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

+ **W.P.(C) 9843/2024**

SUNIL YADAV

.....Petitioner

Through: **Mr. Arjun Panwar, Adv.**

versus

UNION OF INDIA AND ORS

.....Respondents

Through: **Mr. Madhav Krishna Dubey, SPC
with Mr. Sanjay Pal, Adv. and SI
Prahlad Singh and SI Sunil for R-1 to
R-5.**

**Mr. Ravinder Agarwal and Mr. Lekh
Raj Singh, Adv. for R-6.**

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

19.07.2024

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CM APPL. 40386/2024—Exp.

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

W.P.(C) 9843/2024, CM APPL. 40385/2024—I.dir

3. The petitioner, who is presently working as a Sub-Inspector (Executive) in the Central Industrial Security Force (CISF), having joined the said force in 2011 as an Assistant Sub-Inspector (Executive) and is an aspirant to join the post of Assistant Commandant (Executive) under the Limited Departmental Competition Examination (LDCE) quota, has approached this Court by way of the present writ petition filed under Article



226 of the Constitution of India seeking the following reliefs:

- “i. issue a Writ of Certiorari for quashing the Medical Report of Detailed Medical Board dated 21.06.2024 and Review Medical Board dated 24.06.2024 whereby Petitioner has been declared medically unfit by the Respondents;*
- ii. Issue a Writ of Mandamus directing the Respondents to allow the Petitioner to appear for a fresh Medical Examination before an Independent Board set up by the Respondents in consonance with the Revised Guidelines of 2021 and if found fit, to have his candidature restored thereby allowing him to take part in the subsequent stages of the LDCE examination for consideration for promotion to the post of Assistant Commandant-Executive.*
- iii. Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case.”*

4. Learned counsel for the petitioner submits that as a Sub-Inspector, the petitioner is subjected to annual medical examination in the CISF on a regular basis wherein he has always been placed in medical category SHAPE-1. Upon applications being invited for the post of Assistant Commandant / AC (Executive) through LDCE, the petitioner applied for the same and based on his performance in the written examination, he was shortlisted for medical examination. However, in his medical examination held on 01.06.2024, he was declared unfit on the ground of Umbilical Hernia and skin lesions. Being aggrieved, the petitioner preferred an appeal seeking examination by a Review Medical Board. Based on his appeal, the petitioner was referred to Kailash Hospital, Greater Noida, Uttar Pradesh, for ultrasound, wherein it was categorically observed that he was not suffering from any hernia. However, despite this finding of the Kailash Hospital, the Review Medical Board has simply re-endorsed the findings of the initial Medical Board and again declared him as medically unfit on the ground of Umbilical Hernia.

5. He submits that since the petitioner is fit in every aspect, as is evident



from the reports of his annual medical examination as a Sub-Inspector as also the ultrasound report provided by Kailash Hospital, the petitioner then approached AIIMS, New Delhi and Indira Gandhi Hospital, Dwarka, Delhi. While the specialist at AIIMS, New Delhi has opined that he can be reconsidered for medical fitness after surgical repair, the doctor at Indira Gandhi Hospital, Dwarka has categorically opined that he is not suffering from any Umbilical Hernia. He therefore contends that, it is clear that, there was an error of judgment on the part of Medical Board conducted by the respondents and therefore, prays that the respondents be directed to treat the petitioner as medically fit and permit him to participate in the interview for the post of Assistant Commandant (Executive), which is scheduled to be held between 24.07.2024 to 26.07.2024.

6. Issue notice. Learned counsel for the respondents accept notice and submit that the findings given by both the initial Medical Board and the Review Medical Board to the effect that the petitioner is suffering from Umbilical Hernia is based on his clinical examination and cannot be said to be incorrect. Furthermore, merely because the petitioner has been declared fit by Indira Gandhi Hospital cannot be a ground to accept his plea that he is not suffering from Umbilical Herina. He, therefore, prays that the writ petition be dismissed.

7. Having considered the submissions of learned counsel for the parties and perused the record, we find that as per the ultrasound report provided by Kailash Hospital, Greater Noida, Uttar Pradesh to which hospital the respondents had themselves referred the petitioner, he is not suffering from Umbilical Hernia. We also find that neither in the initial Medical Board nor in the Review Medical Board, the respondents included any



gastroenterologist, who alone according to both sides, would be in a position to conclusively opine as to whether the petitioner is suffering from Umbilical Hernia. Further, the Indira Gandhi Hospital, Dwarka where the petitioner was examined has also opined that he is not suffering from Umbilical Hernia.

8. In these circumstances, even though the respondents are correct in urging that the findings of civil hospitals cannot be a ground to determine the medical fitness of persons for joining the Armed Forces, we are of the view that taking into account that the petitioner is since 2011 being placed in medical category SHAPE-1 by the CISF itself, an error of judgment on the part of the Medical Boards cannot be ruled out especially when no gastroenterologist was associated with the Board proceedings. Furthermore, Kailash Hospital, to which the petitioner was referred by the respondents themselves, had categorically opined that he is not suffering from Umbilical Hernia. It would, therefore, be in the interest of justice to direct the medical examination of the petitioner by an independent Medical Board at Army Hospital (R&R), New Delhi.

9. We, therefore, allow the writ petition by directing the respondents to get the petitioner examined by a three member Medical Board at the Army Hospital (R&R), New Delhi preferably on or before 25.07.2024 and accordingly, request the Medical Superintendent, Army Hospital (R&R), New Delhi to constitute a three member Medical Board at the earliest to examine the petitioner and give opinion regarding his medical fitness. As it is the common case of the parties that a gastroenterologist will be the concerned specialist to opine as to whether the petitioner is suffering from Umbilical Hernia, we request the Medical Superintendent, Army Hospital



(R&R), New Delhi to ensure that a gastroenterologist is included as a member in the Medical Board that is to be constituted.

10. The writ petition is, accordingly, allowed in the aforesaid terms by making it clear that the decision taken by the Medical Board of Army Hospital (R&R), New Delhi will be binding on both the sides and in case the petitioner is declared medically fit to join the Armed Forces, he will be permitted to participate in the interview as per the laid down procedure.

11. Taking into account that the interviews for final selection for the post of Assistant Commandant (Executive) are scheduled to be held between 24.07.2024 to 26.07.2024, we also grant liberty to the petitioner to approach the Medical Superintendent, Army Hospital (R&R), New Delhi for compliance of this order on or before 25.07.2024.

12. A copy of this order be given *dasti* under the signatures of the Court Master to both the sides.

REKHA PALLI, J

SHALINDER KAUR, J

JULY 19, 2024/ss