



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

% *Date of decision: March 19, 2024*

+ **W.P.(C) 3997/2024 & CM APPL. 16357/2024**

(61) **NAVEEN NIRWAN** Petitioner
Through: **Mr. Sudarshan Rajan, Mr. Ramesh Rawat and Mr. Hitain Bajaj, Advs.**

Versus

UNION OF INDIA & ANR. Respondents
Through: **Mr. Shrey Sharawat, SPC with Mr. Abhishek Gupta, GP and Ms. Ishita Misra, Adv.**
Mr. Sourabh Bhushan, Law Officer/CRPF with Mr. R.N. Pareek, Officer/CRPF

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J. (ORAL)

1. On 20.07.2020, the respondent no.2 issued an advertisement notice for Paramedical Staff Exam 2020, under which the petitioner applied for the position of Head Constable Junior X-ray Assistant under Other Backward Classes category.

2. Subsequently, on 19.12.2020, the petitioner first cleared Physical Standard Test/Skill Test and Trade Test and then on 02.06.2023 completed a computer-based test as well. Advancing in the recruitment process, on 22.02.2024, the petitioner, after clearing the Skill Test/DV/Detailed Medical Examination and Review Medical



Examination¹, was shortlisted for medical examination. However, on 28.02.2024, the respondents declared him '*Unfit*' solely due to his having '*Hypospadias*'.

3. Hence, the petitioner, vide the present petition under Article 226 of The Constitution of India, seeks quashing of the impugned medical report dated 28.02.2024 and direction to the respondents to appoint him to the post of Head Constable Junior X-ray Assistant as also to give him all consequential benefits upon such appointment including seniority, arrears of pay and allowances, future promotion etc.

4. As per the learned counsel for the petitioner, even after being declared '*Unfit*' by the respondents on 28.02.2024, the petitioner consulted the Associate Professor, Urology of Safdarjung Hospital on 05.03.2024 who has affirmed that '*Hypospadias*' will not impede the ability of the petitioner to fulfil the duties associated with the position and did not necessitate active surgery. He further highlights that the nature of the job of Head Constable Junior X-ray Assistant primarily involves radiology work, such as X-ray, MRI, and CT scans, for which the petitioner has demonstrated proficiency by passing the skill test.

5. He lastly submits that the respondents decision to declare the petitioner '*Unfit*' without conducting a proper examination, despite evidence suggesting his capability and good health appears unjust and he deserves a fair consideration and a reassessment of his eligibility for the position based on his qualifications and abilities rather than his medical condition.

¹ Hereinafter referred to as '**RME**'



6. Learned Senior Panel Counsel for the respondents, appearing on advanced notice, submits that the RME was conducted by a Medical Board constituted by the respondents comprising of specialised experts in their fields who have the final verdict for determining the standard of recruitment of any candidate like the petitioner herein. Based thereon, he submits that in matters involving adjudication of medical condition of any candidate like the petitioner for recruitment, there is hardly any scope for interference by this Court.

7. We have heard the learned counsel appearing for all the parties and also gone through the documents on record.

8. Present is a case wherein the petitioner was declared medically 'Unfit' in the RME on 28.02.2024 due to his having *Hypospadias*'. Therefore, since the issue involved before us rests on the terms and conditions contained in the '*Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles*'² and which is the guiding force with the determining factors qua recruitment of any candidate like the petitioner, the relevant portion thereof are reproduced hereunder :-

"XIII. Examination of Inguinal Region and Genitals:

*3 (c) **Penis:** Penis should be examined for any wart, ulcer, discoloration discharge or tumour and these cases are to be rejected. The cases of hypospadias and epispadias or meatal stenosis should also be rejected. The individual is asked to retract the prepural skin and if failed, such cases of phimosis should be rejected."*

(emphasis supplied)"

9. Since, neither the steps of appointment in constituting of the RME

² Hereinafter referred to as '**Guidelines**'.



as taken by the respondents nor the process of declaring the petitioner 'Unfit' on the basis of the aforesaid Guidelines are faulty or can be doubted, there is no occasion for us to hold that they are and/or can be vitiated by any element of arbitrariness, biasness or *mala fide*. In any event, we are required to be circumspect, wary and watchful in interfering and drawing any opinion or reaching any conclusion which is/ can be contrary to such specialized body of experts, especially, when we while deciding the present petition under Article 226 of The Constitution of India are not to supplement, alter, amend or substitute it with our own.

10. In any event, the opinion rendered by the Associate Professor, Urology of Safdarjung Hospital, who is a Doctor from outside, can hardly be equated with that of the respondents constituting of specialised body of experts. Since the requirements, standards and parameters for the Armed Forces cannot be placed on the same platform. The Hon'ble Supreme Court, while dealing with the aforesaid in ***Union of India v. Lt. Gen. Rajendra Singh Kadyan*** (2000) 6 SCC 698 has held as under:

“29. Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. Maybe one may emphasize one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government.”



11. Recently also, the Hon'ble Supreme Court while dealing with the 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.”



12. As a result of the aforesaid discussions and analysis coupled with our reasons therefor, we find no ground for judicial intervention or referring the petitioner to the RMB.

13. Accordingly, the present petition along with the pending application is dismissed, leaving the parties to bear their respective costs.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

MARCH 19, 2024/rr