

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

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Reserved on: 4<sup>th</sup> December, 2012  
Date of decision: 21<sup>st</sup> December, 2012

**+ W.P.(C) 2887/2012**

MAN SINGH ..... Petitioner

Through : Mrs. Rekha Palli,  
Ms. Punam Singh and  
Ms. Amrita Prakash, Advs.

versus

UNION OF INDIA AND ORS ..... Respondents

Through : Mr. Ruchir Mishra, Adv.  
for R-1 to 3.  
Mr. Naresh Kaushik and  
Mr. V. Nagpal, Advs.  
for R-4.

**+ W.P.(C) 2893/2012**

AJAY TRIPATHI ..... Petitioner

Through : Mrs. Rekha Palli,  
Ms. Punam Singh and  
Ms. Amrita Prakash, Advs.

versus

UNION OF INDIA AND ORS ..... Respondents

Through : Mr. Ruchir Mishra, Adv.  
for R-1 to 3.  
Mr. Naresh Kaushik and  
Mr. V. Nagpal, Advs.  
for R-4.

**CORAM:**

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**GITA MITTAL, J.**

1. The instant case raises two pertinent questions. The first issue raised in these petitions is whether the appointment to the rank of Assistant Commandant in the Central Industrial Security Force (CISF) by Limited Departmental Competitive Examination (hereinafter referred to as 'LDCE') tantamounts to appointment by promotion or is a direct recruitment appointment. The second question which has been raised is as to whether the respondents can legally prescribe two medical standards for eligibility of candidates to the same post, one for those to be selected through LDCE for the rank of Assistant Commandant, and, the second for candidates who are promoted to the said rank from the rank of Inspector (the feeder cadre for the promotion to the rank of Assistant Commandant) in the same organization.

2. Before examining these two issues, we may briefly consider the facts giving rise to these petitions which are undisputed.

**Factual narration**

3. Man Singh, the petitioner in the writ petition bearing WP(C)No.2887/2012 had joined the CISF on 22<sup>nd</sup> May, 2003 as a Sub Inspector (Executive). Ajay Tripathi, the petitioner in writ petition bearing WP(C)No.2893/2012 had joined the CISF on 18<sup>th</sup> May, 2003 as Sub Inspector (Executive). Both of them had successfully cleared the Annual Range Classification (ARC), i.e., firing test conducted by the department every year since 2003 to 2011. Both the petitioners are stated to have also undertaken the

Basic Training Pre Commando Course and Promotion Course in the year 2010 for promotion from the post of Sub Inspector to Inspector. The writ petitions state that the petitioners had successfully qualified the Screener Certificate and performed the duties of Screener at Airports which includes operation of the X-ray Baggage Inspection Machine with utmost efficiency.

These facts are not disputed by the respondents.

4. Vide a notification dated 16<sup>th</sup> April, 2011, the respondent no.1 invited applications from departmental candidates for filling up vacancies of Assistant Commandant (Executive) for the vacancy year 2010 and 2011. Since both Man Singh and Ajay Tripathi were fulfilling all eligibility conditions, they applied for the same and appeared in the written examination which was held on 19<sup>th</sup> June, 2011 by the Union Public Service Commission (hereinafter referred to as UPSC), the respondent no.4 herein.

5. Both the petitioners had successfully qualified the written test as well as the physical efficiency test (PET) held on 21<sup>st</sup> September, 2011 and were directed to appear before the medical board for the medical examination for selection to the said rank. Man Singh and Ajay Tripathi appeared before the Medical Board at the Base Hospital ITBP, Tigri Camp, New Delhi on 23<sup>rd</sup> and 24<sup>th</sup> September, 2011 respectively and underwent the medical examination. Both the petitioners were declared medically unfit on account of their having 'Alternating Exophoria' (latent squint). Ajay Tripathi was found unfit on the additional ground that he was overweight by 6 Kgs.

6. As both the petitioners were unsatisfied with the result of the medical examination, Man Singh underwent a medical examination at SMS Hospital, Jaipur on 24<sup>th</sup> September, 2011 where he was declared medically fit for the appointment to the post of Assistant Commandant (Executive) (LDCE). Ajay Tripathi, similarly underwent medical examination at the Eye Clinic, Agartala on 7<sup>th</sup> October, 2011 in which he was also declared to be medically fit.

7. Based on the result of these medical examinations, the petitioners sought a review medical examination from the respondents. Man Singh was subjected to review medical board on 19<sup>th</sup> October, 2011 which confirmed the finding of unfitness by the medical examination held on 23<sup>rd</sup> September, 2011. The finding of unfitness of Ajay Tripathi were similarly confirmed in the review medical board held on 18<sup>th</sup> October, 2011 convened by the respondents.

8. The petitioner, Man Singh, has complained that the opinion and findings of the review medical board were not communicated to him. However on inquiry made under the Right to Information Act, the respondents sent a response dated 24<sup>th</sup> January, 2012 to Man Singh, which has been placed before this Court whereby the CISF authority had informed that he had been declared unfit in the review medical test.

9. The petitioners separately submitted representations dated 24<sup>th</sup> November, 2011 and 28<sup>th</sup> November, 2011 respectively to the Director General of the CISF complaining that they had been wrongly declared as medically unfit and that, on the basis of

examinations by other eye-experts, who declared them medically fit, they were fit for appointment to the post of Assistant Commandant (Executive) (LDCE).

10. As the representations did not evoke any positive response from the respondents, Man Singh filed the writ petition bearing WP(C)No.2887/2012 challenging the actions of the respondents and sought the following relief:-

“(A) Issue a Writ of Certiorari quashing Para 2(a) of Appendix II of Notification dated 16.04.2011 wherein separate Medical Standards have been prescribed for candidates for the post of Assistant Commandant in the CISF selected through LDCE as compared to candidates who are promoted from the post of Inspector to Assistant Commandant;

(B) Issue a writ of certiorari quashing the findings of the Medical Board held on 23.09.2011 and Review Medical Board held on 19.10.2011 declaring the petitioner as medically unfit on the grounds of his suffering from Alternating Exophoria;

(C) Issue a writ of mandamus directing the respondent to appoint the petitioner as an Assistant Commandant (Executive) with all consequential benefits; and

(D) Pass any other appropriate order/direction which this Hon’ble Court deem fit and proper.”

11. Ajay Tripathi filed WP(C)No.2893/2012 also praying for the above reliefs except prayer ‘B’ seeking quashing of the medical board dated 24<sup>th</sup> September, 2011 and Review Medical Board held on 23<sup>rd</sup> September, 2011. All other prayers are identical.

As the two petitions raise identical questions of law and fact, they are being taken up together for consideration.

12. The appointments to different posts with the CISF are effected either by direct recruitment or by promotion from the feeder posts.

13. During the course of hearing, the respondents have filed an additional affidavit dated 29<sup>th</sup> November, 2012 explaining that in the CISF, the Assistant Commandant (Executive) is an entry rank to the Group 'A' posts. Considering the increasing need for direct Assistant Commandants, 17% posts from the promotion quota of Feeder Cadre have been diverted to cater for the vacancies to be filled-up by conducting Assistant Commandant/Limited Departmental Competitive Examination which is open to departmental candidates only.

14. The present case is concerned with the fast tracking of appointments of meritorious personnel for which purpose the respondents conduct a Limited Departmental Competitive Examination which encompasses a written examination, a physical efficiency test, an interview and a medical examination. It is apparent that the persons who succeed in this Limited Departmental Competitive Examination must possess merit of the highest order.

*Petitioners' contentions*

15. It is urged by Ms. Rekha Palli, learned counsel representing the petitioners before us that the selection of candidates for appointment to higher posts by conducting a Limited Departmental

Competitive Examination has to be considered as appointment by promotion. The respondents urge otherwise.

16. The second contention on behalf of the petitioner is that the respondents appear to have also prescribed two different medical standards, one for appointments of Assistant Commander through LDCE and another for appointments on regular promotions in due course. In view of the fact that the respondents have drawn up separate Rules for Eligibility and Medical Standards so far as the appointments by the two methods, it has, therefore, become necessary to examine this issue. We may note that the counter affidavit filed before us is hopelessly unclear on this issue.

*Appointment through LDCE – Whether promotion or direct recruitment?*

17. In support of her first contention, Ms. Rekha Palli, learned counsel for the petitioner has drawn our attention to the stand of the Ministry of Home Affairs (Personnel), New Delhi as well as the Department of Personnel and Training of the Government of India in their records which have been filed in a pending matter before the Supreme Court of India. The first noting (dated 18<sup>th</sup> November, 2011) is extracted in extenso hereafter and reads as follows:-

“Department of Personnel & Training  
Estt (res)

Reference notes of Ministry of Home Affairs on pages 2-3/ante.

2. Regarding clarification whether LDCE is Direct

Recruitment or a mode of promotion, the RR Branch of this Department has clarified that the LDCE is a mode of promotion. On the issue of change in category of a person, who has been appointed on the basis of reservation, it is clarified vide this Department's OM dated 11.7.2002 that SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.

-sd-

(Sharad Kumar Srivastava)  
Under Secretary (Res)''

(underlining by us)

18. This noting was reiterated by the Ministry of Home Affairs in a noting dated 22<sup>nd</sup> November, 2011 of Shri R.P. Sati, Under Secretary referring to a writ petition filed in this court. The noting dated 22<sup>nd</sup> November, 2011 reads as follows:-

**“Ministry of Home Affairs**  
**Pers – II**

Reference note on pre-pages.

2. This is regarding Writ Petition(C)No.5460/2011 filed by Shri Sundeep Kumar Dubey, Constable )GD) of CRPF in the High Court of Delhi against his non-selection for the post of Sub, Insp(GD) through Limited Department Competitive Examination (LDCE), 2010.

3. The matter was considered in this Ministry (p-2/n) and DoP&T was requested to clarify the position



as mentioned in para – 3(p-2/n). In this connection DoP&T vide their UO dated 18.11.2011 (p-4/n) has clarified the following:-

“Regarding clarification whether LDCE is Direct Recruitment or a mode of promotion, the RR Branch of this Department has clarified that the LDCE is a mode of promotion. On the issue of change in category of a person, who has been appointed on the basis of reservation, it is clarified vide this Department’s OM dated 11.7.2002 that SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.”

4. We may convey the above mentioned clarification of DoP&T to CRPF.

-Sd-

(R.P. Sati)

Under Secretary

22.11.2011

Director (Pers)/DS(Pers-I)”

(Underlining supplied)

The correctness and authenticity of these notings have not been disputed before us by the respondents.

19. The respondents have urged in the present proceedings that appointments through the LDCE is a mode of fast tracked promotion. In the above notings, the respondents have themselves taken the position that appointment through the LDCE is a mode of promotion. Given the stand of the respondents in the notings

aforesaid and before this Court it is clear that appointment to LDCE is merely an appointment by promotion, albeit fast tracked. It would, therefore, follow that the recruitment rules or guidelines for appointments which would apply to appointments through the LDCE, would have to be those which are applicable to appointment by promotions.

Medical Standards and Rules for appointment as Assistant Commandant

20. In order to rule on the second contention on behalf of the petitioner, it is necessary to examine the medical standards prescribed by the respondents. We may first briefly notice the parameters for evaluation which have been prescribed by the respondents.

21. The respondents have provided rules and regulations for promotion of Inspectors to the post of Assistant (Executive) by a notification dated 17<sup>th</sup> February, 2009.

The rules being the Central Industrial Security Force, Assistant Commandant (Executive) Recruitment Rules, 2009 which apply to promotion of inspectors to the post of Assistant Commandant (Executive) were notified by the Ministry of Home Affairs by a notification dated 17<sup>th</sup> February, 2009. The same have been placed along with the additional affidavit on record. Perusal of these rules would show that in column 12, the respondents provide the eligibility requirements for promotion which is to the following effect:-

“ Inspector (Executive) in the pay scale of PB-2 9300-34800 + GP 4600 with five years regular service in the grade being in medical category Shape-1 and having passed the matriculation examination from a recognized Board or equivalent.”

Therefore, as per these rules, so far as the medical fitness status is concerned, the only requirement prescribed by the respondents is that the Inspector should have been placed in medical category Shape-1 and nothing else.

The LDCE examination is conducted by the Union Public Service Commission (UPSC) which frames subject examination rules for each vacancy year with the approval of the Ministry of Home Affairs. The respondents state that the eligibility criteria for the direct recruit Assistant Commandants as well as those appointed from the Limited Departmental Competitive Examinations are identical except with regard to the age limits. The respondents also state that vacancies for Assistant Commandants through the LDCE are filled-up by applying the same process and set of rules of medical and physical standards as are applicable for direct recruitments.

So far as the relevant LDCE examination is concerned, the Ministry of Home Affairs issued a notification dated 16<sup>th</sup> April, 2011 prescribing “*Rules for Limited Departmental Competitive Examination*” to be held by the Union Public Service Commission in 2011 for the purpose of filling vacancies of Assistant Commandants (Executive) in Central Industrial Security Force for the vacancy year 2010 and 2011.

Both the parties have drawn our attention to *Rule 8* and the physical and medical standards for candidates which have been stipulated in *Appendix II* therein, the relevant extract whereof reads as follows:-

“8. Candidates must meet the prescribed Physical and Medical standards for admission to the Limited Departmental Competitive Examination for selection of Assistant Commandant (Executive) in CISF, 2010 and 2011 specified in *Appendix – II* of these Rules.”

“(2) Medical Standards:  
(a) Eye Sight

	Better eye (Corrected vision)	Worse eye (Corrected vision)
Distant Vision	6/6 OR 6/9	6/12  6/9
Near vision	J1 (corrected)	J2 Corrected)

The candidate should not have squint of any degree and should have high colour vision.”

22. We are informed that the issue with regard to the prescription of visual standards with regard to the personnel of the Central Armed Police Force had been raised in a host of writ petitions before this court. Amongst others, in W.P.(C)No.686/2011 and W.P.(C)No.1142/2011, this Court directed the Government to notify revised visual standards.

23. A detailed consideration was thereafter effected by the Ministry of Home Affairs of the Government of India culminated

in formalization of the policy guidelines captioned as “Policy Guidelines on Visual Standards for recruitment/retention in respect of Central Armed Police Force (CAPF) and Assam Rifles (ARs) personnel” which were issued by communication dated 18<sup>th</sup> May, 2012. The object and intendment of the guidelines is to be found in paras 3 and 4 which read as follows:-

“3. Keeping the above in view, a board was constituted under the guidance of ADG(Medial), CAPFs to examine the scientific reforms required in the existing instructions on Colour Blindness for the purpose of Medial Examination during recruitment and the medial categorization policy guidelines in CAPFs “SHAPE” system and also to prepare updated standard of visual acuity required for the various groups of personnel recruited in CAPFs and ARs, including age specific physiological changes at the various levels of serving age.

4. The said board had submitted its recommendations wherein while stating that there is necessity to review the visual standards in CAPFs & ARs to avoid litigations, they have also observed that :

- a. The visual standards vary amongst the CAPFs and the same have never been comprehensively reviewed. The existing standards have been taken mostly from Army & CGHS in various organizations. Furthermore, due to various loopholes in the existing visual standards, there had been various litigations in the courts against the visual standards and in many cases, the CAPFs have failed to counter the charges against visual standards in the Hon’ble Courts.

- b. The capability of Direct Appointed Gazetted Officers to carry out their tasks is also enhanced in the current scenario since optical, range-finding and target acquisition devices have made the unaided visual acuity concept redundant. Even if the officer does not have his spectacles on the battlefield, the range of assisting devices will help him carry out his tasks efficiently provided he has good spectacle assisted acuity. Hence, it is proposed that the unaided visual acuity criteria be relaxed and best corrected visual acuity now be made the real determinant of a candidate's fitness to serve in the CAPFs & ARs.
- c. The CAPFs and Staff Selection Commission (SSC), while doing their recruitments are silent on near vision. It has also not been defined in recruitment rules. Furthermore, CAPFs are facing litigations especially in respect of ex-servicemen. To have uniformity and avoid future litigations, near vision needs to be specified and recommended in respect of all ranks.
- d. There are three grades of binocular vision, Grade-I being Simultaneous macular perception, Grade-2 being Fusion and Grade-3 being Stereopsis or 3-D vision (depth perception). There are certain branches like Law and logistics where a Binocular vision of Grade-2 would suffice. These branches are losing out on a lot of deserving candidates due to the above stringent criteria. Some branches like aviation have stringent prism bar based guidelines for acceptance. These standards are now felt to be unnecessarily stringent in view of ILS and other precision navigational systems. Such stringent standards for posts where they are not required, also result in a large number of referrals for this

condition thereby increasing the work load of senior advisers/experts unnecessarily, as many of such cases are found fit upon review. Hence a simpler and more liberal standard is proposed so as to make it easier to implement.

- e. There are certain branches like law, pioneer, education, animal transport, barber, washermen watercarrier, cook, safai karamchari, gardner, cobbler, carpenter, electrician, etc. which can do with a colour perception standard of CP-IV as their job profile does not involve any activity that requires acute identification of colours from great distances. In rarest of rare cases they may be called upon to perform such duties, but the criteria for the whole induction cannot be made stringent in anticipation of a rarer eventuality which may never occur.
- f. Colour vision test should be done once at the time of recruitment and later on at the time of basic training. Thereafter, there is not necessity to examine it during Annual Medical Examinations, since it is mostly a congenital problem.
- g. Ex-servicemen are appearing for the recruitment of officers and SOs in CAPFs & ARs. Since they are appearing in the age group 35-50 years for the re-employment in CAPFs & ARs, they cannot be treated at par with direct entry candidates with the age related refractive errors. It is presumed that they have developed refractive errors by this stage and accordingly visual standards for them should be relaxed.
- h. All the Direct Appointed Gazetted Officers (DAGOs) in CAPFs and ARs are graduate. LASIK is proposed as an acceptable method for

vision correction for all DAGOs for selection in CAPFs/ARs. The acceptance standards for these surgeries are to be made uniform across the CAPFs as under :

- i) Uncomplicated surgery
- ii) Surgery atleast 6 months before examination
- iii) Axial length  $\leq 26$  or  $> 211$  mm by IOL Master or A Scan
- iv) Residual corneal thickness 425 micron
- v) Residual refraction  $\leq \pm 0.75$  D sph or cyl
- vi) Normal retinal examination. No evidence of laser, retinal detachment or peripheral retinal lesions requiring treatment. No suspicion of myopic maculopathy, optic disc assessment to be unambiguously noted in terms of disc size, CD ratio, adherence to ISNT rule (inferior neuroretinal rim to be thicker than superior, followed by nasal and temporal rim being the thinnest), presence of nerve fibre layer defects and peripapillary atrophy or nerve fibre layer hemorrhages. Family history of glaucoma must be mentioned.

These standards are proposed based on the evidence that flap and refractive stability and quality of vision stabilization usually occur within six months in most cases. Studies in the US military have reported increased reports of glare, haze and haloes at night during the first month after treatment when compared with experiences with either glasses or contact lenses before LASIK. These complaints were higher in the treated compared with the untreated eyes at 1 month, but complaints were reduced by 3 months after treatment and indistinguishable from preoperative levels by 6 months.

- i. Since sufficient data are unavailable about other refractive surgeries such as Phakic IOLs and



INTACS, candidates having undergone these procedures will be considered UNFIT. Similar guidelines will be followed for any new refractive procedures other than expressly outlines above. Radial Keratotomy performed in any candidate will render him/her UNFIT for service.

- j. Where there is suspicion that individual has been using hard contact lenses to modify corneal curvature by orthokeratology, it is suggest that the candidate is to be kept under close observation without contact lens wear for 72 hours and serial corneal topography and refraction be done during this period to unmask the true refractive status and corneal curvature.”

24. Paras 8 and 9 of the communication dated 18<sup>th</sup> May, 2012 provides the applicability of these guidelines and reads as follows:-

“8. For conducting the ophthalmic examination by the doctors during the medical examination while recruitment as well as during the Annual Medical Examination of Force personnel for deciding the medical category as per the medical categorization policy guidelines in CAPFs “SHAPE” system, detailed guidelines have been given in Annexure-II for determining the visual standards as per the New Standards.

9. For the existing Force personnel, the medical ‘SHAPE’ category determined for the visual standards, particularly with regard to Colour Blindness, as per the New Standards shall be applicable in future and no retrospective benefit shall accrue to the Force personnel in case their visual standards are declared upto the mark (as per the New Standard) while determining their ‘SHAPE’ category in the Annual Medical Examination.”

25. So far as the recording of results of the medical examination as well as the effect of having a squint are concerned, the same is considered and prescribed in para 41 of the guidelines. Given the controversy before us, the same also requires to be considered in extenso and reads as follows:-

“41. ***Recording of Results.*** The degree of movement is recorded by letters \_ S’ if slight and \_M’ if moderate. Second and third letters indicate lateral or medial deviation. Fourth and fifth letters show rate of recovery and the last two letters indicate whether left or right or both eyes. ***Slight latent divergence with rapid recovery in both eyes will be recorded as SLDRRBE’ Recruits with tropia or manifest squint are unfit. Latent squint is acceptable provided recovery is complete and rapid.***”

(Emphasis by us)

26. The respondents have also prescribed the parameters of the ocular muscle balance with which squints are relatable. In this regard, the prescription at Sr.No.VII in para 70 is relevant and reads as follows:-

“VII. **Ocular Muscle Balance ;**

70. ***Individuals with manifest squint are not acceptable for recruitment.***

71. **The assessment of latent squint or heterophoria** in the case of aircrew will be mainly based on the assessment of the fusion capacity. A strong fusion sense ensures the maintenance of binocular vision in the face of stress and fatigue. Hence, it is the main criterion for acceptability.

(a) **Convergence :**

(i) **Objective Convergence.** Average is from 6.5 to 8 cm. It is poor at 10 cm and above.

(ii) **Subjective Convergence (SC).** This indicates the end point of binocular vision under the stress of convergence. If the subjective convergence is more than 10 cm beyond the limit of objective convergence, the fusion capacity is poor. This is specially so when the objective convergence is 10 cm and above.

Table 1. Accommodation Values – Age wise. Age in yrs.	17-20	21-25	26-30	31-35	36-40	41-45
Accommodation (in cm)	10-11	11-12	12.5-13.5	14-16	16-18.5	18.5- 27

(b) **Accommodation.** In the case of myopes, accommodation should be assessed with corrective glasses in position. The acceptable values for accommodation in various age groups are given in Table 1.

72. Ocular muscle balance is dynamic and varies with concentration, anxiety, fatigue, hypoxia, drugs and alcohol. The above tests should be considered together for the final assessment. For example, cases just beyond the maximum limits of the Maddox Rod test, but who show a good binocular response, a good objective convergence with little difference from subjective convergence, and full and rapid recovery on the cover tests may be accepted. On the other hand, cases well within Maddox Rod test limits, but who show little or no fusion capacity, incomplete or no recovery on the cover tests, and poor subjective convergence should be rejected.

73. Any clinical findings in the media (cornea, lens, vitreous) or fundus, which is of pathological nature and likely to progress will be a cause for rejection. This examination will be done by slit lamp and ophthalmoscopy under mydriasis.”

27. A reading of the above would show that these guidelines apply to initial appointment as well as medical examination conducted after induction at all stages. The mandate of these guidelines is clear and it is clearly prescribed that the new standards would be applicable in future and no retrospective benefit shall accrue to force personnel in case the visual standard is declared up to the mark as per the new standard while determining the shape category in the annual medical examination.

28. We may note that even at the cost of repetition that so far as the present petitioners are concerned, they have been categorized as being in Shape-I and had never been found to be medically unfit in their annual medical examination.

29. Without commenting on the issue as to whether these guidelines dated 18<sup>th</sup> May, 2012 would have applied to the LDCE of the petitioners which commenced pursuant to the notification dated 16<sup>th</sup> April, 2011 leading to the written examination conducted on 19<sup>th</sup> June, 2011 while the medical examination was conducted on 23<sup>rd</sup> and 24<sup>th</sup> September, 2011 respectively, we may point out that while framing the regulations, the experts at the highest level have considered the method and parameters in the context of latest technology as well as the job requirements. These guidelines recognise the difference between a latent squint and a

manifest squint. It has been clearly prescribed that only recruits with manifest squint are unfit. Guideline 41 categorically lays down that latent squint is acceptable provided the recovery was complete and rapid.

30. The petitioners have also placed before us medical standards for direct recruits. The respondents have circulated these as ***“Uniform Guidelines for Conduct of Medical Examination of Combined Recruitment of Constable/GD – 2011 in CAPFs”*** under the communication dated 18<sup>th</sup> July, 2011. Under clause 8 of these guidelines, the respondents have detailed “Main points in medical examination for recruits”. So far as the vision is concerned, the respondents have prescribed as hereunder:-

“(C). His vision with either eye is up to the required standard. His eyes are bright, clear and with ***no obvious squint or abnormality***. Movements of eye balls should be full and free in all impediments.”

31. It is noteworthy that in these standards as well, the respondents have drawn a clear distinction with regard to the non-eligibility of only persons with “*obvious squint*”. Therefore, so far as direct recruitment is concerned, only candidates with an obvious squint were ineligible for appointment. So far as a person possessing a latent squint is concerned, no objection has been prescribed in the guidelines.

#### Analysis and Conclusions

32. The petitioner has taken an objection that if it were to be held that under the Rules of 16<sup>th</sup> April, 2011 prohibition for appointment of persons with a squint included a candidate with a

latent squint as well, the respondents cannot legally prescribe two different standards of eligibility for appointment to the same rank of Assistant Commandant, one standard being applicable to those who are promoted to the said post in due course from the post of Inspector and the other being applicable to the candidates being appointed through direct recruitment.

33. It has been urged at some length before us that there could be no rationale or justification on the part of the respondents in prescribing such differential medical standards for the same post in the same organization; more so, when both the categories of persons are already satisfactorily working in the organization.

34. The respondents in their counter affidavit have given no answer at all to these specific grounds raised by the petitioner. Even in the oral submissions made before us, no reasonable explanation could be given as to how two standards could be prescribed for the same post.

35. It has been urged before us that so far as the LDCE is concerned, the same enables the CAPFs personnel to fast track promotion to a higher position and, therefore, through the LDCE, a personnel is appointed to a higher rank at a younger age. It is urged that if the person had to wait for a promotion in due course, he would be older in age. This certainly cannot serve as a justification for providing more stringent standards for younger persons and setting less stringent standards when the person was to be appointed on promotion in due course, and therefore, older in age.

36. In the instant case, the petitioners have been rendered unfit for a promotion by the LDCE in which selection he has successfully participated on the ground that he had a “latent squint”. In case, the petitioners were to simply wait for promotion in due course, they would be eligible for a promotion despite the latent squint.

37. Such reading of the Appendix II to the Rules of 16<sup>th</sup> April, 2011 as suggested by the respondents, results in a preposterous situation. It would result in a meritorious Inspector, who is able to successfully meet all requirements of the LDCE, being rendered unfit because he had a latent squint. Whereas the same Inspector with such latent squint, and much older in age, is eligible for promotion to due course to the same post of Assistant Commandant. This interpretation has no justification or legal basis. It does not in any manner further efficiency or public interest or lead to selection of better candidates. On the contrary, a meritorious Inspector who is declared unfit because of a latent squint after clearing LDCE, would after a few years be promoted in due course, despite the latent squint.

38. Similar issues were raised before this court in the context of persons who were found to be colour blind in the CAPFs and were seeking promotions by LDCE. In this regard, our attention has been drawn to a Division Bench pronouncement of this court dated 22<sup>nd</sup> March, 2011 in WP(C)No.5077/2008 titled ***Sudesh Kumar & Ors. v. Union of India*** and others as well as connected writ petitions. The facts in this case have been briefly noticed out in

para 2 of the judgment and the ruling of the court on similar issues that are raised before this court are contained in para 41 of the pronouncement. The same may usefully be extracted and read as follows:-

“2. Sudesh Kumar, the writ petitioner of WP(C)5077/2008 joined service as a Constable (General Duty) with the Central Industrial Security Force on 19.4.2003. Indisputably, he was medically examined at the time of his initial entry in the service and was found fit. He was not detected with any colour blindness. At each annual medical examination he was found fully fit. Responding to an advertisement dated 19.3.2007 he sought career progression when he offered his candidature for being appointed as a SubInspector (Executive) through a Limited Departmental Competitive Examination proposed to be conducted by the Department. He successfully cleared the written examination held on 27.5.2007 as also the physical examination conducted on 2.6.2007 as also the interview held on 29.6.2007. Required to undergo another medical examination, he was medically examined at the CISF Hospital, Saket, New Delhi on 5.7.2007 and on 6.7.2007 was communicated a rejection on ground of being „unfit“. The medical unfitness detected was: „Defective Colour Vision“. He had a right to seek a Review Medical Board and for which he was supposed to file an Appeal annexing therewith an opinion of a competent doctor to the contrary. Since by July 2007, the Unit to which the petitioner was attached was transferred Thalchar (Orissa), he got himself medically examined from an Eye-Specialist at Angul (Orissa) and obtained a certificate as per which it was certified that the he had normal colour vision. He also got himself examined from the District Hospital, Moradabad where it was certified that his colour vision was normal. Armed with the 2 certificates he preferred an appeal to the Inspector General CISF and grievance raised in the writ petition is that his Appeal was not being disposed of. During



arguments of the writ petition filed by him, counsel stated that directions may be issued to CISF to convene a Review Medical Board with a panel of 3 doctors; all of whom should be Ophthalmologist with further direction that latest techniques available to detect colour blindness should be considered by the Board and applied at the medical examination. The response of CISF, as per counter affidavit filed, is that the Appeal filed has been rejected inasmuch as Sudesh Kumar has not complied with the requirements of filing the Appeal. Though not stated with clarity in the counter affidavit filed as to what was not complied with by Sudesh Kumar, during arguments, Dr.Ashwani Bhardwaj Advocate, stated that the requirement to be complied with was to have it recorded in the certificates obtained by Sudesh Kumar from the Civil Hospitals that he had informed the doctors concerned of being detected with colour blindness by the doctors of CISF, and since the certificates did not so record, the Appeal was rejected. It is asserted that this fact was communicated to Sudesh Kumar on 7.9.2007.”

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“41. The policy circular dated 29.10.2008, while restricting the benefit thereof to those who were engaged prior to 17.5.2002, a cut-off date which we have opined to be arbitrary, contains a beneficial policy of adjusting the members of the force who suffer from colour blindness, to be made to perform such duties where colour blindness is not a handicap. Being a beneficial policy, it needs to be construed liberally and as long as the language thereof permits, in the widest amplitude. The same guiding beneficial principles, we see no reason, should not apply to all the writ petitioners. In this context we seek to highlight a very anomalous situation created by the respondents evidenced by the case of Sudesh Kumar, the writ petitioner of WP(C) No.5077/2008 who joined service as a Constable (General Duty) under CISF on 19.4.2003 and was not detected with colour blindness then nor at any subsequent medical examination, but is being denied the fruits of

promotion as a Sub-Inspector (Executive) notwithstanding he having successfully cleared the written and physical examination as also the interview on the ground that on 5.7.2007 he was detected with a defective colour vision. What is the exact extent of the defective colour vision has not been brought out. But what is unexplainable is that as per CISF he can continue to work as a Constable (General Duty), but not earn a promotion as a Sub-Inspector (Executive). We just do not see any rationale in the action taken. We also find absurdity in the stand taken by the CISF of not convening a Review Medical Board on the ground of the deficiency in the language of the certificates obtained by him from civil hospitals. Law is clear. Unless the language of a document is statutorily prescribed, as long as there is substantial compliance with the substance of an issue, the language of a document is immaterial. We find no justification for CISF not to subject him to a Review Medical Board, but in the final view which we have taken, there may be no requirement of so doing.”

39. In support of the contention that the Rules of 16<sup>th</sup> April, 2011 do not render the petitioners unfit, reliance is placed on the decision dated 23<sup>rd</sup> July, 2012 in W.P.(C)No.9085/2011 titled ***Tholu Rocky v. Director General, CISF & Ors.*** wherein the Court held as follows:-

“4. The facts disclosed above would demonstrate that a person of schedule tribe of Mizo’s and Naga’s community is given relaxation in physical standards and the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, 1999 provide for height of 162.5 cms. only as against candidates belonging to other categories where the height required is 170/165 cms. Therefore, we do not find any justification or rationale in not extending the same benefit to this tribe at the stage of their promotion to the post of Assistant Commandant. The purpose of

inserting different standards for Mizo's and Naga's in the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, was recognition of the fact that normally the persons belonging to these communities/tribes are of short heights. That fact is given due recognition by making the aforesaid provision and on that basis, the petitioner was allowed to enter the service in CISF. Once this aspect is recognized and requisite provision made at the entry level, we fail to understand as to how it becomes a bar when it comes to further progression in his service. Not only it is irrational and arbitrary, it would also amount to stagnating a person at the present post without giving him chance to seek promotion to a higher post.”

40. Appendix II to the Rules of 16<sup>th</sup> April, 2011 which was applied to the LDCE in question makes a reference to only a “squint” without noticing the important distinction between a latent and a manifest squint. This distinction has been recognized by the respondents themselves. Given the prescription of the Guidelines dated 18<sup>th</sup> May, 2012 which apply to promotions which are effected in the CAPF as well as the aforenoticed Medical Standards dated 18<sup>th</sup> July, 2011 for direct recruitment, it is evident that the respondents do not consider a latent squint as rendering a person unfit for appointment to the rank of Assistant Commandant.

41. In the instant cases as well, not only is an Inspector with a latent squint eligible and fit to continue to work as an Inspector but cannot be promoted through the LDCE to the post of Assistant Commandant. Such person having a latent squint is also fit to be appointed in due course through regular promotion channel to the

same post of Assistant Commandant. The respondents do not even remotely suggest an explanation for this.

Just as in *Sudesh Kumar* (Supra), the stand of the official respondents is bereft of any logic or rationale, and in fact results in absurdity.

42. The Rules for Limited Departmental Competitive Examination of 16<sup>th</sup> April, 2011 have to be read, understood, interpreted and applied in the context of the prescriptions made by the respondents in *“Uniform Guidelines for Conduct of Medical Examination of Combined Recruitment of Constable/GD-2011 in CAPFs’ dated 18<sup>th</sup> of July, 2011”* in the light of the guidelines of 18<sup>th</sup> May, 2012, as well as the Medical Standards For Direct Recruits prescribe Uniform Guidelines dated 18<sup>th</sup> July, 2011.

43. We are supported in the view we have taken also by order dated 14<sup>th</sup> May, 2009 passed by the Supreme Court in SLP(C)No.1877/2007 entitled *Ajay Kumar v. Union of India & Ors.* wherein the court agreed with the opinion of the Post Graduate Institute of Medical Education and Research, Chandigarh which had found the petitioner medically fit for the post of Constable in the CRPF who had no manifest squint even though he had exophoria for near with slow recovery. The order of the Supreme Court reads as follows:-

“The appellant was originally recruited as constable in CRPF but during the course of medical examination it was found that his vision was not normal. Then he was subjected to Examination by the Medical Board on 24th April, 2002 and it was found

that though he had no manifest squint, he had moderate exophoria with slow recovery and ultimately the Board opined that the candidate is fit for the job of Constable in CRPF. But subsequently on 24th March, 2003, his services were terminated on the ground that the Director of Medical Directorate found him unsuitable. The appellant filed a writ petition and the High Court referred the matter to the Medical Board consisting of some senior doctors from the Postgraduate Institute of Medical Education and Research, Chandigarh. The Medical Board gave the following opinion:

"He had unaided visual acuity of 6/6 in both eyes and his color vision and fundus examination was found to be within normal limits. He has no manifest squint. However, he has exophoria for near with slow recovery. Worth four dot test showed binocular single vision. In our opinion, the candidate is fit for the job of Constable in CRPF."

In view of the medical opinion expressed by the Medical Board of the Postgraduate Institute of Medical Education and Research, Chandigarh, we are unable to agree with the respondent that the appellant is not medically fit. Respondents are directed to reinstate the appellant forthwith. The appellant is not entitled to get back wages for the period he was out of service. But for the period he was in service, the wages may be paid as soon as he is reinstated in service.

The appeal is disposed of accordingly."

44. Having regard to the above discussion, it has to be held that the prescription in Appendix II Clause 29 of the rules dated 16<sup>th</sup> April, 2011 can advert only to an obvious or manifest squint and no other.

*Fitness and Merit*

45. The CISF is a paramilitary force and is performing serious security functions including those at airports, sea ports, industrial establishments of the Government and other vital installations of the Governments. There can be no doubt at all that medical standards in the force cannot be compromised.

46. It is undisputed before us that the petitioners have undergone the annual range classification firing test conducted by the respondents and have been declared as being in Shape I which is the highest medical fitness category appointed by the respondents. In this regard, Man Singh has placed the documents relating to the medical board conducted on 9<sup>th</sup> July, 2010 and 12<sup>th</sup> July, 2011 before us. It has also been pointed out that after scrutiny of all relevant facts including medical categorization as Shape – I, Man Singh was promoted from the post of Sub Inspector to Inspector on 6<sup>th</sup> March, 2012. Similarly, Ajay Tripathi was so promoted on 14<sup>th</sup> February, 2012 to the post of Inspector.

47. On the same aspect, we may also refer to the judgment dated **4<sup>th</sup> May, 2010** in ***W.P.(C)No.13685/2009*** titled ***Birendra Singh v. Union of India & Ors.*** Birendra Singh was appointed as a Constable with the CISF on 25<sup>th</sup> August, 2001. On 15<sup>th</sup> January, 2005 while posted at Mumbai, he was bitten by a snake in the

official barrack. He was taken to the nearest Government Hospital where, due to development of gangrene in his little toe of his left foot, the same had to be amputated. Birendra Singh contended that the same did not have any impact on his physical fitness and that he continued to efficiently discharge his duties. While at Mumbai, the petitioner remained posted at the International Airport. He was denied promotion through LDCE, even though he qualified in the selection on the ground of the amputated toe. Allowing his challenge, it was held as follows:-

“20. We have carefully considered the rival contentions of the parties. Even though the recruitment to the post of sub-inspector Exe.) though the LDCE 2009 for which applications were invited by the communication dated 14.1.2009 is strictly not in the nature of a promotion, yet perusal of the notice would show that only departmental candidates were eligible for undertaking the written examination. No recruitment from personnel other than the notified personnel in the CISF is envisaged therein. Written and physical standards have been prescribed as well as an interview. It needs no elaboration that the effect of successfully undertaking the selection process and the subsequent appointment to a higher post have the real impact of a promotion so far as the career profile of the participating candidates is concerned. Therefore the opposition to the writ petition on the ground that the notice dated 14.1.2009 did not envisage promotion is misconceived. In any case, the orders which are passed against the petitioner will impact his career-progression which we now propose to examine hereinafter.

21. In the counter affidavit filed by the respondent, it is not disputed that the petitioner has remained posted at sensitive positions from the time he has joined the force. He was compelled to suffer the amputation of his little toe in the left foot on account of a snake bite while he was in the official barracks at Mumbai when posted at the International Airport. The amputation has not impacted the functioning of the petitioner at all and he has continued to remain posted at sensitive postings till 2007. Even when the respondents had to transfer the petitioner, he was not given a soft posting. Since 1.6.2007, the petitioner has been posted at the International Airport in New Delhi. It cannot be disputed that such a sensitive posting requires the security personnel manning the airport and discharging function of airport security to be in the fittest possible shape. Certainly the amputation of his toe had no impact on the functions which the petitioner has been required to discharge.

22. The petitioner's fitness has been endorsed by the respondents who since 1.8.2007 have posted him as a Commando with the Quick Reaction Team. We are informed that prior to his assignment with the QRT, a Constable has to undergo a Quick Reaction Team course for a period of 35 days which is conducted at Aarakonam, Vellore District, Tamil Nadu. The petitioner has been posted as a Commando after having been shortlisted and having successfully undertaken this course.

23. Not a single complaint in the functioning of the petitioner has been placed before us. No deficit on account of loss of his little toe is also available or pointed out in the record or in the documents placed before us."

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“28. The respondents accept the fact that the petitioner was certified as being in Shape I category for the year 2007, 2008 and 2009.”

48. Before us also it is an admitted position that both the petitioners have continued to render satisfactory service to the respondents and there is no complaint at all with regard to their functioning or their ability to discharge their official duties and functions.

49. In the case of Ajay Tripathi, there is yet another factor which supports his contentions in the writ petition. On the 25<sup>th</sup> of October 2011, Ajay Tripathi was admittedly shortlisted for training and was detailed for undertaking the Bomb Disposal (BD) (83) course by the respondents. The respondents on 25<sup>th</sup> of October 2011 have themselves certified Ajay Tripathi's fitness to undergo the training and the course. It is undisputed that this is a special course for which personnel who are in perfect fitness and shape are detailed. In this background, the contention of the petitioners as regards his medical fitness to perform his duties goes unrebutted as the respondents are satisfactorily utilising their services in difficult positions and postings, including those requiring specialised training.

50. To support the case of the petitioners, it has been also emphasized that given their merit, the petitioners were strongly deserving the accelerated promotions. It has been pointed out that as per the result declared by the respondents, Man Singh secured a total of 398 marks while Ajay Tripathi secured 421 marks. The

last persons who were promoted in the LDCE by the respondents secured only 379 marks. Both petitioners were much higher in merit than the selected candidates.

51. The petitioners have placed on record the medical certificates certifying them to be medically fit observing that there was an error of judgment on the part of the medical officer and that the declaration of medical unfitness was wholly unwarranted. Both the petitioners have relied upon the records of the respondents.

52. Learned counsel for the respondents places reliance on an order dated 4<sup>th</sup> December, 2009 passed in **W.P.(C)No.7993/2009, Dhananjay Kumar v. CRPF & Anr.** wherein the court was concerned with the fresh appointment of the petitioner who was suffering from a latent squint with mild ptosis of the eye i.e. both his eyes could not focus simultaneously at the same point and the upper eyelid was dropping a little. It was held by the court that it is for the authorities at CRPF to decide as to what fitness levels are desired. This position cannot be disputed. The issues raised in the present writ petition were not raised before the Court.

53. In the instant case, we have noticed above the prescription made by the respondents with regard to the appointments to the post of Assistant Commandant and the distinction which has been drawn between the manifest and latent squint by the respondents themselves. It is an admitted position before us that a latent squint does not prohibit the promotion to the post of Assistant Commandant in due course. The respondents have not provided any specific prohibition so far as candidates who are to undergo

LDCE Examination is concerned as well and we have been called upon to consider as to what is the intent of the rule which applies to appointments to the LDCE exam.

54. It is also an admitted position that the Assistant Commandants, whether they be appointed by direct recruitment or promoted through promotions in due course or through LDCE, perform identical functions. The judgment in *Dhananjay Kumar* (supra) was not concerned with any of these aspects.

55. In view of the above discussion, it has to be held that there is no justification at all for the respondents to be drawing the distinction between the fitness requirements for persons who have been appointed as Assistant Commandant through LDCE or being appointed by regular promotion in due course to Assistant Commandants, irrespective of the manner of their appointments, performance identical functions. It is an admitted position before us that person with a latent squint would be eligible for promotion in due course to the post of Assistant Commandant. We therefore hold that the declaration of the petitioners as being medically unfit for appointment through the LDCE to the same post of Assistant Commandant on the ground that they were not having latent squint is arbitrary and unsustainable in law.

#### Relief

56. The writ petitioners have made a prayer for striking down the Rules of 16<sup>th</sup> April, 2011 to the extent reproduced hereinabove. We have held that the interpretation of the rule which are under challenge in the instant case would take colour from the Rules and

guidelines made by the respondents themselves which have binding force. Given the above interpretation, it is wholly unnecessary to strike down the Rule in question.

57. In view of the above discussion, it is to be held that the findings of the Medical Board dated 23<sup>rd</sup> September, 2011 and the Review Medical Board on 19<sup>th</sup> October, 2011 in the case of Man Singh (writ petitioner in W.P.(C)No.2887/2012); as well as the findings of the Medical Board held on 24<sup>th</sup> September, 2011 and the Review Medical Board held on 18<sup>th</sup> October, 2011 in the case of Ajay Tripathi (writ petitioner in W.P.(C)No.2893/2012) holding the petitioners unfit are legally unsustainable and are hereby set aside and quashed. As a result, the petitioners are entitled to be promoted to the posts of Assistant Commandant just as other persons who successfully cleared the same Limited Departmental Competent Examination as the petitioners.

58. However, given the passage of time since the last medical examination, before any appointment of the petitioners can be effected, the respondents would be required to conduct a medical examination afresh of the petitioners before their appointments. The respondents shall consequently constitute a Board within four weeks of the present judgment for a medical examination of the petitioners which shall take into consideration the observations made in the present order as well as the result of the annual examinations of the petitioners. The findings of the Medical Board shall be forthwith communicated to the petitioners.

59. In case, the petitioners are found medically fit for appointment, the respondents shall issue the letters of appointment to the petitioners to the post of Assistant Commandment within a period of four weeks from their medical examination.

60. The petitioners shall be entitled to notional seniority and all other consequential benefits upon their appointment, as if they had been appointed along with the other persons in the LDCE selection pursuant to the notification dated 16<sup>th</sup> of April, 2011. We make it clear that the petitioners shall however not be entitled to back wages.

61. In case the petitioners are required to undergo any training, the respondents shall ensure appropriate facility to the petitioners for the same so that no prejudice of any kind results to the service career or the service profile of the petitioners.

62. We also make it clear that in case the petitioners are aggrieved by the result of the medical examination or any other order passed by the respondents, it shall be open to the petitioners to assail the same by an appropriate action in accordance with law.

63. If the petitioners are found medically fit and in case the respondents do not complete the process of their appointment within the stipulated period, the petitioners would be entitled to salary and emoluments for the position of the Assistant Commandant (Executive) with effect from today.

64. In case, the vacancies in the rank of Assistant Commandant for the year 2010-2011 are not available, the respondents shall effect the appointments of the petitioners against vacancies for the

future, subject to the protection of notional seniority, with all consequential benefits to which the petitioners have been entitled.

These writ petitions are allowed in the above terms.

**(GITA MITTAL)**  
**JUDGE**

**(J.R. MIDHA)**  
**JUDGE**

**DECEMBER 21, 2012**  
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