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

Date of decision: 25.11.2024

\+ W.P.(C) 14182/2024

STAFF SELECTION COMMISSION & ORS. .....Petitioners
Through: Mr. R. Venkat Prabhat, SPC with Mr. Abhinav M. Goel, Advs.

versus

PRINCE .....Respondent
Through: Counsel Appeared. (But appearance not given)

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CAV 501/2024

1. As the learned counsel for the respondent enters appearance, the Caveat stands discharged.

W.P. (C) 14182/2024 & CM APPL. 59377/2024

2. This petition has been filed by the petitioners challenging the Order dated 14.05.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in Original Application (in short, 'OA') No.1027/2024, titled ***Prince vs. Commissioner of Police & Ors***.

3. The said OA had been filed by the respondent herein,

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challenging the opinion of the Review Medical Board, which declared the respondent to be unfit for appointment to the post of Constable (Executive) Male and Female in the Delhi Police Examination 2023 on the ground of *"NCCT Chest likely to represent Infective Etiology"*.

4. The learned counsel for the petitioners draws our reference to the opinion of the Review Medical Examination Board, which declared the respondent unfit for appointment, also on the basis of a X-ray and the NCCT scan of the respondent, which is reproduced as under:

> *"**FINDINGS:***
> *Multifocal patchy soft tissue density nodules are noted in apical segment of right upper lobe, anterior segment of right middle lobe and inferior segment of right upper lobe. Few of these show adjacent multiple tiny centilobular nodules in tree in bud pattern.*
> *Rest of both lungs are normal in architecture and attenuation.*
> *Trachea, major bronchial divisions and mediastinal great vessels appear unremarkable.*
> ***Multiple enlarged mediastinal lymph nodes are seen, largest measuring 1.2 cm in SAD in subcarinal region.***
> *No evidence of any pleural effusion/thickening is seen on either side.*
> *Cardiac size is normal with apparently normal configuration. No obvious pericardial collection seen.*
> *Chest wall structures appear unremarkable.*
> ***IMPRESSION:***
> • ***Multifocal patchy soft tissue density nodules are noted in apical segment of right upper lobe, anterior segment of right middle lobe and inferior segment of right upper lobe. Few of these show adjacent multiple tiny centilobular nodules in tree in bud pattern.***

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> ***• Mediastinal lymphadenopathy.***
> ***Above findings are likely to represent infective etiology-Active pulmonary koch's cannot be ruled out.****"*

5. The respondent had approached the learned Tribunal with a report from the Vardhman Mahavir Medical College (in short, 'V.M.C.C.') and Safdarjung Hospital, New Delhi, which though found a small nodular lesion on the right upper lobe, likely representing an old healed tuberculosis lesion, at the same time opined that the respiratory system of the respondent is normal and that he is fit for the post for which he was examined. The report also opined as under:

> "*Impression: Patient has radiological evidence of past pulmonary tuberculosis. However he is sputum negative at present and hence non infective. He is totally asymptomatic his blood gas reports and his pulmonary Function tests are normal. In my opinion his respiration system is normal and he is fit for the post he was examined for."*

6. The learned counsel for the respondent also draws our attention to the report from the Rajan Babu Tuberculosis Institute (in short, 'RBIPMT'), GTB Nagar and District T.B. Center, Hisar, both of which also found the respondent fit for appointment.

7. Based on the above reports, the learned Tribunal by the Impugned Order has directed the petitioners to conduct a re-medical examination of the respondent by a duly constituted medical board, which would include a Specialist in the respective field(s).

8. The learned counsel for the petitioners submits that in the present case, the findings of the Review Medical Examination Board cannot be faulted, as it was based on scientific examination and

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reports. He submits that, while the report from the Safdarjung Hospital is credible, in the absence of any allegations of *malafide* intent or procedural impropriety, it cannot serve as the basis for reopening the final opinion of the Review Medical Examination Board.

9. On the other hand, the learned counsel for the respondent submits that the doctor at the Safdarjung Hospital has clearly opined that the pulmonary tuberculosis discovered was an old one and non-infective. The blood gas reports of the respondent and the pulmonary function test were found to be normal, and based thereon he was found to be fit for the post he was examined for. He submits that in view of these contradictory reports, the learned Tribunal has rightly granted one more opportunity to the respondent to undergo a medical examination, and if found fit, be appointed to the post.

10. We have considered the submissions made by the learned counsels for the parties.

11. In the present case, the Review Medical Board has based its opinion on the scientific findings of the medical examination of the respondent. It is not the case of the respondent that the said reports were obtained by some *malafide* intent or impropriety. The report from the Safdarjung Hospital, on which the respondent has placed reliance, also identified Radiological evidence of past pulmonary tuberculosis. Although it opines that the respondent is fit for the post for which he was examined, it need not be emphasised that the doctor there may not be fully aware about the rigors of the post for which the respondent was being considered.

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12. A coordinate Bench of this Court in ***Staff Selection Commission v. Aman Singh***, 2024 SCC OnLine Del 7600, after a detailed analysis of the precedents on the power of the Court to interfere with the opinion of the Medical Boards, laid down the principles governing the subject, as under:-

> *10.38 In our considered opinion, the following principles would apply:*
> *(i) The principles that apply in the case of recruitment to disciplined Forces, involved with safety and security, internal and external, such as the Armed and Paramilitary Forces, or the Police, are distinct and different from those which apply to normal civilian recruitment. The standards of fitness, and the rigour of the examination to be conducted, are undoubtedly higher and stricter.*
> *(ii) There is no absolute proscription against judicial review of, or of judicial interference with, decisions of Medical Boards or Review Medical Boards. In appropriate cases, the Court can interfere.*
> *(iii) The general principle is, however, undoubtedly one of circumspection. The Court is to remain mindful of the fact that it is not peopled either with persons having intricate medical knowledge, or were aware of the needs of the Force to which the concerned candidate seeks entry. There is an irrebuttable presumption that judges are not medical men or persons conversant with the intricacies of medicine, therapeutics or medical conditions. They must, therefore, defer to the decisions of the authorities in that regard, specifically of the Medical Boards which may have assessed the candidate. The function of the Court can only, therefore, be to examine whether the manner in which the candidate was assessed by the Medical Boards, and the conclusion which the Medical Boards have arrived, inspires confidence, or transgresses any established norm of law, procedure or fair play. If it does not, the Court cannot itself examine the material on record to come to a conclusion as to whether the candidate does, or does not, suffer from the concerned ailment, as that would amount to sitting in appeal over the decision of the Medical Boards, which is not permissible in law.*

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(iv) The situations in which a Court can legitimately interfere with the final outcome of the examination of the candidate by the Medical Board or the Review Medical Board are limited, but well-defined. Some of these may be enumerated as under:

(a) A breach of the prescribed procedure that is required to be followed during examination constitutes a legitimate ground for interference. If the examination of the candidate has not taken place in the manner in which the applicable Guidelines or prescribed procedure requires it to be undertaken, the examination, and its results, would ipso facto stand vitiated.79

(b) If there is a notable discrepancy between the findings of the DME and the RME, or the Appellate Medical Board, interference may be justified. In this, the Court has to be conscious of what constitutes a "discrepancy". A situation in which, for example, the DME finds the candidate to be suffering from three medical conditions, whereas the RME, or the Appellate Medical Board, finds the candidate to be suffering only from one of the said three conditions, would not constitute a discrepancy, so long as the candidate is disqualified because of the presence of the condition concurrently found by the DME and the RME or the Appellate Medical Board. This is because, insofar as the existence of the said condition is concerned, there is concurrence and uniformity of opinion between the DME and the RME, or the Appellate Medical Board. In such a circumstance, the Court would ordinarily accept that the candidate suffered from the said condition. Thereafter, as the issue of whether the said condition is sufficient to justify exclusion of the candidate from the Force is not an aspect which would concern the Court, the candidate's petition would have to be rejected.

(c) If the condition is one which requires a specialist opinion, and there is no specialist on the Boards which have examined the candidate, a case for interference is made out. In this, however, the Court must be satisfied that the condition is one which requires examination by a specialist. One may differentiate, for example, the existence of a haemorrhoid or a skin lesion which is apparent to any doctor who sees the candidate, with an internal orthopaedic deformity, which may require radiographic examination and analysis, or an

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ophthalmological impairment. Where the existence of a medical condition which ordinarily would require a specialist for assessment is certified only by Medical Boards which do not include any such specialist, the Court would be justified in directing a fresh examination of the candidate by a specialist, or a Board which includes a specialist. This would be all the more so if the candidate has himself contacted a specialist who has opined in his favour.

(d) Where the Medical Board, be it the DME or the RME or the Appellate Medical Board, itself refers the candidate to a specialist or to another hospital or doctor for opinion, even if the said opinion is not binding, the Medical Board is to provide reasons for disregarding the opinion and holding contrary to it. If, therefore, on the aspect of whether the candidate does, or does not, suffer from a particular ailment, the respondents themselves refer the candidate to another doctor or hospital, and the opinion of the said doctor or hospital is in the candidate's favour, then, if the Medical Board, without providing any reasons for not accepting the verdict of the said doctor or hospital, nonetheless disqualifies the candidate, a case for interference is made out.

(e) Similarly, if the Medical Board requisitions specialist investigations such as radiographic or ultrasonological tests, the results of the said tests cannot be ignored by the Medical Board. If it does so, a case for interference is made out.

(f) If there are applicable Guidelines, Rules or Regulations governing the manner in which Medical Examination of the candidate is required to be conducted, then, if the DME or the RME breaches the stipulated protocol, a clear case for interference is made out.

(v) Opinions of private, or even government, hospitals, obtained by the concerned candidate, cannot constitute a legitimate basis for referring the case for re-examination. At the same time, if the condition is such as require a specialist's view, and the Medical Board and Review Medical Board do not include such specialists, then the Court may be justified in directing the candidate to be re-examined by a specialist or by a Medical Board which includes a specialist. In passing such a direction, the Court may legitimately place

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reliance on the opinion of such a specialist, even if privately obtained by the candidate. It is reiterated, however, that, if the Medical Board or the Review Medical Board consists of doctors who are sufficiently equipped and qualified to pronounce on the candidate's condition, then an outside medical opinion obtained by the candidate of his own volition, even if favourable to him and contrary to the findings of the DME or the RME, would not justify referring the candidate for a fresh medical examination.

(vi) The aspect of "curability" assumes significance in many cases. Certain medical conditions may be curable. The Court has to be cautious in dealing with such cases. If the condition is itself specified, in the applicable Rules or Guidelines, as one which, by its very existence, renders the candidate unfit, the Court may discredit the aspect of curability. If there is no such stipulation, and the condition is curable with treatment, then, depending on the facts of the case, the Court may opine that the Review Medical Board ought to have given the candidate a chance to have his condition treated and cured. That cannot, however, be undertaken by the Court of its own volition, as a Court cannot hazard a medical opinion regarding curability, or the advisability of allowing the candidate a chance to cure the ailment. Such a decision can be taken only if there is authoritative medical opinion, from a source to which the respondents themselves have sought opinion or referred the candidate, that the condition is curable with treatment. In such a case, if there is no binding time frame within which the Review Medical Board is to pronounce its decision on the candidate's fitness, the Court may, in a given case, direct a fresh examination of the candidate after she, or he, has been afforded an opportunity to remedy her, or his, condition. It has to be remembered that the provision for a Review Medical Board is not envisaged as a chance for unfit candidates to make themselves fit, but only to verify the correctness of the decision of the initial Medical Board which assessed the candidate.

(vii) The extent of judicial review has, at all times, to be restricted to the medical examination of the candidate concerned. The Court is completely proscribed even from observing, much less opining, that the medical disability from which the candidate may be suffering is

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> *not such as would interfere with the discharge, by her, or him, of her, or his, duties as a member of the concerned Force. The suitability of the candidates to function as a member of the Force, given the medical condition from which the candidate suffers, has to be entirely left to the members of the Force to assess the candidate, as they alone are aware of the nature of the work that the candidate, if appointed, would have to undertake, and the capacity of the candidates to undertake the said work. In other words, once the Court finds that the decision that the candidate concerned suffers from a particular ailment does not merit judicial interference, the matter must rest there. The Court cannot proceed one step further and examine whether the ailment is such as would render the candidate unfit for appointment as a member of the concerned Force.*

13. In view of the above, we are of the opinion that the learned Tribunal erred in directing the re-medical examination of the respondent based solely on the report of the Safdarjung Hospital.

14. We, accordingly, allow the petition and set aside the Impugned Order dated 14.05.2024, passed by the learned Tribunal in OA No.1027/2024. Pending application, if any, stands disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 25, 2024/ab/sk/DG

Click here to check corrigendum, if any

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