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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 23.02.2022***+ **W.P.(C) 11496/2021 & CM 35438/2021**

SUNNY

..... Petitioner

Through Mr.U.Srivastava, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr.Rishabh Sahu, Central Govt.
Sr. Counsel.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (Oral)**

The petition has been heard by way of video conferencing.

1. The present petition has been filed seeking a direction to the respondents to conduct medical re-examination of the petitioner on account of the petitioner having been found 'fit' for appointment by three reputed hospitals and if found fit, consider the case of the petitioner for appointment to the post of constable/driver in the Indo Tibetan Border Police Force (in short, 'ITBP').

2. It is the case of the petitioner that pursuant to the Advertisement No. 02/2018 for the post of Constable (Driver) in the ITBP, the petitioner filled out the online application against said vacancy. For the purpose of appointment, the petitioner appeared for the Written



Test as well as the Documentation & Practical (Skill) Test and cleared both stages. Upon clearing these stages of the recruitment process, the petitioner was shortlisted and deputed for a Detailed Medical Examination (in short, 'DME').

3. At the DME conducted on 14.09.2021 at Referral Hospital, Greater Noida, Uttar Pradesh, the petitioner was declared to be medically unfit on the ground of '*defective distant vision rt eye 6/12, lt eye 6/9*'. Aggrieved by the result of the DME, the petitioner applied for his Review Medical Examination (in short, 'RME').

4. The respondents conducted the RME on 15.09.2021 and the petitioner was declared to be medically unfit on the same grounds as those suggested by the report of the DME, that is, '*defective distant vision rt eye 6/12, lt eye 6/9*'.

5. The learned counsel for the petitioner submits that the petitioner, distressed by the reports of both the DME and the RME had consulted doctors at Mahajan Eye Centre, Delhi; Civil Hospital, Sonapat; and the Safdarjung Hospital, Delhi, wherein the petitioner was made to undergo tests by doctors and was found not to be suffering from defective eye vision. He submits that in light of being found to be medically fit by doctors in these prestigious hospitals, the petitioner represented to the respondents for a re-medical examination, and having failed to receive a response, has filed the petition. He submits that the petitioner ought to be afforded an opportunity to be re-examined medically.



6. On the other hand, the learned counsel for the respondent submits that the petitioner has been found to be medically ‘unfit’ for appointment, both by the DME and RME. He submits that these reports cannot be doubted because of the subsequent medical reports of private/public hospitals.

7. This Court, vide its order dated 25.10.2021, had directed the respondents to ensure that the medical examination records of the petitioner are brought on record. In compliance with the same, the medical documents of the petitioner were produced before the Court.

8. We have considered the submissions made by the learned counsels for the parties as also perused the medical record of the petitioner produced by the respondent.

9. A perusal of the relevant documents shows that the petitioner was found to be medically unfit on the same ground at the stage of the DME as well as the RME, that is, ‘defective distant vision rt eye 6/12, lt eye 6/9’. Thus, there is no inconsistency in the reports of the DME and the RME, with both finding the petitioner to be medically unfit on account of defective vision in both eyes. A perusal of the RME report shows that the petitioner was examined by a specialist ophthalmologist.

10. As far as the reliance on the reports of private/public hospitals is concerned, again we find no force in the submission. This Court, in its judgment dated 29.11.2021 in **Sandeep vs. Indo Tibetan Border Police Force & Ors.**, W.P. (C) 13456 of 2021, has held that medical



opinion can vary from professional to professional, but once the recruitment procedure provides for finality and is found to have provided for a review to eliminate the possibility of human error, the finality has to be accepted, unless an exceptional case for interference is made out.

11. This Court, in its judgment dated 21.12.2020 in ***Km. Priyanka vs. Union of India & Ors.***, W.P.(C) 10783 of 2020, has also held that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for the civilian employment. It was held that it is the doctors of the Forces who are well aware of the demands of duties and the physical standards required to discharge the same. It was further held as under:

“8. We have on several occasions observed that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for civilian employment. We have, in Priti Yadav Vs. Union of India 2020 SCC OnLine Del 951; Jonu Tiwari Vs. Union of India 2020 SCC OnLine Del 855; Nishant Kumar Vs. Union of India 2020 SCC OnLine Del 808 and Sharvan Kumar Rai Vs. Union of India 2020 SCC OnLine Del 924, held that once no mala fides are attributed and the doctors of the Forces who are well aware of the demands of duties of the Forces in the terrain in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, opinion of private or other government doctors to the contrary cannot be accepted inasmuch as the recruited personnel are required to work for the Forces and not for the private doctors or the government hospitals and which medical professionals are unaware of the demands of the duties in the Forces.”



12. In view of the above, we find no merit in the present petition and the same is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

MANMOHAN, J

FEBRUARY 23, 2022/AB

