



#

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 25.07.2023

Judgment delivered on: 11.08.2023

+ W.P.(C) 9104/2023, CM APPL. 34607/2023 & 34609/2023

SH. PRITAM

..... Petitioner

Through: Mr. Rahul Singh, Advocate with
Petitioner-in-person.

versus

DELHI SUBORDINATE SERVICES SELECTION BOARD

AND ANR.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Ms. Tania Ahlawat,
Mr. Nitesh Kumar Singh, Ms. Palak
Rohmetra, Ms. Laavanya Kaushik and
Ms. Aliza Alam, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. The challenge in this petition is to an order dated March 29, 2023 passed by the Central Administrative Tribunal (hereinafter, referred to as the 'Tribunal') in O.A. No. 702/2021, whereby the O.A. preferred by the petitioner, for his appointment in Delhi Fire Service as Fire Operator against Advt. No. 01/2014, was dismissed, since the petitioner was declared medically unfit.

2. In brief, as per the case of the petitioner, he applied against Advt. No.



01/2014, issued by respondent No. 2 for the post of Fire Operator in Delhi Fire Service through respondent No. 1 and qualified the written examination as well as Physical Endurance Test conducted by respondent No. 1 in between August, 2014 and June, 2016. Petitioner further cleared the Driving Skill Test conducted by respondent No. 2 in September, 2017 and finally received the offer of appointment vide Memorandum No. F.2(13)/228/Admn./DFS/HQ/FO/2020/396 dated June 25, 2020.

On September 02, 2020, petitioner received letter for his medical examination, which was scheduled to be conducted on September 17, 2020 at Aruna Asaf Ali Hospital, Delhi. Pursuant to the medical examination at Aruna Asaf Ali Hospital, Delhi, respondent No. 2 issued a Show-Cause Notice dated November 04, 2020 calling upon the petitioner, as to why the offer of appointment should not be cancelled and withdrawn, since the petitioner was declared medically unfit vide report dated October 12, 2020.

It may be appropriate to notice, at this stage itself, that medical report of Aruna Asaf Ali Hospital, Delhi declared the petitioner unfit on account of **(i) reduced visual acuity Right Eye: 6/9P; Left Eye: 6/9P and; (ii) interlocking nail in left femur.**

3. In response to the Show-Cause Notice, petitioner relied upon the medical report dated November 19, 2020 issued by Ayushman Hospital, Sector 10, Dwarka, New Delhi and claimed the vision in both eyes of the petitioner to be normal. Petitioner further informed that interlocking nail in left femur was inserted on account of an accident met by him on October 23,



2018 but he was physically fit. Petitioner also clarified that medical condition is temporary illness and he could get the nail extracted.

4. In response to the grievance raised by petitioner with respondent through Public Grievance Monitoring System, petitioner was informed vide letter dated December 17, 2020 that his request for medical re-examination is under consideration with the competent authority and further, removal of interlocking nail in left femur is his personal decision, for which Delhi Fire Service is not competent to advise.

5. Thereafter, the petitioner was re-examined at Deen Dayal Upadhyay Hospital, Hari Nagar, New Delhi and in terms of report dated February 11/12, 2021 issued by the Medical Board, petitioner was again found unfit on account of defective vision i.e. Right Eye 6/9 & Left Eye 6/9(p).

6. Consequently, the offer of appointment to the petitioner was cancelled and withdrawn vide letter dated March 03, 2021.

7. Aggrieved against the cancellation of offer of appointment, petitioner preferred O.A. No.702/2021 before the Tribunal which was dismissed for the reasons recorded in para 5 of the impugned order:-

“5. It is not in dispute that the applicant participated in the selection process and was duly selected. It is also not in dispute that the applicant was declared medically unfit at the Aruna Asaf Ali Hospital vide report dated 12.10.2020 and subsequently also by a Medical Board of four experts at another Government Hospital annexed at page-54 of the O.A. dated 11/12.02.2021. We have no reason to disbelieve the medical reports given by the Medical Board. It is a settled position of law that the domain of deciding medical fitness of



the applicant lies with the Medical Board, who are experts in the field. We cannot substitute or replace the opinion given by the Medical Board.”

8. Learned counsel for the petitioner, as well as petitioner in person, have vehemently contended that the respondents wrongly withdrew the offer of appointment, without any justification and disputed the report of the Medical Boards, which found the petitioner unfit. It is claimed that the petitioner was declared medically fit by the Doctors at Ayushman Hospital, Sector 10, Dwarka, New Delhi as well as Deen Dayal Upadhyay Hospital, Hari Nagar, New Delhi on March 23, 2021 and vision in both eyes was found to be normal. Reference was also made to medical reports obtained from Dr. Baba Saheb Ambedkar Hospital, Rohini, Delhi on April 15, 2021 and AIIMS, New Delhi on April 05, 2023 and it is claimed on the basis of the same that vision in both eyes is normal. It was further urged that petitioner could not be treated as unfit on the ground of insertion of interlocking nail in left femur as the same could be extracted after medical procedure.

9. On the other hand, the order passed by the Tribunal is supported by learned counsel for the respondents and it is pointed out that the offer of appointment issued to the petitioner was subject to his being found medically fit and petitioner was bound by the terms and conditions/requirements of the post. It is urged that there is no reason to disbelieve the concurrent findings of the Medical Board and no *malafides* or error could be attributed to the experts who conducted the medical examination. The fitness of the petitioner on account of interlocking nail in left femur is also stated to be an impediment for his joining. Reliance was further placed upon '**Devendra**



Singh vs. Union of India', W.P.(C) 9559/2021.

10. We have given considered thought to the contentions raised.

Admittedly, the petitioner was found to be unfit, both at the time of initial medical examination at Aruna Asaf Ali Hospital as well as by the second Medical Board, which re-examined the petitioner.

It needs to be kept in perspective that no *malafides* or error can be attributed to the medical experts, who were best suited to form an opinion as to the medical fitness of the candidate. Medical check-ups undertaken by the petitioner at his personal level at different hospitals without disclosing the complete factual background and the findings of 'unfitness' by competent Medical Board, do not inspire confidence. Such medical examination undertaken by the petitioner on his own, cannot be given much credence unless some plausible reason for error by Medical Board is manifest. Also, the rigors of the post to which an individual is to be posted are unknown to the medical specialist while an individual undertakes medical examination on his own at OPD. Even, it remains doubtful, in case, the identity of the concerned person is checked by the Doctors in the OPD, as the examination is undertaken in routine as per disclosure made by an individual. There is absolutely no reference in the medical reports obtained by the petitioner, if the findings of the competent Medical Board could be erroneous. It may further be noticed that there is no discrepancy in the findings of the two Medical Boards (i.e. initial Medical Board and Review Board) which were officially constituted. As such, there does not appear to be any plausible



ground for further seeking a third medical opinion, at this stage.

There has to be a finality for such medical examination in justice delivery system and the process cannot be kept open-ended, until and unless exceptional circumstances can be shown that the medical opinion rendered by the competent Medical Boards could be erroneous.

So far as the medical condition of the petitioner regarding insertion of interlocking nail in left femur is concerned, the same is not disputed. The finding by the Medical Board in this regard was given as per prescribed criteria for the post. Obviously, in case any correctional therapy by way of removal of interlocking nail is permissible under the Rules, the same would have been considered by the respondents. However, the issue does not require further deliberation since the petitioner was also found to be unfit on account of defective vision.

For the foregoing reasons, we do not find any infirmity in the order passed by the Tribunal. The writ petition is accordingly dismissed. Pending applications, if any, also stand disposed of. No order as to costs.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

August 11, 2023/R/sd