

**IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
(APPELLATE SIDE)**

**Present:**

**The Hon'ble Justice Sujoy Paul**

**And**

**The Hon'ble Justice Smita Das De**

**FMA/90/2025**

**Biltu @ Bittu Ganguly**

**Vs.**

**The Union of India & Ors.**

**For the Appellant**

: Mr. Lakshminath Bhattacharya  
Mr. Debasis Kundu

**For the U.O.I**

: Mr. Koushik Roy.  
: Mr. Sourav Sengupta

**Reserved on  
Judgment on**

: **29.08.2025**  
: **09.09.2025**

**Smita Das De, J.:-**

1. The Intra Court Appeal arises out of a judgment and order dated November 28, 2024 passed in WPA 20512 of 2024 challenging inter alia, the order of rejection by the respondent No. 6 dated July 16, 2024. The Learned Single Judge by impugned order rejected the petitioner's prayer for a further medical check up to consider his candidature on the basis of the result of the medical examination.

**2.** Apropos the facts of the case is that the petitioner participated in the selection process for appointment of Constable (Technical and Tradesman) in Central Reserve Police Force (in short, CRPF) in terms of an Advertisement Notice dated July 1, 2023. The petitioner being successful in the computer based written examination was called for physical standard and physical efficiency test. The petitioner after being successful in such tests was called for a detailed medical examination (in short DME) on July 15, 2024. The petitioner was rejected on certain medical grounds which included over weight, extensive fungal infections over buttocks and eye defective colour vision and keloid on the chest. Subsequent thereto, the petitioner went for a review medical examination (in short, RME). Thereafter, upon being examined the petitioner was declared to be 'unfit' only on the ground of overweight and extensive fungal infection over buttocks and thigh. Owing to such clinical findings of the RME, the petitioner further went for a re-examination from a different government Hospital. Upon such examination it was clinically found that none of the disabilities sustained for declaring him to be 'Unfit'. Under such pretext, the petitioner challenged the clinical findings of the RME by filing a Writ Petition before this Hon'ble Court. After hearing the Learned Single Judge after hearing was pleased to dispose of rejecting inter alia the petitioner's prayer for further medical check up upon consideration of the candidature on the basis of the result of such medical examination.

3. Assailing the Order of the Learned Single Judge the petitioner, the instant appeal has been preferred for setting aside the order impugned by considering / declaring the petitioner to be medically fit and to be appointed in the post in question.

4. Against the backdrop of the case the issues which arises as follows :-

- a) Whether the petitioner is entitled to go for a further medical examination despite being declared unfit by the Medical Board on the ground of overweight. (BMI 27.8)

**PETITIONER'S CONTENTION:**

5. The petitioner being the appellant herein states that after going through the clinical examination twice by the Medical Board he was declared to be unfit on the ground of overweight (BMI to be 27.8) which was contrary to the prescribed Rules framed under the guidelines for 'Recruitment medical examination in Central Armed Police Forces and Assam Files' dated May 15, 2015 (hereinafter referred to as the Said Guidelines). It was further submitted that as per the guidelines as mentioned in 12.2.1, the petitioner submits that the height mentioned in the said guidelines in *paragraph 12.2.1 for Male is 170 Cms and the weight as mentioned in 12.2.5 in the said guidelines proportionate to height and age as per medical standard.*

6. The age of the petitioner was 23 and from the report of the DME dated July 16, 2024, it appears that there was no whisper to the extent of mentioning the age, weight and height of the petitioner. The Medical Officer

only mentioned that the petitioner was overweight (BMI 27.8) and declared him to be unfit. Subsequently the petitioner on July 15, 2024 went for a review of the clinical finding of the medical examination and was declared to be unfit on account of overweight (BMI 26.8 Kgs.) and giving the weight as 82 Kgs., height as 175 cms. The petitioner submits that the clinical finding runs contrary to the procedure laid down in the said guidelines of the department. Since there was irregularity in the report of medical examination, the petitioner for his own satisfaction went for a further re-examination from a different independent Government hospital in order to ascertain whether the disabilities still survives or not. Upon such re-examination it appeared that the deformities / disabilities as clinically found by the department to declare the petitioner unfit, no longer survives. Since there being no other impediment, the appellant submits that he deserves to be considered for the appointment for the post in question. In the context of such, the petitioner relies upon a judgment of the Hon'ble Apex Court being C.A. Appeal No. 7254 of 2025 arising out of SLP (C) No. 13758 of 2025 in the case of **Divyanshu Singh Vs. The Union of India and Ors.**

**7.** The appellant further submits that after qualifying in all the examination including the written test when he was called for medical examination on July 15, 2024 he was declared unfit on four grounds. Subsequently the decision of the Medical Board was negated by the Review Medical Board. Thereafter on the very next day when the Review Medical Examination was done by the Review Medical Board some glaring defects were found from the

Report of the Medical Board regarding conducting the Review Medical Board. The procedure adopted for conducting such medical examination and the review medical examination dehors the guidelines as well as the rules. Since the clinical examination was not conducted in proper manner the two reports were found to be contradictory in nature. He further submits that being successful candidate, the petitioner should not be denied of the appointment even if the vacancy is filled up. Such vacancy cannot frustrate or vitiate the entitlement of the petitioner to be recruited for the post in question. The petitioner further draws the attention of the Court to the discrepancy of the reports and the clinical findings of the two medical reports. It is asserted by the petitioner that as per the medical report of the Govt. Hospital his weight had been mentioned as 72 Kgs as on July 22, 2024 whereas the weight recorded in the Review Medical Board as on July 16, 2024 was 82 Kgs. Since his weight mentioned in the Govt. Medical report is 72 Kgs. therefore, he comes within the purview of the prescribed weight as per the guidelines. The petitioner submits that due to procedural irregularities and discrepancies in the clinical findings of the medical report he shall not be deprived from being eligible to be recruited for the post in question.

**8.** The appellant also relies upon Clause (d) of Section 2 of the said guidelines dated 20<sup>th</sup> May 2025 which is reproduced is as below :

*“Measurement of physical standards viz., height, weight, and chest is the responsibility of the Physical Standard Test Board (PST Board) for all*

*categories of candidates i.e. GOs, Sos and Ors. Medical officers will not be part of PST board both for Male & Female candidates. Since presence of a female is required at the time of recording of physical standard (PST), a female non medical staff may be associated with PST board. Recruiting medical officer need not record to physical measurements. Recruiting medical officer will mention physical standard in the medical examination form as recorded by the PST board. In borderline cases of overweight, BMI should also be considered to arrive at conclusion and variation of 5 Kg. +/- from the minimum/maximum limit may be accepted. Similarly while measuring height fraction of cm less than 0.5 will be ignored and 0.5 cm & more will be rounded off to the next higher cm. Standard height – weight chart is attached at ANNEXURE-I.”*

**9.** In the light of such Rules mentioned in the guidelines the findings of the Medical Report runs contrary to the provisions laid down in the said guidelines.

#### **RESPONDENTS CONTENTION-**

**10.** Per contra the Learned Counsel for the respondents strenuously argues and submits that the RME was conducted on July 16, 2024 in accordance with the provisions contained in MHA O.M. No. A.VI.1/2014-Rectt (SSB) Dated May 20, 2015 as well as the recruitment advertisement /Notification of Constable (Technical/ Tradesman in CRPF published on 15.03.2023. It was further submitted that as per the letter No. IG (Estt) Dte., CRPF, New Delhi Letter No. R.II 8/2023-Rectt-DA-10 dated 13.06.2024, there is no provision for appeal if the candidate is declared ‘unfit’ in the Review Medical Examination Board. Since no appeal lies against the decision of the Review Medical Examination the finding of RME is final.

**11.** It is further contended that the category to which the petitioner belong have already been filled up and no post remains vacant. As such there is also no provision for publishing a weight list and selection of other candidates in place of candidates who did not join the service. Therefore, the plea of the petitioner's entitlement to be recruited to the post in question cannot be entertained since no posts in the applicant's/appellant's category remains vacant.

**ANALYSIS:**

**12.** In conspectus of the above, it appears that even if the applicant is sent for a further medical examination and declared to be fit then the preliminary question which arises is with regard to the post to ascertain whether any post of applicant's category remains vacant or not. Since it has been submitted by the respondent that no such post of the applicant's category remains vacant, we direct the authorities concerned to create a supernumerary post until a suitable post is available. It is a trite law as held in the **Kunal Singh Vs. Union of India** reported in **2003 (4) SCC 524** that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: if it is not possible to adjust the employee against any post he will be kept in a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.

**13.** In cases where there is any doubt of overweight the assessment as per the guidance is done on the basis of the BMI where age for the government

employee is relaxed. The body weight given in the chart mentioned to the guidelines corresponds to only certain height in centimeter on even numbers only. In respect of height in between the principle of average will be utilized for calculating the body weight. Keeping in view such parameters it is apparent from the records and the clinical findings that there shows a difference in BMI in two reports. In one report the weight mentioned as 72 Kgs. as on July 20, 2024 whereas the record in RME as on July 16, 2024 is 82 Kgs. It is imperative to note that since the weight as on July 20, 2024 is 72 Kgs. being subsequent to the weight recorded in RME, the appellant should come within the prescribed weight as per the guidelines. For the sake of justice, equity and good conscience we direct a further re-examination for evaluation of the clinical findings arrived at by RME. In the event if any impediment does not survive then the department shall consider the candidature of the appellant for appointment for any post as per his eligibility. However, it is also of significance to mention that the appellant had duly participated in the selection process but could not make his mark and failed to get selected on medical ground.

**14.** Having regard to the aforesaid facts we are of the opinion that for the interest of justice the Department should obtain a further opinion by conducting a further examination of the petitioner from All India Institute of Medical Sciences (AIIMS), Kalyani, Nadia, West Bengal being one of the premier institute of the country preferably in the presence of competent/nominated officer of the respondent department. The said

examination shall be considered within a period of three weeks from the date of the communication of this order. The said order shall be communicated to AIIMs by the petitioner intun the AIIMs shall fix a date for the aforesaid examination and communicate the same to the petitioner/respondent accordingly.

**15.** In the event if he is found to have been qualified in the medical re-examination the department shall consider his candidature by giving him an appointment to any post which suits him as per the placement list in the post of constable (technical & tradesmen 2023) in central reserve police force and shall be entitled to claim notional benefit at par with the 2023 batch and shall be entitled to receive all his benefits from the date of his joining.

**16.** It is needless to mention, that the respondents are directed to act in terms of the direction contained in paragraph No. 12 of this judgment.

**17.** The appeal is disposed of by setting aside the impugned order and judgment dated 28<sup>th</sup> November 2024. No order is to costs.

**18.** Urgent Photostat certified copy of this order if applied for, be supplied to the party on priority basis upon compliance upon requisite formalities.

**I agree**

**(Sujoy Paul, J)**

**(Smita Das De, J.)**