



2025:DHC:4442-DB



\$~87

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 26.05.2025+ W.P.(C) 7210/2025
GOVT. OF NCT OF DELHI & ANR.

.....Petitioners

Through: Mr.Amit Tiwari, CGSC with
Mr.Ayush Tanwar &
Ms.Ayushi Srivastava, Advs

versus

HARI SHANKER

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (Oral)CM APPL. 32520/2025 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 7210/2025, CM APPL. 32519/2025& CM APPL. 32521/2025

2. This petition has been filed by the petitioners, challenging the Order dated 14.05.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in O.A. No. 1371/2024, titled ***Hari Sankar v. Govt. of NCT of Delhi & Anr.***, allowing the said O.A. filed by the respondent herein with the following directions:

“4. In the conspectus of things, we find that the facts in the present case and the ones in the aforesaid OA are similar, in all fours. Accordingly, the instant OA is also disposed of



*on the same analogy. Respondents are hereby directed to comply with the aforesaid directions (OA No.519/2024 - **Teekaram Singh Meena vs. SSC and Ors.**) within twelve weeks from the date of receipt of a certified copy of this order.”*

3. The respondent had applied for the post of Constable (Executive) Male in the Delhi Police Examination, 2023, pursuant to the Advertisement/Notification issued by the petitioners herein on 01.09.2023. He was, however, declared ‘*unfit*’ for appointment on 18.01.2024, by the Detailed Medical Examination (‘DME’) Board, on the grounds of “*Perforated Left Tympanic membrane*” and “*Left Ear Hearing loss*”.

4. The Review Medical Board (RME), on 25.01.2024, after conducting an Audiometry Test on 21.01.2024, declared the respondent ‘*unfit*’ for appointment on the grounds of “*Moderate SN Hearing loss Lt. ear*” and “*Perforated Tympanic membrane*”.

5. The respondent, before the learned Tribunal, claimed to have got himself treated and checked by a medical practitioner on 23.02.2024, who found the respondent’s TM membrane to be intact and that he was fit to join his duties, which led to the filing of the above O.A.

6. The learned counsel for the petitioners submits that the opinion of the DME Board and the RME Board have been interfered with by the learned Tribunal merely on the basis that other medical institutions have given divergent opinions. He submits that the same cannot be a ground for disregarding the opinions of the DME Board and the RME Board, especially when the Audiometry Test was conducted.



7. We have considered the submissions of the learned counsel for the petitioners.

8. At the outset, we would first note that the present petition challenges the Order dated 14.05.2024, wherein the learned Tribunal had directed that the respondent be allowed to appear for the re-Review Medical Examination to be conducted by the petitioners. It is, however, pertinent to note that the present petition has been filed by the petitioners on or about 20.03.2025, that is, after much delay and without giving any explanation for such delay. The petition, insofar as it relates to a recruitment process is, therefore, belated and liable to be dismissed on the ground of delay and laches.

9. Be that as it may, we have also considered the claim of the petitioners on merits.

10. At the first instance, we agree with the submissions of the learned counsel for the petitioners that the learned Tribunal has, in a cursory manner, set aside the consistent opinions of the DME and the RME based on its earlier decision in O.A.519/2024 titled ***Teekaram Singh Meena v. Staff Selection Commission & Ors.*** We do not appreciate the said procedure followed by the learned Tribunal. The facts and circumstances of each case have to be seen for the application of a particular judgment and law, and there cannot be a universal formula adopted for fitting into all situations *de hors* the individual facts of a case.

11. We, however, instead of remanding the matter, have proceeded to consider the petition and the case of the respondent on merits.

12. It is admitted that the DME Board, *vide* Report dated



18.01.2024, had declared the respondent unfit for appointment, while observing as under:

“1) Perforated Left Tympanic membrane

2) Left Ear Hearing loss”

13. The respondent thereafter applied for the RME, and was referred for an examination of his ear by way of an Investigation Audiometry, advised by the RME Board on 21.01.2024. In such audiometry investigation, on the same day itself, the respondent was found to have *“Moderate S.N. Hearing Loss”* in his left ear. Based on this report, the RME declared the respondent unfit for appointment by the Report dated 25.01.2024, on the following grounds:

“(1) Moderate SN Hearing loss Lt. ear

(2) Perforated Tympanic membrane”

11. In the present case, solely based on the Audiometry Report, the respondent could not have been declared medically ‘unfit’ by the RME, without a Specialist opinion thereon.

12. In ***Staff Selection Commission v. Aman Singh***, 2024 SCC OnLine Del 7600, this Court, while summarizing the principles that would be applicable in cases of recruitment to disciplined Forces and medical standards applicable thereto, has, *inter alia*, opined that where the DME or the RME does not contain a domain expert and the candidate is referred to a specialist, the candidate cannot be declared unfit for appointment without such an expert report. We quote the relevant guidelines laid down by this Court, as under:

“ 10.38 In our considered opinion, the following principles would apply:

xxx



(iv) *The situations in which a Court can legitimately interfere with the final outcome of the examination of the candidate by the Medical Board or the Review Medical Board are limited, but well-defined. Some of these may be enumerated as under:*

xxx

(c) *If the condition is one which requires a specialist opinion, and there is no specialist on the Boards which have examined the candidate, a case for interference is made out.*

13. Further, especially with respect to ‘*Tympanic Perforation*’, this Court in ***Staff Selection Commission (Hdqs) & Anr. v. Jyoti Gupta***, 2025:DHC:2630-DB has observed as under:-

“13. It can be seen from the above that even though the respondent was found to be temporarily unfit, the entire process of medical examination was completed within a period of five days in a hasty manner, though the medical guidelines applicable to the selection process grants one month’s time to a candidate to appeal against the initial finding of the Medical Board.

14. In ***Staff Selection Commission v. Aman Singh***, 2024 SCC OnLine Del 7600, this Court has also considered the aspect of curability and sufficient time being given to the candidate for the said purpose if the rules so permit. We quote from the said judgment as under:

“10.38 In our considered opinion, the following principles would apply:

xxx

(c) *The aspect of "curability" assumes significance in many cases. Certain medical conditions may be curable. The Court has to be cautious in dealing with such cases. If the condition is itself*



specified, in the applicable Rules or Guidelines, as one which, by its very existence, renders the candidate unfit, the Court may discredit the aspect of curability. If there is no such stipulation, and the condition is curable with treatment, then, depending on the facts of the case, the Court may opine that the Review Medical Board ought to have given the candidate a chance to have his condition treated and cured. That cannot, however, be undertaken by the Court of its own volition, as a Court cannot hazard a medical opinion regarding curability, or the advisability of allowing the candidate a chance to cure the ailment. Such a decision can be taken only if there is authoritative medical opinion, from a source to which the respondents themselves have sought opinion or referred the candidate, that the condition is curable with treatment. In such a case, if there is no binding time frame within which the Review Medical Board is to pronounce its decision on the candidate's fitness, the Court may, in a given case, direct a fresh examination of the candidate after she, or he, has been afforded an opportunity to remedy her, or his, condition. It has to be remembered that the provision for a Review Medical Board is not envisaged as a chance for unfit candidates to make themselves fit, but only to verify the correctness of the decision of the initial Medical Board which assessed the candidate.”

15. *Applying the above principle to the facts of the present case, we find that the RME was conducted almost immediately after the DME, and had declared the respondent as ‘temporarily unfit’ without giving sufficient time to the respondent to recover from her condition. It is also an admitted fact that the*



same hospital where the respondent had been referred to for a specialist opinion and which declared her as temporarily unfit, has later opined that she is fit and does not suffer from the condition for which she had been earlier declared unfit for recruitment.”

14. In the present case, from the medical record placed before us, and for lack of expertise on this subject, we cannot state whether the condition of “*Perforated Tympanic membrane*” suffered by the respondent was only temporary in nature and/or was curable by a minor procedure. We also cannot opine whether the respondent could have been cured of the said condition if he had been given enough time by the RME for the same, before declaring him ‘*unfit*’ for appointment. The Medical Board has to also take into account whether the condition can be surgically cured and, otherwise, also whether this will have an effect on the discharge of services by the respondent if appointment is given to the respondent. In the present case, there is an absence of such an opinion by the Medical Boards.

15. In similar circumstances, in ***Staff Selection Commission (Hdqrs) & Anr. v. Ramavtar Meena***, 2025:DHC:2870-DB; ***Commissioner of Police & Anr. v. Puja Jakhar***, 2025:DHC:4184-DB; and, ***Staff Selection Commission & Ors. v. Preeti Kumari***, 2025:DHC:4127-DB, this Court has uphold the direction of the learned Tribunal on having the respondent therein re-examined by a specialist.

16. In view of the above, we do not find any reason to interfere with the final direction issued by the learned Tribunal in the Impugned Order.



2025:DHC:4442-DB



17. It is, however, made clear that the re-Review Medical Examination being now undertaken by the respondent shall be final and binding on the parties. In case the respondent is found ‘*unfit*’ for appointment for any of the reasons given by the re-Review Medical Board, the result of the said report shall be binding on the respondent and there shall be no challenge thereto.

18. Accordingly, the petition is dismissed with the above directions. The pending applications also stand disposed of.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 26, 2025/rv/SJ

Click here to check corrigendum, if any