



2024:DHC:8788-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 15686/2024, CM APPLs. 65852/2024 & 65853/2024**

STAFF SELECTION COMMISSION & ORS.Petitioner
Through: Mr. Premtosh K. Mishra, CGSC
with Mr. Manish Vashist and Ms. Sanya
Kalsi, Advs.

versus

RAVIRespondent
Through: Mr. Joby P. Varghese and Mr.
Aby P. Varghese, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

% **12.11.2024**

C.HARI SHANKAR, J.

CM APPL. 65853/2024 (Exemption)

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 15686/2024, CM APPL. 65852/2024

3. The respondent applied for appointment as Constable (Male) in the Delhi Police, pursuant to a notification for the said post issued on 1 September 2023. He was declared successful in the examination as



per the final result issued by the Staff Selection Commission (SSC). Thereafter, however, he was subjected to a Detailed Medical Examination¹ as well as Review Medication Examination², which declared him “unfit”. The DME found that the respondent was suffering from Dextrocardia, which is a condition in which the heart is located on the right side of the body. This diagnosis was confirmed by the RME which consequently certified that the respondent was unfit on account of Dextrocardia.

4. Aggrieved by the said decision, the respondent approached the Central Administrative Tribunal³ by way of OA 709/2024, which stands decided by the judgment under challenge.

5. The Tribunal has decided the matter merely by placing reliance on a decision of this Court in *Veena v The Secretary Ministry of Home Affairs*⁴. The reasoning of the Tribunal, as contained in paras 4 to 8 of the impugned judgment, may be reproduced thus:

“4. Learned counsel for the applicant relies on the decision of the Hon’ble High Court of Delhi in the matter of *Veena v The Secretary Ministry of Home Affairs & Ors.* in Writ Petition no. 8013/2018 dated 28.02.2019. In the identical case, the petitioner therein also suffered from congenital defect and was an aspirant for the post of Head Constable. The abovementioned writ petition has been allowed and the Hon’ble Court was pleased to quash and set aside the rejection of the candidature of the applicant and a direction was issued to the respondents to issue the appointment letter to the applicant therein.

5. Notices in the present O.A. were issued on 23.02.2024. On that date itself, the following order was passed:-

¹ “DME”, hereinafter

² “RME”, hereinafter

³ “the Tribunal”, hereinafter

⁴ Order dated 28 February 2019 in WP (C) 8013/2018



“The applicant participated in the examination conducted by the Delhi Police for the post of Constable (Executive). He successfully cleared all the stages of the examination. However, he was declared medically unfit by the medical board for the reason of "Dextrocardia".

Learned counsel for the applicant states that the case of the applicant is fully covered by the judgment of the Hon'ble High Court of Delhi in W.P. (C) No. 8013/2018 decided on 28.02.2019 titled '*Veena Versus The Secretary Ministry of Home Affairs and Ors.* (Page 90).

Issue notice to the respondents. Mr. Amit Yadav and Mr. Vipul Gupta for Mr. Rajeev Kumar, learned counsel, who appear on advance service, accept notice.

Let reply be filed within two weeks. Learned counsel for the respondents are also directed to go through the aforementioned judgment and assist us on the next date of hearing.

List on 11.03.2024.”

6. In view of the decision of the Hon'ble High Court of Delhi, the Tribunal had issued a direction to the respondents to go through the judgment and assist the Court on the next date of hearing. Thereafter, the respondents have been seeking time for reply. Today also, the learned proxy counsel for the respondents appears and seeks time for filing the reply.

7. Learned counsel for the applicant opposes the request of the respondents and submits that the batch mates of the applicant have already been appointed and are undergoing training. Any further delay in the present case will cause huge prejudice to the applicant and also would delay his joining and impact his service career for all times to come.

8. Considering the submissions of the learned counsels for the parties and in view of the settled position as noted above, the O.A. is allowed. The impugned order passed by the review medical board dated 29.01.2024 is quashed and set aside. The respondents are directed to consider the case of the applicant for appointment as Constable (Executive) Male under his category with all consequential benefits within a period of four weeks from the date of receipt of a certified copy of this Order. No costs.”

6. We must observe that the manner in which the Tribunal has



examined the case is not satisfactory. The Tribunal has merely relied on the judgment of this Court in *Veena*. There is no discussion of the facts in *Veena*, or even on the ratio of the decision in *Veena*. Nor is there any discussion as to how the said facts or the said ratio would apply in the present case.

7. Though, the Tribunal has observed that the petitioners – i.e. the respondents before it – were given opportunities to explain why the decision in *Veena* was not applicable, and did not do so, that does not absolve the Tribunal of its duty to discuss the decision and specifically state why it applied to the facts before it.

8. We, however, do not deem it appropriate to remand the matter to the Tribunal for the said reason, so as to avoid multiplicity of litigation.

9. We have seen the decision in *Veena*. *Veena* was a case in which the appointment was to a ministerial post of Head Constable (HC) (CM) in the Indo Tibetan Border Police (ITBP). This Court noted that the applicable guidelines in that case required the candidate to be certified not only that she, or he, was unfit, but also that the abnormality from which she, or he, suffered was such as to impede efficient discharge of her, or his, duties. Inasmuch as there was no certification, in that case, that the abnormality of Dextrocardia, from which the petitioner Veena suffered, was such as to impede efficient discharge, by her, of her training/duties, this Court deemed it appropriate to set aside the decision to cancel her appointment and to direct that she be appointed to the post of Head Constable (HC) (CM).



10. This Court has also, in the said decision, noted the distinction between appointment to a ministerial post and appointment to a post which would involve combatised duties, though the Court has further clarified that it is not for the Court to pronounce on whether the condition from which a particular candidate suffers, renders her, or him, fit or unfit to perform duty.

11. Though, therefore, on facts, *Veena* may not be fully applicable, we deem it appropriate, instead of entering into that thicket, to direct the petitioners to refer the matter once more to a Review Medical Board, for a specific opinion as to whether the condition of Dextrocardia, from which the respondent suffers, renders him incapable is “likely to interfere with the efficient performance of his duties” as Constable (Executive). We say so, because para 13.1 of the advertisement, in pursuance whereof the respondent had applied in the present case, reads thus:

“13.1 The candidates should be in sound state of health, free from defect/deformity/disease, vision 6/12 without glasses both eyes, free from colour blindness and without any correction like wearing glasses or surgery of any kind to improve visual acuity. Free from defect, deformity or diseases *likely to interfere with the efficient performance of the duties*. No relaxation is allowed/permission to any category of candidates on this count.”

12. We expect that the decision would be supported by adequate reasons. Before arriving at the said decision, needless to say, the respondent would be examined.

13. We also make it clear that the panel constituted by the Review



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Medical Board to comply with this direction must consist at least of one specialist in the requisite discipline, so that no grievance is raised on that account.

14. Let a decision in the aforesaid terms be taken within a period of two weeks from today and communicated to the respondent forthwith.

15. Needless to say, should the respondent continue to be aggrieved by the said decision, his rights in that regard would remain reserved.

16. Subject to the aforesaid directions, the impugned judgment of the Tribunal is quashed and set aside.

17. This writ petition is disposed of.

C.HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 12, 2024/aky

Click here to check corrigendum, if any