

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 25th March, 2021

Pronounced on: 20th April, 2021

+ **W.P.(C) 292/2021**

SI GD PRADEEP

..... Petitioner

Through: Mr.N.L.Bareja, Advocate

versus

UNION OF INDIA & ORS.

... Respondents

Through: Mr.Shashank Bajpai, Sr.Panel
Counsel for UOI

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

ASHA MENON, J:

1. This petition has been filed with the following prayers: -

“a) Issue an appropriate writ, order(s) or directions(s) in the nature of:-

(i) Certiorari by quashing/setting aside the impugned letter dated 19.11.2020 and the decision dated 10.12.2020 (copy of the decision not supplied to the petitioner) passed by the RMB against the petitioner in the Review Medical Examination, held on 10.12.2020 wherein the petitioner was declared medically unfit.

(ii) *Mandamus directing the respondents to consider the case of the petitioner by treating him medically fit in medical category SHAPE-1, in terms of the Medical Fitness Certificate issued by the Registered Medical Practitioner in the relevant field, who was fully qualified, and competent to assess the Medical Fitness of the petitioner, after having given him the appropriate treatment, as also in the opinion of the expert on the outcome of the colour Doppler Test held at Delhi as well as Jhunjhunu (Rajasthan) and in pursuance thereof, direct the respondents to issue him the letter of appointment to the post of AC/GD, in accordance with his position in the merit list drawn on conclusion of the LDCE-2017 / 18, with all consequential benefits accruing to the petitioner therefrom, or in the alternative direct the conduct of the medical examination of the petitioner by constituting an Independent Medical Board under the aegis of either AIIMS or under the Commandant Army Hospital (R&R).*

(iii) *Order or direct the respondents to keep one vacancy in the post of AC/GD reserved for the petitioner, for appointment In one of the unreserved Vacancies in the CRPF, under the scheme for appointment through LDCE-2017 / 18, pending finalization of the above noted writ petition.*

b) Direct the respondents to pay appropriate compensation/ damages towards the sufferings and mental agony, under-gone by the petitioner on

account of the unjustifiable acts on the part of the respondents, for depriving the petitioner of his rights for appointment to the post of AC/GD through LDCE.
c) Direct the respondents to pay costs of this petition to the petitioner for compelling him to approach this Hon'ble Court for indulgence to seek justice.
d) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the petitioner, to meet the ends of justice. ”

2. The brief facts as are relevant for the disposal of the present case are as follows. The petitioner was selected for the direct appointment to the post of SI/GD through CPOs Examination-2011 on 27th July, 2012 and was allocated to the Central Reserve Police Force (CRPF). After successfully undergoing basic training, the petitioner was posted to the 225th Bn. of CRPF and continued to perform his duties well wherever deployed for its operational tasks till July, 2017. In July, 2017, he was posted to the Recruit Training Centre (RTC), CRPF, Latur (Maharashtra) where he performed his duties as Training Instructor till March, 2019, when he was posted to the CTC Neemuch (MP), where he is presently serving.

3. On 28th June, 2019, an advertisement was issued by the respondents inviting applications to fill 135 vacancies i.e. 87 vacancies in the BSF; 27 in the CRPF and 21 in the SSB, from serving officers of the rank of SI/GD, Inspector/GD and Subedar Major/GD for selection to the post of Assistant Commandant (AC)/GD in the said Central Armed Police Forces (CAPFs), through Limited Departmental Competitive

Examination (LDCE) 2017-18 as per their respective RRs. The petitioner responded to this advertisement by submitting his application and was shortlisted for the Written Test on 2nd February, 2020. The petitioner qualified the Written Test and also underwent the Physical Standard Test (PST) and Physical Efficiency Test (PET) on 8th February, 2020 at 39 Bn., ITBP Lakhnawali Camp, Greater Noida (U.P.), which too he cleared. He then appeared in the Interview and Personality Test, which was held from 5th October, 2020 to 13th October, 2020 for 144 candidates, who had qualified the Written Test as well as the PST and PET.

4. On 18th November, 2020, the petitioner was medically examined at Composite Hospital (CH), New Delhi and was declared unfit on the ground of being overweight by 8 KGs and being a case of “Varicose Veins Right Lower Limb” vide memorandum dated 19th November, 2020 issued by Dr. Shekhar Kansara, Medical Officer, Selection Board LDCE. Since the petitioner was entitled to apply for a Review Medical Examination (RME) after obtaining necessary fitness certificate from a Registered Medical Practitioner within 15 days, i.e. by 3rd December 2020, the petitioner underwent an operation at Sama Hospital, Sri Fort Road, New Delhi on 19th November 2020 and thereafter, got the requisite fitness certificate from the Registered Medical Practitioner serving at Bhagwan Das Khetan (BDK) Hospital, a Govt. Hospital at Jhunjhunu.

5. The petitioner appeared for the Review Medical Board (RMB) on 10th December, 2020 at CH CRPF, New Delhi and was subjected to Colour Doppler Test on 11th December, 2020. He claims that he was never communicated either verbally or in writing as to the outcome of the said Colour Doppler Test, but he was orally informed that he was found

medically unfit on the ground of “Varicose Veins Right Lower Limb”. The petitioner nevertheless, on 12th December, 2020 got himself examined by way of Colour Doppler Right Lower Limb at Rajasthani Diagnostic and MRI Centre, Jhunjhunu and was found to be normal by the Specialist Government Medical Officer of the Government Hospital, Jhunjhunu, who also issued to him a Certificate dated 13th December, 2020.

6. In this background, Sh.N.L.Bareja, learned counsel for the petitioner, submitted that great wrong had been perpetrated on the petitioner as the respondents had applied standards that were meant for ‘entry level direct recruitment candidates’ to the post of GOs/NGOs in the CAPFs and Assam Rifles (AR), while the petitioner admittedly had been in service since 2012 and was in SHAPE-1 and had applied to the post of AC/GD only for promotion and had to be assessed medically on standards prescribed for promotees. Learned counsel also submitted that this court in several cases, where the candidates had been declared medically unfit on the plea of “Varicose Veins”, had directed the respondents to conduct a medical examination by an independent Board constituted by the Commandant, Army Hospital (R&R) and that a similar relief be also extended to the petitioner and he be directed to be examined at the R&R Hospital.

7. Learned counsel also relied on the judgment of the Supreme Court in **SLP Nos.2332-2333/2018** titled ***Ct/CD Rambabu Chandrawanshi v. Union of India and Ors.***, to submit that the order of this court in W.P.(C)4765/2015 filed by CT/DC Rambabu Chandrawanshi declining to direct the said petitioner to be medically examined by a RMB had been

set aside by the Supreme Court and that this court ought to be guided by the view taken by the Supreme Court.

8. Sh. Shashank Bajpai, learned counsel for the respondents, pursuant to our directions on 8th January, 2021 had placed on record the photocopy of the report of the RMB dated 10th December, 2020 as well as the copies of the judgments passed in W.P.(C) 10783/2020 and W.P.(C) 9191/2020.

9. We have heard both the learned counsel and have perused the record and find that on 18th November, 2020, when the petitioner was examined, he was found to be overweight by 8 KGs and was found with “Varicose Veins Right Lower Limb”. The Report of the RMB held on 11th December, 2020 records that the petitioner was found unfit on account of being a case of “*OPTD varicose veins RT-Leg*” wherein the petitioner has also recorded “*maine varicose veins ka surgery karwaya hai*”. The Board then recorded “*as per guidelines optd varicose veins is unfit as basic defect remains unchanged*” (“optd” being short for “operated”) and declared the petitioner unfit.

10. There is no dispute that the existence of “Varicose Veins” is considered as unfitness under the Uniform Guidelines for Medical Examination. The petitioner had been examined through Colour Doppler and was found to be suffering from “Varicose Veins Right Lower Limb”. The very fact that the petitioner has endorsed the report of the RMB to the effect that he had undertaken surgery for “Varicose Veins” confirms the fact that he was suffering from that medical condition. The conclusions drawn by the first Medical Board and the RMB, therefore, are not incorrect or based on erroneous assessment. So, neither of the two Reports can be rejected on that ground. In any case, this court in various

cases, including in ***W.P.(C) 9191/2020*** titled ***Vikash Choudhry v. Union of India & Others*** and ***W.P.(C) 10783/2020*** titled ***KM. Priyanka v. Union of India & Others***, copies whereof have been filed by the learned counsel for the respondents, has held that when no *mala fide* can be attributable to the doctors constituting the Medical Boards, the opinion formed by them that a candidate is not medically fit for appointment is to be preferred to the opinion of private or government doctors to the contrary, as the doctors belonging to the CAPFs are well aware of the demands of the duties of the Forces and the terrain in which they have to work and the challenges they are required to face.

11. With regard to the contention of the learned counsel for the petitioner that the medical standards for the LDCE could not be equated to the requirements for candidates of direct recruitment process, since LDCE was a promotion, and that the standards applicable for promotees alone should be made applicable to the LDCE candidates, this is an issue that has been settled by this court in ***W.P.(C)2591/2020*** titled ***Pavnesh Kumar v. Union Of India & Ors.*** In that case also, a plea had been raised that the petitioner having applied for LDCE, the BSF could not apply different medical standards for promotion to the same post of SI(GD) through general promotion and through LDCE. Reliance was also placed on two judgments of this court in ***Man Singh v. Union of India*** **2012 SCC OnLine Del 6360 (DB)** and ***Ajay Pandey v. Union of India*** **MANU/DE/1721/2014 (DB)** to contend that the Recruitment Rules and the guidelines for promotion which would apply to appointments through LDCE would have to be those which were applicable to appointments by promotion. The submissions were rejected by the court. The following

observations of the court apply on all fours to the facts of the present case and are worth reproducing, as below: -

“20. xxx xxx

(D) The sheer difference in age, in the two modes of appointment, even though to the same rank, one by LDCE and the other in the due course, in our view is sufficient for the two to be treated differently and to be not placed at par. Through LDCE, Constables, even though already working in BSF, can aspire to be an SI, much before 32 years of age and which rank they would otherwise in the due course attain, in all probability, not before 50 years of age, if not more.

(E) There is a sea of difference between an SI in his 30s and an SI in his 50s. Though on paper, their job profile may be same but experience of life shows the duties allocated to the two, out of the same job profile, to be entirely different. Normal wear and tear of human body with age takes a toll on physical strength and efficiency and it cannot possibly be disputed that the tasks which a person in his 30s is able to perform are not ordinarily performable by the same person in his 50s.

xxx xxx

(G) LDCE is a means of providing an opportunity to those, who owing to compulsions of life have been forced to commence working life at a comparatively young age, of fulfilling their dreams and aspirations. Such persons are not condemned to live the entire life of drudgery, by being not in a position to resign from service already in hand, to fulfill their dreams. LDCE offers them an opportunity to, while holding on to their job in hand, if better than their peers, fulfill their dreams without risking their jobs. It is only after they are successful that they are required to resign from their jobs in hand.”

12. Reliance was also placed by the court on another decision of this court reported as ***Sunil Kumar Singh v. Union of India*** MANU/DE/0428/2017 (DB) to conclude that for eligibility, LDCE have to be treated at par with direct recruitment and not with promotion. As in those cases, so also in the present case, the eligibility criteria were declared in the advertisement for filling the vacancies. In the present case the advertisement (Annexure P4 at page 54 of the e-file) notified that the candidates who qualified the written examination, PST/PET and appear in the interview process were to be shortlisted for undergoing medical examination which was to be conducted as per the “Revised Medical Guidelines 2015”. The petitioner having accepted this condition, and participated in the selection process cannot now cry “foul” only because he has failed to meet the prescribed medical standards.

13. The judgment in ***Rambabu Chandrawanshi (supra)*** has no application to the facts of the present case. Following the judgment in ***Pavnesk Kumar (supra)***, we find no force in the contention of the learned counsel for the petitioner that the LDCE should be treated at par with the promotees, who get promoted in due course at a much later stage in their career and at a far more advanced age, and not with direct recruits, who are younger and of a similar age as the LDCE candidates.

14. Before concluding, we must deal with the submission of the learned counsel for the petitioner that he was in SHAPE-1 as per the Annual Medical Examination held on 5th September, 2020 and could not have been found unfit by the Medical Boards two-three months later. The advertisement in question once again provides the answer. In para 8 of

the advertisement (at page 52 of the e-file), it is notified as follows:

“Medical Standards:

- (i) *The candidates must be in Medical Category SHAPE-1.*
- (ii) *It should, however, be clearly understood that the Government of India reserves to itself, absolute discretion to reject or accept any candidate after considering the report of the Medical Board.*
- (iii) *Medical examination will be conducted as per revised Medical Guidelines issued by MHA dated 20-05-2015 and amended from time to time for recruitment of GOs and NGOs in the CAPFs and AR.”*

15. Thus, it is clear, that being in SHAPE-1 is a mandatory condition to apply to appear for and participate in the selection process. It does not exempt the candidate from being medically examined by the Medical Board on clearing the examinations. Rather, para 8 proclaims loud and clear that the Government of India has reserved to itself the “absolute discretion” to reject or accept a candidate based on the reports of the Medical Boards. These conditions were never challenged by the petitioner. On the contrary, he willingly accepted all these conditions including that he would be assessed for medical fitness on standards prescribed for recruitment of GOs and NGOs and applied for and participated in the selection process. He was aware that he is an in-service candidate and appearing for the LDCE. But he made no grievance at the time of applying for the vacancy of AC/GD that the medical standards prescribed were improper.

16. In the result, the appeal is dismissed along with pending applications, if any, as being devoid of merits.

ASHA MENON, J

MANMOHAN, J

APRIL 20, 2021/s

