



2025:DHC:516-DB



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

Date of decision: 28th January, 2025

+ W.P.(C) 6471/2010

PAWAN KUMAR

.....Petitioner

Through: Mr. Pradeep Dahiya and Ms.
Mahima Benipuri, Advs.

versus

UOI

.....Respondent

Through: Mr. Rajesh Kumar, SPC with
Mohd. Changez Khan and Mr.
Rahul Sharma, Advs. with Mr.
G.S. Rathore, AC/CISF, Mr.
Yespal, Insp. 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 Reserve Police Force (CRPF), praying for the following relief:-

“i. Allow the writ petition and direct the respondents to give appointment to the petitioner to the post of SI/Exe with all consequential benefits including pay, seniority from the day his juniors have been given appointment to the post of SI/Exe in the LDCE-2009;”

2. The facts necessary for the disposal of the present writ petition

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W.P.(C) 6471/2010

Page 1 of 7



2025:DHC:516-DB



are that the petitioner was enrolled in the CRPF on 19.12.2003 and has been working in the aforementioned post since his enrolment. The petitioner has undergone multiple Medical Examinations by the respondents, during which he has consistently been adjudged in the Medical Category SHAPE-I.

3. The petitioner had applied for the post of Sub-Inspector (Executive) through the Limited Departmental Competitive Examination-2009 (LDCE). However, the petitioner was declared 'unfit' for appointment as in his Medical Examination, he was found to be suffering from 'Varicose Veins'. The medical report dated 08.06.2009 stated that the petitioner is '*unfit (temporary)*' for three months.

4. The learned counsel for the petitioner submits that post the above declaration, the petitioner got himself examined at the Lok Nayak Hospital, where the petitioner was operated upon on 18.06.2009, and was subsequently declared fit for any employment on 30.06.2009. He further submits that the petitioner was in SHAPE-I Medical Category on the date of his application and, therefore, could not have been rejected on the ground of temporary unfitness.

5. On the other hand, the learned counsel for the respondents submits that as per the 'PET/Medical Examination Guidelines for qualified candidates in connection with recruitment to the post of Sub Inspectors in the CPOs (SI) Examination-2007 onwards conducted by the SSC' issued by the Ministry of Home Affairs (MHA) *vide* MHA UO No.1-45023/2/2006-PRS.II/(PART-III) dated 07.02.2008



2025:DHC:516-DB



(hereinafter referred to as the ‘Medical Guidelines’), and specifically Clause 4(y) thereof, a candidate found to be suffering from ‘Varicose Veins’, even if operated upon, is to be declared ‘unfit’ for appointment.

6. The learned counsel for the respondent further submits that the advertisement dated 14.01.2009, pursuant to which the petitioner had applied, clearly mentioned that a candidate must not be suffering from ‘Varicose Veins’.

7. He submits that merely because the petitioner was declared to be in SHAPE-I Medical Category in his Annual Medical 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.

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

9. 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



2025:DHC:516-DB



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 **Pavnesk Kumar** (supra).*

10. In **Pavnesk Kumar** (supra), on which reliance has been placed by the Full Bench, rejected a plea similar to the one taken by the learned counsel for the petitioner, on the effect of the candidate being in SHAPE 1 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.



2025:DHC:516-DB



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."

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

12. 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, we do not find merit in the same. Clause 4(y) of the Medical Guidelines clearly states that a candidate found to be suffering from 'Varicose Veins', even if operated upon, shall be rejected. The Clause reads as under:-

"General Grounds for Rejection

4. Persons presenting with any of the following conditions will be rejected:

xxxx

(y) Varicose veins even if operated because basic defect remains unchanged"

13. Having applied under the advertisement, the petitioner cannot



2025:DHC:516-DB



now challenge its terms.

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
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Click here to check corrigendum, if any

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