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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28th January, 2025

+ W.P.(C) 9160/2019, CM APPL. 37829/2019

CONST. GAUTAM KUMAR MISHRAPetitioner

Through: Ms. Ankita Patnaik, Adv.

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. Jitesh Vikram Srivastav,
SPC with Mr. G.S. Rathore,
AC/CISF, Mr. Yespal, Insp and
Mr. Prehlad 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-2018) 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 12.07.2019 and Medical Review Board dated 09.08.2019 whereby the Respondents have declared the Petitioner as unfit by illegally applying the medical standards as applicable to fresh recruits.*



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(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, 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 19.02.2011, 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 in the SHAPE-I Medical Category.

3. The petitioner had applied for the post of Assistant Sub-Inspector (ASI) Executive through the Limited Departmental Competitive Examination-2018 (LDCE). However, the petitioner was declared ‘unfit’ for appointment as in his Medical Examination, he was found to be suffering from ‘*Partial Defective Colour Vision*’.

4. The learned counsel for the petitioner submits that post the above declaration, the petitioner got himself examined at a Government Hospital, and obtained a Medical Fitness Certificate from a Specialist Medical Officer on 20.07.2019, stating that the petitioner did not suffer from Defective Colour Vision.

5. The petitioner then applied for a Review Medical Examination, however, on 09.08.2019, the Review Medical Board again declared



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the petitioner 'unfit' on the ground of '*CP IV (FOUR)- Require CP III*'

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 is to be in SHAPE-I Medical Category, which the petitioner has consistently met since his enrolment in 2011 and, therefore, he cannot be declared 'unfit' for appointment.

7. On the other hand, the learned counsel for the respondents submits that as per the 'Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles' dated 20.05.2015 issued Ministry of Home Affairs (MHA), and the MHA 'Policy Guidelines on Visual Standards for recruitment/retention in respect of the Central Armed Police Forces and Assam Rifles personnel' dated 18.05.2012, which are applicable candidates qualifying for the posts of ASI (Executive) in the LDCE- 2018, if a candidate is found to suffering from '*Partial Defective Colour Vision*', he/she is to be declared 'unfit' for appointment.

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

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



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10. 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).



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 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 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 for the examination announced by the respondents. Stage V of the same required the candidate to be declared 'fit' in the medical examination, which the petitioner could not meet.

13. As far as the submission of the learned counsel for the petitioner that the petitioner got himself examined at a Government



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Hospital and obtained a Medical Fitness Certificate from a Specialist Medical Officer is concerned, we do not find merit in the same. The Review Medical Board also contained an Ophthalmologist. The said report, therefore, cannot be disregarded merely because another doctor has given a contradictory report.

14. In *Staff Selection Commission & Ors. vs. Aman Singh*, 2024 SCC OnLine Del 7600, a coordinate Division Bench of this Court, after a detailed examination of the precedents on the scope of challenge to a report of the Review Medical Board in CAPF recruitment process, has summarized the applicable principles, as under:-

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

(i) The principles that apply in the case of recruitment to disciplined Forces, involved with safety and security, internal and external, such as the Armed and Paramilitary Forces, or the Police, are distinct and different from those which apply to normal civilian recruitment. The standards of fitness, and the rigour of the examination to be conducted, are undoubtedly higher and stricter.

(ii) There is no absolute proscription against judicial review of, or of judicial interference with, decisions of Medical Boards or Review Medical Boards. In appropriate cases, the Court can interfere.

(iii) The general principle is, however, undoubtedly one of circumspection. The Court is to remain mindful of the fact that it is not peopled either with persons having intricate medical knowledge, or were aware of the needs of the Force to which the concerned



candidate seeks entry. There is an irrebuttable presumption that judges are not medical men or persons conversant with the intricacies of medicine, therapeutics or medical conditions. They must, therefore, defer to the decisions of the authorities in that regard, specifically of the Medical Boards which may have assessed the candidate. The function of the Court can only, therefore, be to examine whether the manner in which the candidate was assessed by the Medical Boards, and the conclusion which the Medical Boards have arrived, inspires confidence, or transgresses any established norm of law, procedure or fair play. If it does not, the Court cannot itself examine the material on record to come to a conclusion as to whether the candidate does, or does not, suffer from the concerned ailment, as that would amount to sitting in appeal over the decision of the Medical Boards, which is not permissible in law.

(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:

(a) A breach of the prescribed procedure that is required to be followed during examination constitutes a legitimate ground for interference. If the examination of the candidate has not taken place in the manner in which the applicable Guidelines or prescribed procedure requires it to be undertaken, the examination, and its results, would ipso facto stand vitiated.

(b) If there is a notable discrepancy between the findings of the DME and the RME, or the Appellate Medical Board, interference may be justified. In



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this, the Court has to be conscious of what constitutes a “discrepancy”. A situation in which, for example, the DME finds the candidate to be suffering from three medical conditions, whereas the RME, or the Appellate Medical Board, finds the candidate to be suffering only from one of the said three conditions, would not constitute a discrepancy, so long as the candidate is disqualified because of the presence of the condition concurrently found by the DME and the RME or the Appellate Medical Board. This is because, insofar as the existence of the said condition is concerned, there is concurrence and uniformity of opinion between the DME and the RME, or the Appellate Medical Board. In such a circumstance, the Court would ordinarily accept that the candidate suffered from the said condition. Thereafter, as the issue of whether the said condition is sufficient to justify exclusion of the candidate from the Force is not an aspect which would concern the Court, the candidate's petition would have to be rejected.

(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. In this, however, the Court must be satisfied that the condition is one which requires examination by a specialist. One may differentiate, for example, the existence of a haemorrhoid or a skin lesion which is apparent to any doctor who sees the candidate, with an internal orthopaedic deformity, which may require radiographic examination and analysis, or an ophthalmological impairment. Where the existence of a medical



condition which ordinarily would require a specialist for assessment is certified only by Medical Boards which do not include any such specialist, the Court would be justified in directing a fresh examination of the candidate by a specialist, or a Board which includes a specialist. This would be all the more so if the candidate has himself contacted a specialist who has opined in his favour.

(d) Where the Medical Board, be it the DME or the RME or the Appellate Medical Board, itself refers the candidate to a specialist or to another hospital or doctor for opinion, even if the said opinion is not binding, the Medical Board is to provide reasons for disregarding the opinion and holding contrary to it. If, therefore, on the aspect of whether the candidate does, or does not, suffer from a particular ailment, the respondents themselves refer the candidate to another doctor or hospital, and the opinion of the said doctor or hospital is in the candidate's favour, then, if the Medical Board, without providing any reasons for not accepting the verdict of the said doctor or hospital, nonetheless disqualifies the candidate, a case for interference is made out.

(e) Similarly, if the Medical Board requisitions specialist investigations such as radiographic or ultrasonological tests, the results of the said tests cannot be ignored by the Medical Board. If it does so, a case for interference is made out.

(f) If there are applicable Guidelines, Rules or Regulations governing the manner in which Medical Examination



of the candidate is required to be conducted, then, if the DME or the RME breaches the stipulated protocol, a clear case for interference is made out.

(v) Opinions of private, or even government, hospitals, obtained by the concerned candidate, cannot constitute a legitimate basis for referring the case for re-examination. At the same time, if the condition is such as require a specialist's view, and the Medical Board and Review Medical Board do not include such specialists, then the Court may be justified in directing the candidate to be re-examined by a specialist or by a Medical Board which includes a specialist. In passing such a direction, the Court may legitimately place reliance on the opinion of such a specialist, even if privately obtained by the candidate. It is reiterated, however, that, if the Medical Board or the Review Medical Board consists of doctors who are sufficiently equipped and qualified to pronounce on the candidate's condition, then an outside medical opinion obtained by the candidate of his own volition, even if favourable to him and contrary to the findings of the DME or the RME, would not justify referring the candidate for a fresh medical examination.

(vi) 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.

(vii) The extent of judicial review has, at all times, to be restricted to the medical examination of the candidate concerned. The Court is completely proscribed even from observing, much less opining, that the medical disability from which the candidate may be suffering is not such as would interfere with the discharge, by her, or him, of her, or his, duties as a member of the concerned Force. The suitability of the candidates to function as a member of the Force, given the medical condition from which the candidate suffers, has to be entirely left to the members of the Force to assess the candidate, as they alone are aware of the nature of the work that the candidate, if appointed, would have to undertake, and the capacity of the candidates to undertake the said work. In other words, once the Court finds that the decision that the candidate concerned suffers from a particular ailment does not merit judicial interference,



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the matter must rest there. The Court cannot proceed one step further and examine whether the ailment is such as would render the candidate unfit for appointment as a member of the concerned Force.

(emphasis supplied)”

15. Applying the above principles to the facts of the present case, we find that the petitioner has not made out a case for interference with the report of the Review Medical Board.

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/FRK/SJ

Click here to check corrigendum, if any