



2025:DHC:518-DB



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

Date of decision: 28th January, 2025

+ W.P.(C) 10482/2016

KUTUBUDDEN

.....Petitioner

Through: Mr. Anuj Aggarwal, Mr.
Avinash Kumar, Ms. Kritika
Matta and Mr. Utkarsh
Chauhan, Advs.

versus

CENTRAL RESERVE POLICE FORCE (CRPF) & ORS

.....Respondents

Through: Mr. Vikrant N. Goyal, Mr.
Nishu Dagar, Mr. Aaditya
Shukla and Ms. Shivani Yadav,
Advs.
Mr. Ajay Pal, LO, Mr. S.K.
Singh and Mr. Rajesh Singh,
CRPF

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 reliefs:-

"a. Issue and appropriate writ, order or direction setting aside the Impugned order dated 21.06.2016 passed by the respondents whereby the petitioner was declared medically unfit due to the reason that the petitioner is suffering from 'bilateral testicular swelling'



b. Issue and appropriate writ, order or direction setting aside the impugned order dated 23.08.2016 and direct the respondents to consider the candidature of the petitioner for the post of head ministerial through LDCE;

c. Issue and appropriate writ, order or direction declaring impugned medical guidelines for recruitment for Head Constable (Ministerial) Para 7(b) ultra vires to Article 14 and 16 of the Constitution of India;

d. Issue and appropriate writ, order or direction setting aside the impugned order dated 23.08.2016 and direct treating him as medically fit for the post of Head Constable (Ministerial) and pay him all consequential benefits thereof”

2. The brief facts, as emerging from the record, are that the respondents invited application for the post of Head Constable (Ministerial) through the Limited Departmental Competitive Examination (LDCE)-2015 vide the advertisement No. A-IV-19/2015/DA (MIN) dated 29.02.2016.

3. In order to apply for the said post, the petitioner requested a No Objection Certificate (NOC) from the respondents and received the said NOC dated 26.03.2016. Thereafter, the petitioner appeared for the written examination on 22.05.2016, and the Skill Test/ Physical Standard Test, on 20.06.2016, and successfully cleared both. However, on 21.06.2016, the petitioner underwent a medical examination and was declared medically ‘unfit’ vide the Impugned Order due to the reason that he was suffering from ‘Bilateral Testicular Swelling’.

4. In order to fix his ailment, the petitioner underwent surgery for



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his condition on 27.06.2016 at the District Hospital, Sultanpur, Uttar Pradesh. After being declared medically 'fit' by the Hospital where his surgery was conducted, the petitioner applied for a medical re-examination on 06.07.2016. The petitioner was directed to appear for the medical re-examination, which was to be conducted on 23.08.2016.

5. Upon being medically re-examined, the petitioner was once again declared 'unfit' by the Review Medical Board on the ground that the petitioner is suffering from '*Hydrocele*', and the petitioner had not completed the required post-surgery recovery period of three months.

6. The learned counsel for the petitioner submits that, thereafter, the petitioner sought further medical re-examination at the District Hospital, Sultanpur, UP, where, on 15.10.2016, he was declared 'fit' with the finding 'No Abnormality Detected (NAD)'.

7. The petitioner, therefore, challenges the Order dated 23.08.2016, seeking relief from the rejection based on the medical findings.

8. On the other hand, the learned counsel for the respondent submits that as per the Guidelines of qualified candidates in connection with recruitment to the posts of Head Constable (Ministerial) through the LDCE-2015, dated 21.03.2016, if a candidate has not completed three months of post-operation recovery, as per clause 7(b) of the aforementioned advertisement, the candidate is to be declared 'unfit' for an appointment. He submits that as the petitioner had not completed the requisite post surgery period, his



candidature was rightly rejected by the Review Medical Board.

9. 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 ***Pavnesk Kumar v. Union of India and Other***, 2023 SCC OnLine SC 1583.

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

11. 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 **Pavnesk Kumar** (supra). ”*

12. In **Pavnesk 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.”

13. 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 Constable (GD), can be of no relevance. The fact remains that he has been declared ‘unfit’ for appointment in the medical examination conducted for the LDCE examination. In terms of the Scheme for 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.

14. 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. The advertisement itself, in Clause 7(b) clearly states that a candidate found not having completed three months of post operation surgery, shall be declared ‘unfit’ for appointment. The same is quoted as under:-



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7. Duration of fitness for Post-operative cases. If any candidate operated for following the time for fitness will be considered as per details given below:-

b) Hydrocele-03 months.

15. Having applied under the advertisement, the petitioner cannot now challenge its terms.

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/DG

Click here to check corrigendum, if any