



2024:DHC:9090-DB



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

Date of decision: 25.11.2024

+ W.P.(C) 14224/2024, CM APPL. 59582/2024

STAFF SELECTION COMMISSION & ORS.Petitioners

Through: Ms. Saumya Tandon, CGSC
with Mr. Prakhar Tripathi, Adv.

versus

TEJVEER

.....Respondent

Through: Mr. Setu Niket, Ms. Esha
Mazumdar and Ms. Unni Maya,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner 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. 1092/2024, titled *Tejveer versus Staff Selection Commission & Ors.*, whereby the learned Tribunal directed the petitioner herein to have the respondent medically examined by a fresh Medical Board to be constituted by the petitioners.

2. The respondent had applied for the post of Constable (Executive) Male and Female in the Delhi Police Examination 2023. He was



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declared medically unfit for appointment by the Medical Board on the ground of being “*unfit due to abnormal chest X-ray*”. The Review Medical Examination Board also declared him unfit for appointment after having him examined at the Lok Nayak Hospital, New Delhi, where the Specialist opined as under:-

*“opinion – unfit on Pulmonary opinion at present.
To rule out active TB, requires further
evaluation”*

3. Thereafter, the respondent approached the learned Tribunal with a report from the V.M.M.C. & Safdarjung Hospital, New Delhi, wherein the Doctor had opined that the respondent was not suffering from any active respiratory symptom and that the respondent could be considered fit from a pulmonary angle.

4. The learned Tribunal, based on the above report of the Safdarjung Hospital, thought it fit to direct the petitioners to have the respondent medically re-examined by a fresh Medical Board.

5. The learned counsel for the petitioners submits that in the present case, the finding of the Review Medical Examination Board cannot be faulted as it was based on scientific examination and reports. He submits that a report from the Safdarjung Hospital, even though worthy of credit, in the absence of any allegation of *malafide* intent or impropriety, cannot form a basis for reopening the final opinion rendered by the Review Medical Examination Board.

6. The learned counsel for the respondent, on the other hand, submits that even in the Lok Nayak Hospital, the Specialist had opined that to rule out active Tuberculosis, it would require further evaluation



of the respondent. She submits that instead of carrying out such further evaluation, the Review Medical Board declared the respondent as unfit for appointment. She submits that at the Safdarjung Hospital, the Specialist has categorically opined that the respondent is not suffering from active respiratory symptoms and is also fit for appointment. She submits that, therefore, no fault can be found in the direction issued by the learned Tribunal directing the re-medical examination of the respondent. She also places reliance on the judgment of this Court ***Kartikeya Arora vs. Union of India & Ors.***, 2020 SCC OnLine 1112, to submit that it is only a case of active Tuberculosis that can be a ground for declaring a candidate medically unfit for appointment.

7. We have considered the submission made by the learned counsels for the parties.

8. In the present case, before declaring the respondent as medically unfit for appointment to the post of Constable (Executive), the Review Medical Board had sent the respondent for examination by a Specialist at the Lok Nayak Hospital. The Specialist, in his report dated 30.01.2024, had opined as under:-

*“CXR-PA done on 30/1/24 at LNH: s/o Left upper zone and Right upper zone infiltrates.
H/o ATT denied by the candidate.
Opinion – unfit on Pulmonary opinion at present.
To rule out active TB, requires further evaluation”*

9. The Specialist has, therefore, declared the respondent unfit for appointment on pulmonary grounds. Even the opinion of the Safdarjung Hospital, New Delhi, on which reliance was placed by the



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respondent before the learned Tribunal, found Fibrosis and traction bronchiectasis in the lungs. It reported as under:-

HRET chest : Calcified pulmonary nodules b/c upper, RMC, Left apical
LL.
- fibrosis & traction bronchiectasis seen in LUL, apical lobes.
- Subsegmental atelectasis & calcification in LUL - ant segment.
? old TB sequelae.

10. Though it did not at that time find any active respiratory symptoms and declared the respondent fit for appointment, however, in our opinion, the said report cannot form a basis for a reconsideration of the report of the Review Medical Examination, which was conducted by the petitioners as part of the selection process. The report of the Review Medical Examination Board can be interfered with only when there is a very cogent and exemplary evidence casting doubt on such medical opinion so rendered. In our opinion, the respondent has not been able to satisfy this test.

11. 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.

(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 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 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 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



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the ailment is such as would render the candidate unfit for appointment as a member of the concerned Force.

12. Applying the above principles to the facts of the present case, it is seen that the respondent was referred to the Lok Nayak Hospital, where the Specialist declared him unfit. The opinion of the Safdarjung alone cannot constitute a legitimate basis for referring the case for re-examination.

13. In *Kartikeya Arora (supra)*, the Court was confronted with a position where the Review Medical Board did not have a Specialist and the petitioner therein was not even referred to a Specialist before declaring him unfit. It was in those peculiar facts that the Court held that the rejection of the petitioner was improper, and the equity demanded that the petitioner be subjected to further medical examination. The said judgment, therefore, cannot come to the aid of the respondent.

14. In view of the above, we find that the Learned Tribunal has erred in passing the Impugned Order. The same is accordingly set aside.

15. The petition is allowed. Pending applications, if any, are disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 25, 2024/ss/km/DG

Click here to check corrigendum, if any