



2025:DHC:436-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 22.01.2025

+ W.P.(C) 14424/2024 & CM APPL. 60455-56/2024
GOVT OF NCT OF DELHI AND ANRPetitioners
Through: Mr.Radhika Bishwajit Dubey,
CGSC with Ms.Gurleen Kaur
Waraich, Adv.
versus

DHARMESH KUMARRespondent
Through: Mr.Rajesh Chauhan, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner, challenging the Order dated 14.05.2024 passed by the Central Administration Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in Original Application no.1384/2024, titled ***Dharmesh Kumar v. Govt. of NCT of Delhi & Anr.***, whereby the learned Tribunal allowed the Original Application filed by the respondent herein and directed the petitioner herein to conduct a fresh Medical Examination of the respondent by way of constituting an appropriate Medical Board in any Government Medical Hospital, except the hospital which has conducted the Initial and/or the Review Medical Examination of the respondent.
2. The respondent had filed the above Original Application before the learned Tribunal, challenging the Reports of the Detailed Medical



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Examination Report (in short, 'DME') dated 18.01.2024, wherein the respondent was declared 'unfit' for appointment on account of an '*Abnormal X-ray finding pointing towards lung pathology*', and the Review Medical Examination Report (in short, 'RME') dated 23.01.2024, which also declared the respondent 'unfit' for appointment with the remarks '*Abnormal CT-Chest*'.

3. The learned counsel for the petitioner submits that the learned Tribunal failed to appreciate that in terms of the Note attached to the Appendix to Clause 24 of the Delhi Police (Appointment and Recruitment) Rules, 1980, which were applicable to the selection process in question, a candidate suffering from '*Abnormal CT-Chest*' was to be declared unfit for appointment. She further submits that the learned Tribunal has erred in disregarding, based only on conjectures and surmises, the opinion of the medical experts.
4. On the other hand, the learned counsel for the respondent submits that the respondent had got himself examined at the National Institute of TB and Respiratory Diseases, where the doctor found the respondent medically fit.
5. We have considered the submissions made by the learned counsels for the parties.
6. In *Staff Selection Commission & Ors. v. Aman Singh*, 2024:DHC:8441-DB, this Court, on a detailed examination of the precedents on the issue, laid down the circumstances in which the Court may or may not exercise its power of judicial review. These are reproduced 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 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.



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(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, 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.”

7. From a reading of the above, it would be apparent that though there can be no absolute exclusion of judicial review against the decision of the Medical Boards, at the same time, the power of the judicial review is limited and the Court can only examine whether the manner in which the candidate was assessed by the Medical Boards and the conclusion drawn by the Medical Boards transgress any established norm of law and procedure of fair play. The Court not being the medical expert, would not venture out to act as an appellate authority against such medical opinion. As far as the opinion obtained by the candidate from the Private Hospital or even a Government Hospital that contradicts the opinion of the DME or the RME is concerned, due



weightage would be given to the opinion of the DME and the RME particularly where they have obtained an opinion from an expert/specialist or where the DME/RME itself consists of a specialist in the relevant field.

8. In the present case, the DME before declaring the respondent ‘unfit’ for appointment had obtained a report from the Pain and Spine Hospital, which had, *inter alia*, reported as under:

Lung fields:- Fibronodular infiltrates are seen in right upper zone. Few nodular infiltrates are seen in left upper zone. Rest of lung fields are clear.
Cardiac:- Cardiac borders are visible.
Normal heart size.
Diaphragm:- Right CP angle is blunted likely thickening. Left CP angle is normal.
Cardiophrenic angles on right & left are normal.
Diaphragm portion are normal.

9. Even the RME found that the respondent was suffering from an ‘Abnormal CT-Chest’ based on a report which is annexed to the said examination.
10. Therefore, merely because the respondent has later obtained a contrary opinion from the National Institute of TB and Respiratory Diseases, may not have been sufficient to direct the re-examination of the respondent. In fact, even the report of the said TB Clinic found the respondent suffering from the:

“SU- abnormality (Old infectivity)
Etiology”

11. The learned Tribunal should have been cognizant of the fact that there has to be finality attached to the process of the medical examination, and unless the limited scope for judicial intervention is made out, the Court/Tribunal would refrain itself from re-opening the



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same.

12. In the present case, the learned Tribunal in the Impugned Order has merely placed reliance on its earlier Order dated 10.05.2024, passed in O.A. 519/2024, titled *Teekaram Singh Meena vs. SSC and Ors.*, without appreciating that in the said case, the learned Tribunal had found that the DME and the RME had probably been conducted by the same set of doctors, thereby defeating the very purpose of the RME. In the present case, however, the DME and the RME report, in fact, show that there were different sets of doctors who conducted the two examinations, and as noted hereinabove, even an opinion from the expert was obtained. Therefore, the learned Tribunal erred in relying upon its earlier order.

13. Apart from the above, there was no other discussion by the learned Tribunal as to why the reports of the DME and the RME deserve to be set aside or why the fresh medical examination of the respondent has been directed to be undertaken.

14. In view of the above, we find that the learned Tribunal has erred in passing the above direction. The Impugned Order dated 14.05.2024 of the learned Tribunal is accordingly set aside.

15. The petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

HARISH VAIDYANATHAN SHANKAR, J
JANUARY 22, 2025/Arya/DG

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