



2025:DHC:546-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28.01.2025

+ W.P.(C) 10916/2022, CM APPL. 31817/2022

CT./GD SMARJEET KUMAR TIWARYPetitioner

Through: Ms. Ankita Patnaik, Adv.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Kamal Kant Jha, SPC with
Mr. G.S.Rathore, AC, Mr.
Yespal and Mr. Prahlad
Devenda, SI

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-2019) to the post of Assistant Sub-Inspector(Exe) and grant him all consequential benefits except back wages;

(B) Issue of Writ of Certiorari quashing the findings of Medical Board dated 27.04.2022 and Medical Review Board dated 09.06.2022 Whereby the Respondents have declared the Petitioner as unfit by illegally applying the medical standards as applicable to fresh recruits.

(C) Issue of Writ of Certiorari quashing the



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*Clause iii (b) in
Column 11 of the Central Industrial Security
Force, Security Wing, Assistant Sub-Inspector
(Executive) Recruitment Rules, 2013”*

2. The facts necessary for the disposal of the present writ petition are that the petitioner who enrolled in the CISF as a Constable (General Duty) on 28.10.2013, 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 conducted by the respondents, in which he has consistently been adjudged to be in the SHAPE-I Medical Category.

3. The petitioner applied for promotion to the rank of Assistant Sub-Inspector (ASI) Executive through the Limited Departmental Competitive Examination-2019 (LDCE). However, the petitioner was declared ‘unfit’ for appointment in his Medical Examination as he was found to be suffering from ‘*Left Hydrocele*’.

4. The petitioner addressed the issue of ‘*Left Hydrocele*’ by undergoing surgery for the same at the Wenlock District Hospital Mangaluru. On being discharged on 09.05.2022, he obtained a certificate of fitness dated 06/07.05.2022 from the District Hospital certifying that the petitioner had undergone the surgery for the correction of his disease.

5. After receiving the fitness certificate, the petitioner applied for a Review Medical Board, where the petitioner was once again declared ‘unfit’ on the ground that ‘*post-op case of left hydrocele on dated 06.05.2022 duration for fitness for hydrocele -03 months*’



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6. The learned counsel for the petitioner submits that the petitioner has always been in Medical Category SHAPE-I, therefore, he cannot be denied ‘unfit’ for appointment.

7. On the other hand, the learned counsel for the respondent submits that, as per the Revised Uniform Guidelines for recruitment medical examination for recruitment of GOs and NGOs in the CAPFs and AR dated 20.05.2015, if a candidate is found to be suffering from ‘*Left Hydrocele*’, even if operated upon, he is to be declared unfit for appointment unless more than 90 days have passed from the surgery.

8. He submits that merely because the petitioner was declared in SHAPE-I Category in his Annual Examination, the same would not be a ground for challenging the report of his medical examination conducted for the LDCE. He places reliance on the Judgment of the Supreme Court in ***Pavnesh Kumar v. Union of India and Other***, 2023 SCC OnLine SC 1583.

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

10. The issue 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 the medical grounds, has been considered by the 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)



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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).”*

11. 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



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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.”

12. In view of the above, the submission of the learned counsel for the petitioner that the petitioner was declared to be in SHAPE-I Medical Category while working as a 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 of the examination announced by the respondent. Stage V of the scheme required the candidate to be declared ‘fit’ in the medical examination, which the petitioner could not meet.



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13. 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 *vide* the Medical Certificate dated 06.05.2022 by the District Hospital, Mangaluru, the Revised Uniform Guidelines referred herein above, clearly states that “an operated case of hydrocele is disqualifying, if more than 90 days may be accepted, provided there is no post-op complication.” Therefore, if a candidate has undergone surgery for addressing hydrocele, such candidate can be considered only if there is no post-operative complication found though more than 90 days have passed. In the present case, the period of 90 days had not passed at the time of the Review Medical Examination. Therefore, the petitioner was rightly declared ‘unfit’ for appointment by the Review Medical Examination Board. We, therefore, find no merit in the submission of the learned counsel for petitioner.

14. 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/FRK/DG

Click here to check corrigendum, if any