

Form No. J.(2)
Item Nos. 3 & 4
A.B.

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present:
The Hon'ble Justice Aniruddha Roy

W.P.A. 28230 of 2024

Ripan Biswas
Vs.
Union of India & Ors.

With

W.P.A. 28210 of 2024

Tuhin Das
Vs.
Union of India & Ors.

For the petitioners	:	Mr. Debasish Kundu, Advocate
For Union of India	:	Mr. Ram Chandra Agarwal, Advocate Mr. Shiv Chandra Prasad, Advocate
Heard on	:	July 03, 2025
Judgment on :	:	July 03, 2025

Aniruddha Roy, J.

Both the writ petitions, since involve identical issue, by consent of the parties are taken up for collective consideration.

In Re: **W.P.A. 28210 of 2024**

Tuhin Das

Vs.

Union of India & Ors.

Facts:

1. The petitioner participated in the recruitment process for **Constable (GD) in Central Armed Police Forces (in short, “CAPFs”), SSF and Rifleman (GD) in Assam Rifles Examination for the year 2024.**
2. The petitioner after having qualified the initial stages of the said examination was medically examined in the Detail Medical Examination (in short, “DME”). The petitioner was declared **unfit** due to the left arm **“carrying angle”** being less than **10 degree.**
3. The petitioner applied for Review Medical Examination (in short, “RME”). At the RME Board, after considering the X-Ray, it was found that the “carrying angle” in right elbow joint being 8 degree and in left elbow joint being 7 degree. The normal “carrying angle” is between 10 degree to 15 degree. The petitioner was declared **unfit** on such ground.
4. There is a detailed instruction in the medical guidelines for recruitment of Constable (GD) in CAPFs, SSF and Rifleman (GD) in Assam Rifles being the revised guidelines as on May, 2015 (hereinafter referred to as, said guidelines).

5. On perusal of the report of the DME, it is crystal clear that “carrying angle” in left arm being less than 10 degree is a disqualification. The RME Board has found the “carrying angle” in the right elbow joint being 8 degree while in the left elbow joint being 7 degree. The normal “carrying angle” is 10 degree to 15 degree. The petitioner says that since the “carrying angle” in both the arms is less than 10 degree. The petitioner should have been declared fit.

6. The petitioner says that the petitioner had been referred to by the RME Board prior to the holding of the RME to any Government Hospital/CGHS/Ayushman Empanelled Hospital, Durgapur for X-Ray of left elbow joint, to measure “carrying angle” and opinion in respect thereof.

7. The petitioner was taken to Gouri Devi Institute of Medical Sciences and Hospital, Durgapur (hereinafter referred to as, the said hospital) by the respondents. The said hospital found that the “carrying angle” of the left elbow joint is 15 degree. The said hospital also opined that “no obvious bony fracture is seen, joint space appears normal, no obvious soft tissue abnormality is seen”. The petitioner says that after considering the said X-Ray , the RME came to the conclusion that the “carrying angle” of right elbow is 8 degree while in the left elbow is 7 degree when on the basis of the same X-Ray the said hospital had given a **different finding**. Thus, the opinions of the medical experts were in **variance**.

8. The petitioner questions the findings of the RME Board apparently on the basis of the X-Ray report of the said hospital, where “carrying angle” has been found to be 15 degree i.e., within the normal zone. There is as such a **discrepancy** as to the measurement of carrying angle between that given by the said hospital and the RME.

9. In the above facts, the petitioner has filed the instant writ petition with the following reliefs:-

a) A writ of or in the nature of Mandamus commanding the respondent authority, their men, agents or subordinates to show cause as to why the order of unfit dated 28.10.2024 by the Detailed Medical Examination Board and order of unfit dated 01.11.2024 by the Review Medical Examination Board should not be quashed forthwith; and/or set-aside forthwith;

b) A writ of or in the nature of Mandamus directing the respondent, their men, agent and subordinate to show cause as to why the petitioner should not be declared as fit in medical examination forthwith and allow the petitioner to participate in further stage of recruitment process;

c) A writ in the nature of mandamus commanding respondent authority to examine the petitioner by any other examination centre or before any other independent authority like Commando Hospital so that the petitioner can get proper justice with regard to his medical fitness forthwith.

d) A Writ of or in the nature of Certiorari commanding the respondents, their men, agents and sub-ordinates to transmit and produce the entire case records before This Hon'ble Court within a particular period to be fixed by This Hon'ble Court so that conscionable justice can be rendered upon considering the same.

e) Rule Nisi in terms of prayers (a) to (d) above.

f) Ad-interim order injunction restraining of the respondent authority to fill up the vacancy without considering the case of the petitioner;

g) Ad-interim order do issue directing the respondent authority to check up the hands of the petitioner for qualifying the medical examination by keeping one post vacant till the disposal of the writ application;

h) Ad-interim order of stay of the selection procedure till the disposal of this writ application.

i) To pass such further order or orders, direction or directions as your Lordship may deem fit and proper.

10. Then the matter had been considered by the Coordinate Bench. The Coordinate Bench had relied upon two decisions, one of Delhi High Court and the other one of the Hon'ble Supreme Court, which are:

(i) A judgment of Delhi High Court dated November 30, 2024, In the matter of: Staff Selection Commission and Others vs. Vinit Kumar rendered in WP (C)/14731/2024 and

(ii) The judgment of the Hon'ble Supreme Court dated July 19, 2019, In the matter of: Dharamvir Singh vs. the State of Uttar Pradesh & Another rendered in WP (Civil) No.444/2019.

11. Relying upon the principles laid down in the above two judgments, by an order dated **January 3, 2025**, the Coordinate Bench directed the Eastern Command Hospital, Kolkata to constitute a Medical Board with appropriate expert and measure the Carrying Angle of the petitioner for both right and left arm elbow. The Eastern Command Hospital, Kolkata was directed to file report. The other interim order prayed for on behalf of the petitioner was rejected. No appeal has been preferred.

12. On **January 13, 2025**, learned Advocate-on-record for the petitioner received an email communication from Alipore Command Hospital that the said Hospital was not in a position to carry out the said

re-medical test on some alleged security reason and accordingly the learned Advocate for the petitioner prayed before the Coordinate Bench for an alternative place. Copy of the said email communication dated January 13, 2025 placed before this court, is taken on record. On **March 26, 2025**, the Coordinate Bench passed an order directing the BSF Hospital, Salt Lake to carry out the re-medical test by substituting the Alipore Command Hospital, Kolkata.

13. Pursuant to the direction of the co-ordinate bench dated March 26, 2025 the BSF Hospital at Salt Lake, Kolkata had arranged for the medical examination of the petitioner and a report has been filed today in Court by the office of the learned Registrar General in a sealed cover. The seal has been opened in Court. The report is taken on record.

14. Learned advocates for the parties have taken inspection of the report in Court and proceeded with their submissions on the same.

15. The report of the BSF Hospital at Salt Lake, Kolkata on the basis of the medical examination held on May 2, 2025 shows that the petitioner is **fit** for the post.

Submissions:

16. Mr. Debasish Kundu, learned Advocate appearing for the petitioner submits that since the medical report submitted by the medical experts of BSF Hospital, Salt Lake, Kolkata, has certified and declared the petitioner to be fit for the post after detail medical examination being conducted by it, there cannot be any further impediment for the petitioner to be included in the said relevant selection process of 2024

and the respondent/authority should proceed with further steps in accordance with law accepting the petitioner to be a fit candidate for the post.

17. Learned Counsel for the petitioner further submits that the petitioner was all along diligent in pursuing his right and filed the writ petition immediately after rejection of his candidature on **November 21, 2024** by the medical board of the selection process. Now, since the petitioner has become eligible for being considered for the relevant selection process, he should be considered and appointed for the post.

18. In the light of the above, learned Counsel for the petitioner submits that the writ petition should be allowed.

19. At this juncture, Mr. Ram Chandra Agarwal, learned Advocate for the respondent submits that, the **Final Merit List** for the selection process of **2024** has been published on **December 13, 2024**. The vacancies, whatever were there, have been already carried forward and credited in the next year selection process of **2025**. The selection process for 2025 has already commenced. Therefore, it is not possible to accommodate the petitioner for the selection process for year 2024.

20. Mr. Agarwal further submits that once the candidature of the petitioner was rejected finding him to be unfit physically by the medical experts of the medical board of the selection process, there was no further scope for re-examination by the BSF Hospital. On the basis of the said rejection opined by the selection committee of the relevant selection

process, the candidature of the petitioner was rejected and the rejection was just and lawful.

21. In the light of the above, learned Advocate for the respondent prayed for dismissal of the writ petition.

Decision:

22. After considering the rival submissions made on behalf of the parties, this Court finds from record that, the candidature of the petitioner was rejected being medically unfit on **November 1, 2024, annexure P-6 at page 27** to the writ petition. The petitioner immediately on or about **November 21, 2024** filed the writ petition. The writ petition was considered from time to time by Court since January 3, 2025. On **January 3, 2025** the Eastern Command Hospital, Alipore, Kolkata was directed for re-medical test. On **January 13, 2025** the learned advocate on record for the petitioner had received the information from the Alipore Command Hospital that the said hospital was not in a position to carry out the re-medical test on some security reason and accordingly the learned advocate on record for the petitioner has prayed before the Court for an alternative place.

23. Pursuant to the direction of the Coordinate Bench dated **March 26, 2025**, necessary medical test was conducted by BSF Hospital, Salt Lake. On **May 2, 2025**, after thorough examination, petitioner was declared to be **Fit** the report is already on record, as narrated above. There is no further impediment for the petitioner to accept him as a medically **fit** candidate.

24. All these events, as narrated above, would show that the petitioner was all along diligent in pursuing his right before this Court. The writ petition was filed immediately after the candidature of the petitioner was rejected by the medical board of the selection authority finding the petitioner allegedly to be unfit and before the **Final Merit List** was published. There was no delay or laches on the part of the petitioner in pursuing his right. The petitioner has proceeded so long with the writ petition *bona fide* by availing of his remedy available in law.

25. Right of employment is the constitutional right of the petitioner as guaranteed under **Article 19(1)(g)** of the Constitution of India. The right to livelihood and to live with dignity is also recognized by the Constitution of India under **Article 21**. The rights which are guaranteed under the provisions of the constitution, cannot be taken away without due process of law.

26. In as much as, it is the duty of this Constitutional Court while exercising its plenary jurisdiction under Article 226 of the Constitution of India, to see and ensure that **justice is not only done but is seen to have been done**. While exercising its jurisdiction under Article 226 of the Constitution of India, this Court also exercises its equitable jurisdiction and it is entitled with its vested authority to mould the relief, so that a citizen, who is otherwise found to be eligible for his rights recognized under the Constitution or any other law, is ensured that he has received the fruits of his rights.

27. Under Article 226 of the Constitution, every High Court has the power to issue any person or authority, including in appropriate cases, any government, within its jurisdiction, directions, orders, or writs including writs, inter alia, in the nature of mandamus for the enforcement of the Fundamental Rights conferred under Part III of the Constitution or for any other purpose. The plenary power and authority of this constitutional court under Article 226 is extremely wide in order not to confine the power conferred by it only to the power to issue prerogative writs, but the wide expressions being used under Article 226 to enable this constitutional court to reach injustice wherever it is found and to mould the reliefs to meet the requirement of the situation, in the facts of the case.

28. In view of the above, the **rejection** of candidature of the petitioner by the selection authority on medical ground including the supporting medical report thereto, dated **November 1, 2024, annexure P-6** at **page 27** to the writ petition stands **set aside** and **quashed**.

29. In view of the foregoing reasons and discussions and considering the circumstances and facts in this case, this Court is of the firm and considered view that, the petitioner should not be deprived of his legitimate right of employment under the said 2024 selection process for the post he has applied for, if otherwise, the petitioner is found to be eligible strictly in accordance with law. If necessary, the respondent authority shall accommodate the petitioner by creating a post, in the event, no vacancy is available. If any vacancy is available, the petitioner shall have to be accommodated in accordance with law.

30. This exercise shall be carried out and completed in every respect following the due process of law and the petitioner should be informed positively within **two months** from the date of communication of this order by the appropriate authority of the respondents.

31. Learned advocate on record for the petitioner shall be at liberty to apply for obtaining certified photo copy of the Review Medical Examination report dated May 2, 2025 issued by Dr. Sujoy Ghosh and Dr. Arun Singh of BSF Hospital at Salt Lake, Kolkata before the department concerned.

32. In the event, such an application is submitted, the department concerned and/or its appropriate authority shall immediately issue the certified photo copy of the said Review Medical Examination report dated May 2, 2025 to the learned advocate on record for the petitioner being counter signed by the appropriate authority of the department but positively within **48 working hours** from the date of receiving such an application.

33. Accordingly, this writ petition **W.P.A. 28210 of 2024** stands **allowed**, without any order as to costs.

34. Photostat certified copy of this order, if applied for, be furnished expeditiously.

In Re: W.P.A. 28230 of 2024

Ripan Biswas

Vs.

Union of India & Ors.

1. Pursuant to the direction of the co-ordinate bench dated March 26, 2025 the BSF Hospital at Salt Lake, Kolkata had arranged for the medical examination of the petitioner and a report has been filed today in Court by the office of the learned Registrar General in a sealed cover. The seal has been opened in Court. The report is taken on record.
2. Learned advocates for the parties have taken inspection of the report in Court.
3. It appears that this writ petitioner was absent on **May 2, 2025** when the medical examination was conducted by BSF Hospital at Salt Lake, Kolkata. As such, the medical examination report of the selection authority stands declaring the petitioner to be **absent**. The report of the BSF Hospital at Salt Lake, Kolkata dated May 2, 2025, accordingly suggests that the petitioner is **unfit**.
4. In view of the above, there is no question and scope for any further consideration of the instant writ petition by this Court.
5. Accordingly, this writ petition **W.P.A. 28230 of 2024** stands **dismissed**, without any order as to costs.

(Aniruddha Roy, J.)