



2025:DHC:530-DB



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

Date of decision: 28.01.2025

+ W.P.(C) 4880/2019

CONST. KARNJEET KUMAR

.....Petitioner

Through: Ms. Ankita Patnaik, Adv.

versus

THE DIRECTOR GENERAL & ANRRespondents

Through: Mr. Ripudaman Bhardwaj,
CGSC with Mr. Kushagra
Kumar, Mr. Abhinav Bhardwaj
and Mr. Anit Kumar Rana,
Advs.

Mr. Sanjay Mehta, AC and Mr.
Atul Sen, SI, CISF

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, who is serving as a Constable (General Duty) in the Central Industrial Security Force ('CISF'), praying for the following reliefs:-

“(A) Issue of a writ of mandamus directing the Respondents to appoint (by way of LDCE-2016) to the post of Assistant Sub-Inspector(GD) and grant him all consequential benefits except back wages;

(B) Issue of Writ of Certiorari quashing the findings of Medical Board dated 03.08.2017 and Medical Review Board dated 12.09.2017 whereby the Respondents have once again declared the Petitioner as unfit by illegally applying the medical standards as applicable to fresh recruits.

(C) Issue of Writ of Certiorari quashing the Clause iii (b) in Column 11 of the Central Industrial Security Force, Security Wing, Assistant Sub-Inspector (Executive) Recruitment Rules,



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2013.”

2. The facts necessary for the disposal of the present writ petition are that the petitioner was enrolled in the CISF as a Constable (General Duty) on 21.08.2010, and has been working in the aforementioned post since his enrolment. It is the case of the petitioner that he has undergone multiple Annual Medical Examinations by the respondents, during which he has consistently been adjudged to be in the Medical Category SHAPE-I.

3. The petitioner had applied for the post of Assistant Sub-Inspector (ASI) Executive through the Limited Departmental Competitive Examination-2016 (LDCE). However, the petitioner was declared ‘unfit’ for appointment as in his Medical Examination, he was found to be suffering from *‘Multiple Lipoma at right arm, forearm, inner aspect of left elbow, right side of abdomen, right thigh and right hip’*.

4. The learned counsel for the petitioner submits that post the above declaration, on 09.08.2017, the petitioner underwent a surgery to rectify the *‘Multiple Lipomas’* at the Sama Hospital, and received a fitness certificate dated 12.08.2017 from the District Hospital, confirming his medical fitness. He submits that thereafter, the petitioner applied for a Review Medical Examination, which referred the petitioner for examination by the Safdarjung Hospital, which also declared him medically fit.



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5. The learned counsel for the petitioner submits that despite being declared medically fit by the Safdarjung Hospital, the Review Medical Examination vide Report dated 12.09.2017, relying on the 'Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles' dated 20.05.2015 issued by the Ministry of Home Affairs (hereinafter referred to as the 'Guidelines'), declared the petitioner medically '*unfit*' on the ground of '*Multiple cyst at various site*'.

6. The learned counsel for the petitioner submits that as per the CISF Recruitment Rules, 2010, the only physical standard required for promotion to the rank of ASI was being in Medical Category SHAPE-I, which the petitioner has consistently met since his recruitment in 2010 and, therefore, he cannot be declared '*unfit*' for appointment.

7. She further submits that to her knowledge and belief, some other candidate was offered an appointment to the post of ASI (Executive) in spite of suffering from '*Multiple Lipomas*'.

8. On the other hand, the learned counsel for the respondents submits that as per the Guidelines applicable to the candidates who cleared the first four stages of the recruitment process for the posts of ASI (Executive) LDCE- 2016, if a candidate is found to be suffering from '*Multiple cyst*', even if operated upon, may be declared '*unfit*' for appointment.

9. He submits that merely because the petitioner was declared to be in SHAPE-I Category in his Annual Medical Examinations, would not be a ground for rejecting the report of his medical examination



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conducted for the LDCE. He places reliance on the judgment of the Supreme Court in ***Pavnesk Kumar v. Union of India and Other***, 2023 SCC OnLine SC 1583.

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

11. The issue of whether a candidate, who is otherwise declared to be in SHAPE-I Medical Category can still be rejected for appointment through the LDCE if found 'unfit' on medical grounds, has been considered by a Full Bench of this Court in the present writ petition, observing as under:-

“3. The Supreme Court in the above judgment, has held that even though the candidate in the routine annual medical check-up had been declared to be in SHAPE-I category, the same was merely the eligibility condition for applying to the post of Sub-Inspector (GD) through the LDCE, and was not a part of the examination process for selection to the post of Sub-Inspector (GD) through the LDCE. In case the candidate does not clear the medical examination conducted as part of the recruitment process under the LDCE, the candidate, in such a case, therefore would be considered as not having cleared Stage-V of the LDCE selection process. Further, the plea of the candidate that the LDCE is merely a fast-track promotion and not a case of fresh appointment, was also rejected by the Supreme Court, by holding that the LDCE is not a normal promotion rather, it is selection for a higher post from amongst the eligible candidates working on the lower post. It was held that the selection had to be conducted in terms of the advertisement and the scheme of the selection contained therein. The condition of clearing the medical examination was,



therefore, an eligibility condition that had to be met in addition to the candidate being in medical category SHAPE-I.

4. In view of the above, the question of law that has been referred to this Full Bench, is covered by the judgment of the Supreme Court in Pavnesh Kumar (supra).

12. In **Pavnesh Kumar** (supra), on which reliance has been placed by the Full Bench, the Supreme Court rejected a plea similar to the one taken by the learned counsel for the petitioner, on the effect of the candidate being in SHAPE-I but being found unfit in the medical examination for LDCE, observing as under:

“13. It was next contended that the appointment through LDCE is like fast-track promotion and is not a fresh appointment. Therefore, recruitment rules and guidelines applicable to the normal mode of promotion would have been applied and not any different medical standards.

14. No doubt appointment to a higher post of an incumbent working on lower post is in the form of an accelerated promotion but it cannot be equated with normal mode of promotion. This is evident from the advertisement itself which in unequivocal terms states that applications are invited for selection to the post of Sub-Inspector (GD) in BSF through LDCE. The very fact that the applications were invited for selection to the post of Sub-Inspector (GD) connotes that it was not a normal promotion rather selection to the higher post from amongst the eligible candidates working on the lower post. Thus, the submission that the normal rules of promotion or medical examination ought to have been applied, is not acceptable.

15. This apart, selection was to be conducted in terms of the advertisement. The scheme of



the selection contained in the advertisement categorically provided clearing of the examination in all the five stages which included detailed medical examination. This was independent and in addition of the eligibility condition that a candidate must possess the medical category SHAPE-I while working on the lower post.

16. Additionally, a distinction has to be drawn between a normal promotion and promotion by selection through LDCE. Promotion by selection through LDCE vis-à-vis competitive examination is a facility or a chance given for out of their promotion without waiting for the normal course of promotion. It in effect is selection through competitive examination within the limited category of candidates and cannot be equated with normal promotion. This being the position, the argument that regular promotion criteria had to be applied with regard to medical fitness even in the matter of selection through LDCE is not acceptable.

17. In view of the above facts and circumstances, we find no substance in the appeal. There is no review of the medical of the appellant and the declaration that he is "medically unfit", is not contrary to any earlier reports as he was never declared to be medically fit in the process of examination for selection to Sub-Inspector (GD) through LDCE."

13. In view of the above, the submission of the petitioner that the petitioner was declared to be in SHAPE-I Medical Category while working as Constable (GD), can be of no relevance. The fact remains that the petitioner has been declared 'unfit' for appointment in the medical examination that was conducted for the LDCE examination in terms of the Scheme for the examination. Stage V of the same



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required the candidate to be declared 'fit' in the medical examination, which the petitioner could not meet.

14. As far as the submission of the learned counsel for the petitioner that the petitioner has later undergone an operation and has been declared fit for duty is concerned, we do not find merit in the same. Chapter 9 Clause (4) (B) of the Guidelines clearly states that a candidate found to be suffering from 'cysts', even if operated upon, may be rejected. Therefore, no fault can be found in the Review Medical Board's opinion declaring the petitioner as unfit for appointment.

15. As far as the submission of the petitioner that some other person has been offered appointment in similar condition, it need only be stated that there cannot be a negative equality. Once it is held that the petitioner has been rightly disqualified from the appointment, only because some benefit has been given to another candidate, would not be a ground to extend the same benefit to the petitioner. There cannot be equality in the matter of violations of Rules.

16. In view of the above, we find no merit in the present petition. The same is, accordingly, dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 28, 2025
SU/SJ

Click here to check corrigendum, if any