



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

% *Date of decision: March 12, 2024*

+ W.P.(C) 3663/2024

(61) SAPNA DUBEY

..... Petitioner

Through: Mr. Ajay Garg, Ms. Tripti Gola,
Ms. Lhinghdeihat Chongloi, Mr.
Uday Garg, Mr. Prasant Gola and
Ms. Surbhi Soni, Advs.

Versus

CENTRAL INDUSTRIAL SECURITY FORCE
AND ANR

..... Respondents

Through: Mr. Farman Ali, SPC with Mr.
Kushal Kait, G.P. Ms. Usha
Jammal, Adv. Along with SI Ajay
Kumar, SI Prahlad Devenda and
Mr. Amit Kumar for CISF

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J. (ORAL)

CM APPL. 15134/2024 (for exemption)

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

W.P.(C) 3663/2024 & CM APPL. 15135/2024 (for directions)

3. Pursuant to an advertisement for the post of Head Constable¹ (Ministerial) in 2019 issued by the Central Industrial Security Force², petitioner herein cleared the PST/ documentation verification stage, written test stage and skill test stage on 06.11.2023. Thereafter, vide a

¹ Hereinafter referred to as 'HC'

² Hereinafter referred to as 'CISF'



Detailed Medical Examination³ on 06.12.2023 she was found medically 'Unfit' due to 'Brachymetatarsia Right 3rd toe' and 'Ketones present in Urine RE'.

4. The petitioner, then, within a few days obtained a fitness certificate dated 11.12.2023 from the District Hospital, Narmadapuram, Madhya Pradesh, wherein she was declared medically 'Fit'. Despite thereto, she was declared medically 'Unfit' due to 'Brachymetatarsia 4th toe Right Foot' once again on 23.01.2024, this time by the Review Medical Examination⁴.

5. It is thereafter that the petitioner has now filed the present petition under Article 226 of The Constitution of India seeking quashing of the aforesaid DME dated 07.12.2023 as also the subsequent RME dated 23.01.2024 and declaring her medically 'Fit' for appointment to the post of HC (Ministerial) in CISF-2019.

6. Learned counsel for the petitioner submits that the rejection of candidature of the petitioner is not as per '*Guidelines for Recruitment Medical Examination in CAPFs & Assam Rifles 2015*' since, Brachymetatarsia is not a ground for outright disqualification unless it prevents the proper wearing of combative footwear or impairs walking, marching, running or jumping and she got herself examined from a specialist Orthopaedic at Community Health Centre, Pipariya, Madhya Pradesh whereby she was declared medically 'Fit' in the abovesaid regard.

³ Hereinafter referred to as '**DME**'

⁴ Hereinafter referred to as '**RMB**'



7. Further relying upon *Ashish Kumar Verma Vs. UPSC & Ors.*⁵, learned counsel submits that if the medical ailment is of a minor nature and does not impede with the performance of duties and with normal range then in such cases the candidate need not be declared medically 'Unfit'.

8. *Per-Contra*, learned counsel for the respondents submits that the petitioner was initially declared medically 'Unfit' by the DME and then also by the RME which consisted of competent officers with one Specialist.

9. We have heard the learned counsel for the parties and perused the documents on record.

10. Needless to say, *admittedly*, the petitioner was declared medically 'Unfit' by two independent Boards, being the DME and the RME on two different occasions. Both the DME and the RME are constituted by the respondents for the purposes of determining the requisite conditions needed by a candidate at the time of recruitment and both the DME and the RME are comprising of specialised medical experts in their respective fields. Being mindful of the requirements of assessing any candidate, like the petitioner herein, for recruitment in the CISF, the respondents have in their wisdom and after much deliberation, carved out the procedure as well as the requisites necessary for the same.

11. Under the aforesaid factual circumstances, and even otherwise, this Court is not required to render any finding of fact or deliberate upon the correctness of the two decisions/ opinions rendered by the DME and/ or

⁵ 2012 SCC OnLine Del 5105



the RME, more so, whence this Court is neither sitting as a court of appeal nor as a court of revision. Not to mention that this Court is not a fact-finding authority sitting over the said decisions/ opinions rendered by either of them. Therefore, no interference is called for. It is in fact a settled position of law that this Court while adjudicating any petition of the present nature under Article 226 of The Constitution of India is not to appreciate/ reappraise evidence or act as a finding authority. For the same, this Court finds able support in ***Union of India & Ors. vs P. Gunasekaran***⁶ wherein the Hon'ble Supreme Court has laid down as under:-

“12.....The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappraisal of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

⁶ (2015) 2 SCC 610



13. Under Articles 226/ 227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.”

12. In fact, the Hon’ble Supreme Court recently while dealing with matters of recruitment in ***Telangana Residential Educational Institutions Recruitment Board v. Saluvadi Sumalatha***, 2024 SCC OnLine SC 235 has specifically held as under:-

“16. Courts will have to be cautious and therefore slow in dealing with recruitment process adopted by the recruitment agency. A lot of thought process has gone into applying the rules and regulations. Merely because a recruitment agency is not in a position to satisfy the Court, a relief cannot be extended to a candidate deprived as it will have a cascading effect not only on the said recruitment of respondent no. 2, but also to numerous others as well. In such view of the matter, courts are duty bound to take into consideration the relevant orders, rules and enactments before finally deciding the case. In this regard, reliance is placed on the decision of this Court in Dalpat Abasaheb Solunke v. B.S. Mahajan, (1990) 1 SCC 305 where it was held:

“12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise.



The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

(emphasis added)

13. In view of the aforesaid, the fitness certificate obtained by the petitioner from the District Hospital, Narmadapuram, Madhya Pradesh, whereby she was declared medically ‘Fit’ can hardly be of any assistance to her as the parameters for anyone to be recruited for the Armed Forces are sufficiently different from that of the General Public. Moreover, undeniably, the petitioner has been declared medically ‘Unfit’ twice over again, once by the DME and then again by the RME. This Court has no reason to doubt over either of them.

14. For the aforesaid reasons, this Court finds no ground for judicial intervention by quashing of the DME dated 07.12.2023 and/ or the subsequent RME dated 23.01.2024 and/ or declaring her medically ‘Fit’ for appointment to the post of HC(Ministerial) in CISF-2019.

15. Accordingly, the present petition along with the pending applications therein, if any, is dismissed leaving the parties to bear their respective costs.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

MARCH 12, 2024/rr