



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

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Date of decision: March 06, 2024

+ W.P.(C) 14323/2023, CM APPL. 56715/2023

(43) CHANDRAPRATAP SAINI Petitioner

Through: Mr. Rishabh Kapur &
Mr. Tanmay Gupta, Advs.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Vikrant N. Goyal, Adv. with
Ms. Anushka and Mr. Mohpatra,
Advs. for UOI
Mr. Vedansh Anand, GP for UOI

AND

+ W.P.(C) 14330/2023, CM APPL. 56741/2023

(44) DINESH SAMBHAJIRAO PAWDE Petitioner

Through: Mr. Rishabh Kapur &
Mr. Tanmay Gupta, Advs.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Abhishek Yadav, Sr. PC with
Mr. Archit Mathur and Mr. Anupam
Sharma, Advs. with Mr. Kapil Yadav,
GP for UOI

AND

+ W.P.(C) 14367/2023, CM APPL. 56850/2023

(45) SANTANU KAR Petitioner

Through: Mr. Rishabh Kapur &
Mr. Tanmay Gupta, Advs.

versus



UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Akshat Singh, Sr. PC with
Mr. Aakash Meena, GP with
Mr. Utkarsh Kandpal and
Mr. Bhanu Gupta, Advs. for UOI with
Lt. Col. Mohan Sharma

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. As the issue which arises for consideration in these three petitions is identical, the same is decided by this common order. Suffice to state, the facts of each of the writ petitions shall be narrated separately.

W.P.(C) 14323/2023

2. This petition has been filed by the petitioner with the following prayers:

“Wherefore, it is most respectfully prayed that this Hon’ble Court may be pleased to:

(i) Pass an appropriate writ, order or direction quashing the medical results dated 10.08.2023 & 04.09.2023 (document not supplied/orally informed) whereby the Petitioner has been declared temporarily unfit by the Respondent No. 2;

(ii) Pass a writ of Mandamus or an appropriate writ, order or direction directing the Respondent No. 2 to appoint the Petitioner in the post of Junior Engineer (Civil) and grant all consequential benefits including seniority and monetary benefits, or in the alternative

(iii) Pass an appropriate writ, order or direction constituting an independent medical board at the All India Institute of Medical Sciences, New Delhi or any other



government hospital to medically re-examine the Petitioner; and

(iv) Pass such other and further orders in favour of the Petitioner in the facts and circumstances of the case.”

3. The case of the petitioner primarily is with regard to his disqualification on medical grounds for appointment to the post of Junior Engineer (Civil) in the respondent No.2 Force/ Border Roads Organisation. The medical grounds on which the petitioner has been disqualified are: - Primary Hypertension (High Blood Pressure) and Sinus Tachycardia (High Pulse Rate).

W.P.(C) 14330/2023

4. This petition has been filed by the petitioner with the following prayers:

“Wherefore, it is most respectfully prayed that this Hon’ble Court may be pleased to:

(i) Pass an appropriate writ, order or direction quashing the medical results dated 17.06.2023 & 12.07.2023 (document not supplied/orally informed) whereby the Petitioner has been declared temporarily unfit by the Respondent No. 2;

(ii) Pass a writ of Mandamus or an appropriate writ, order or direction directing the Respondent No. 2 to appoint the Petitioner in the post of Multi Skilled Worker (Nursing Assistant) and grant all consequential benefits including seniority and monetary benefits, or in the alternative

(iii) Pass an appropriate writ, order or direction constituting an independent medical board at the All India Institute of Medical Sciences, New Delhi or any other government hospital to medically re-examine the Petitioner; and

(iv) Pass such other and further orders in favour of the Petitioner in the facts and circumstances of the case.”



5. The case of the petitioner primarily is with regard to his disqualification on medical ground for appointment to the post of Multi Skilled Worker (Nursing Assistant) in the respondent No.2 Force/ Border Roads Organisation. The medical ground on which the petitioner has been disqualified is: - Heart Murmur (*blowing, whooshing, or rasping sound heard during a heartbeat*).

W.P.(C) 14367/2023

6. This petition has been filed by the petitioner with the following prayers:

“Wherefore, it is most respectfully prayed that this Hon’ble Court may be pleased to:

(i) Pass an appropriate writ, order or direction quashing the medical results dated 25.09.2023 & 11.10.2023 (document not supplied/orally informed) whereby the Petitioner has been declared temporarily unfit by the Respondent No. 2;

(ii) Pass a writ of Mandamus or an appropriate writ, order or direction directing the Respondent No. 2 to appoint the Petitioner in the post of Junior Engineer (Electrical & Mechanical) and grant all consequential benefits including seniority and monetary benefits, or in the alternative

(iii) Pass an appropriate writ, order or direction constituting an independent medical board at the All India Institute of Medical Sciences, New Delhi or any other government hospital to medically re-examine the Petitioner; and

(iv) Pass such other and further orders in favour of the Petitioner in the facts and circumstances of the case.”

7. The case of the petitioner primarily is with regard to his disqualification on medical grounds for appointment to the post of Junior Engineer (Electrical & Mechanical) in respondent No.2 Force /



Border Roads Organisation. The medical grounds on which the petitioner has been disqualified are: - Primary Hypertension (High Blood Pressure), Sinus Tachycardia (High Pulse Rate) and Hematuria (Blood in Urine).

8. Mr. Rishabh Kapur, the learned counsel appearing for the petitioners would submit that the examination / re-examination of the petitioners done by the respondents' Force are *ex facie* erroneous. Insofar as, the medical ground of Primary Hypertension is concerned, the permissible range of the Blood Pressure is below 140/95 mm Hg, with an upper Pulse Rate of 100 beats per minute.

9. He submits that the petitioners in *W.P.(C) 14323/2023* and *W.P.(C) 14367/2023* never suffered from High Blood Pressure (Primary Hypertension) or High Pulse Rate (Sinus Tachycardia). However, surprisingly, the medical examination / re-examination conducted by the respondents' Force revealed both the petitioners as '*unfit*' being suffering from Primary Hypertension as well as Sinus Tachycardia.

10. He submits that the doctor who carried out the examination / re-examination of the petitioners was of General Medicine and not a Cardiologist. Moreover, the examination / re-examination was done in a hurried manner. According to him, in cases concerning both Primary Hypertension and Sinus Tachycardia, appropriate should have been that the petitioners were admitted in the Hospital for observation before the rendering of the final opinion. However, no such process has been undertaken by the respondents in the case in hand.

11. Insofar as, the petitioner in *W.P.(C) 14330/2023* is concerned, the conclusion of '*unfitness*' is on the medical ground of Heart Murmur,



which means blowing, whooshing, or rasping sound heard during a heartbeat. He made the similar submissions as stated in the paragraph 10 above.

12. He also draws our attention to various examinations/test reports of the private doctors/laboratories pertaining to the medical grounds on which the petitioners have been disqualified, to state, that those examinations/ test reports, do not reveal that any of the petitioners have the medical conditions which may render them '*unfit*' as per the respondents.

13. On the other hand, learned counsel appearing for the respondents would justify the conclusion drawn by the Medical Board / Review Medical Board to submit that this Court should not sit over the conclusion drawn by the Team of Experts.

14. Having noted the submissions made by the learned counsel for the parties and given the reasons for which the petitioners have been found '*unfit*', i.e., Primary Hypertension, Sinus Tachycardia and Hematuria, it is a common knowledge and also during the course of consideration of various cases on such similar medical grounds, we find instructions have been issued in the Central Armed Police Forces for medical examination of a candidate getting appointed in Central Armed Police Forces and surely, for cases related to Primary Hypertension and Sinus Tachycardia, a candidate needs to be admitted in the Hospital and put under observation before a final opinion has to be rendered.

15. The officer-doctor, who appears for the respondents during the proceedings, was interacted. He concedes to the fact that none of the petitioners were admitted in the Hospital before a final opinion was



rendered. According to him, after the petitioners had come for medical examination, they were made to sit and relax, and it is only after the doctor concerned completed his routine duties, the petitioners were examined. In any case, it is not the case of the respondents that the petitioners were admitted in the Hospital and were put under observation before the formation of the final opinion. Similar is the position insofar as medical ground noted in respect of petitioner in *W.P.(C) 14367/2023* i.e., Hematuria (blood in urine). It appears that the finding of ‘*unfitness*’ additionally based on Hematuria is on the basis of examination of one urine sample. This we say so, as nothing has been stated in the medical examination that such a finding was arrived at after examination of more than one sample. In any case, it is the case of the petitioner by relying upon certain reports from Private Laboratories/Civil Hospital, Faridabad that the reports related to Hematuria are normal.

16. In such facts and situation, we are of the view that the petitions be disposed of by directing re-examination of the petitioners by a Board constituted by the Research and Referral, Hospital by following such protocol which is followed by Research and Referral, Hospital in a case where the symptoms are of Primary Hypertension / Sinus Tachycardia / Heart Murmur / Hematuria. The Board, so constituted, shall submit its report to the Competent Authority in the respondent No.2/Border Roads Organisation.

17. The said exercise shall be carried out within a period of four weeks from the date of the receipt of a copy of this order. A copy of this order shall also be sent by the respondent No.2 to the Medical



Superintendent of Research and Referral, Hospital for convening a Medical Board with at least four days advance notice to the petitioners for medical examination along with the reports of medical examination/review medical examination for the consideration of the newly constituted Board.

18. It goes without saying that if the petitioners are found fit, further action shall be taken by the Competent Authority within six weeks thereafter. Otherwise, the issue which has been raised by the petitioner shall be treated as closed.

19. The petitions are disposed of in above terms. No Costs.

CM APPL. 56715/2023 in W.P.(C) 14323/2023

CM APPL. 56741/2023 in W.P.(C) 14330/2023

CM APPL. 56850/2023 in W.P.(C) 14367/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

MARCH 06, 2024/aky