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

Date of decision: 30.11.2024

(3) + W.P.(C) 14729/2024, CM APPL. 61857/2024 & 61859/2024

STAFF SELECTION COMMISSION & ORS. .....Petitioners

Through: Mr. Nune Balraj, SPC with Mr. Harshit Goel & Ms. Meghna Rai, Advs.

versus

ARUN .....Respondent

Through: Ms. Esha Mazumdar, Mr. Setu Niket, Ms. Unni Maya & Mr. Devansh Khatter, Advs.

(9) + W.P.(C) 15795/2024 & CM APPL.66303/2024

STAFF SELECTION COMMISSION AND ORS .....Petitioners

Through: Adv. (appearance not given)

versus

NITISH KUMAR .....Respondent

Through: Ms. Esha Mazumdar, Mr. Setu Niket, Ms. Unni Maya & Mr. Devansh Khatter, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

W.P.(C) 14729/2024, CM APPL. 61857/2024 & 61859/2024

1. This petition has been filed by the petitioners challenging the Order dated 22.03.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the learned "Tribunal") in Original Application (in short, "OA") No.776/2024 titled ***Arun v. Staff Selection Commission & Ors.,*** allowing the OA filed by the respondent herein and directing the petitioners herein to, within a period of six weeks from the date of receipt of the certified copy of the said order, constitute a fresh Medical Board for examining the respondent herein. It was also directed that the said Medical Board should include three Ophthalmologists and in the event that the respondent herein is declared medically fit and subject to the conditions of his meeting other criteria, offer him appointment to the post of Constable in the Delhi Police. The said order was modified by the learned Tribunal *vide* its order dated 08.04.2024 by substituting the word "ophthalmologists" with "specialists in the respective field" in the final direction.

2. The facts giving rise to the present petition may be summarised as under:

a. The petitioners advertised 7547 posts of Constable (Executive) Male and Female in Delhi Police *vide* notification dated 01.09.2023, by way of direct recruitment. The respondent applied for the said post and underwent the Computer Based Examination and the Physical Endurance and Measurement Test (in short, "PE&MT"). Thereafter, the respondent was

subjected to an examination by a Detailed Medical Examination Board (in short, "DMEB"), which declared the respondent unfit for appointment to the post of Constable (Executive) on the ground of presence of Haemorrhoids *vide* its report dated 22.01.2024.

b. The respondent applied for an examination by the Review Medical Board (in short, "RMB"), which was conducted on 27.01.2024, and again declared the respondent unfit for appointment with the remark of presence of Haemorrhoids as well as Anal Fissure. The respondent claims to have had himself examined at the Dr. Baba Saheb Ambedkar Hospital (in short, "DBSA Hospital"), Rohini on 03.02.2024, and in the said medical report, it is mentioned that he had a healed fissure with no active bleeding and no anal spasm.

c. Armed with the said report, the respondent approached the learned Tribunal seeking relief of appointment to the post of Constable (Executive) in the Delhi Police.

d. The Original Application, as noted hereinabove, has been allowed by the learned Tribunal, directing the petitioners herein to constitute a fresh medical board for examining the respondent.

3. The learned counsel for the petitioners submits that the opinion of the DMEB and the RMB could not have been interfered with by the learned Tribunal as they were based on the reports of experts. He submits that even the report which has been produced by the respondent, shows that the anal fissure with which he was found

suffering from had healed. He submits that the purpose of Review Medical Examination (in short, "RME") is not to give time to the candidate to cure himself/ herself of the ailment that has been found in the Detailed Medical Examination (in short, "DME") but to seek that no error has crept in the examination by the DMEB. He submits that in the present case, it was not the case of the respondent that there was any error in the opinion expressed by the DMEB or the RMB and therefore, the learned Tribunal has erred in interfering with these opinions and directing the petitioners to conduct a re-medical examination of the respondent. In support, he places reliance on the Judgment of this Court in ***Staff Selection Commission & Ors. v. Aman Singh***, 2024 SCC OnLine Del 7600.

4. On the other hand, the learned counsel for the respondent submits that the RMB, before giving its final opinion on the fitness of the respondent for being appointed to the post of Constable (Executive), had referred the respondent to DBSA Hospital for surgical opinion. The specialist found that the respondent was suffering from a post midline fissure, however, had no bleeding. The doctor merely advised high fibre diet, plenty of liquids, and one medicine for 7 days to the respondent. The medical examination was conducted on 27.01.2024. Without granting sufficient time to the respondent to heal, the RMB, on the same day, declared the respondent unfit on grounds of the presence of an anal fissure, without even adverting to the fact that the specialist had merely prescribed one medicine to the respondent and that too only for a period of 7 days.

5. The learned counsel for the respondent, by placing reliance on

the *"Establishment and Administration for Central Government Officers",* which contains the guidelines for the medical examination for recruitment, submits that an application for an appeal medical Board can be made by a candidate within one month from the date of issuance of the communication of unfitness by the DMEB. She submits that in the present case, the RMB should have at least waited for some time and granted time to the respondent to heal before declaring him unfit for the post. In support of her submissions, she places reliance on the Order dated 29.11.2017 of this Court in WP(C) No. 8690/2017 titled ***Ashwani v. Union of India,*** NC:2017:DHC:7339-DB.

6. She submits that in the present case, the DMEB or the RMB have also not given any opinion on whether the presence of anal fissure, which is curable in nature, would have in any manner hampered or affected the discharge of duties by the respondent, if appointed. She submits that in absence of this finding, the opinion of the DMEB and the RMB could not be accepted. She places reliance on the Judgment of this Court in ***Staff Selection Commission and Ors. v. Ravi***, 2024 SCC OnLine Del 8048 in support of her submissions.

7. Placing reliance on the Judgment of this Court in ***Aman Singh*** (supra), she submits that if a disease is curable, the medical board also has to form an opinion if the ailment by itself can be treated as a disqualification for the candidate. In the absence of any clear indication in the medical guidelines to this effect, the medical board should have granted sufficient time to the respondent for the disease to have healed.

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

9. This Court in ***Aman Singh*** (supra), on a detailed scrutiny of the precedents on this issue, has summarised the legal principles applicable to the cases of rejection of a candidature of a person due to medical ailments 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.79

(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.

(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."*

10. This Court, therefore, *inter alia* held that while the extent of judicial review in case of a medical examination of a candidate is restricted and 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 that would interfere with the discharge of duties by such candidates, at the same time, there is no absolute bar against judicial review of or of judicial interference with the decisions of the medical boards or review medical boards. A breach of prescribed procedure or where there is a notable discrepancy between the findings of the DMEB and the RMB or where the cases are such which would require a specialist opinion, which was not

taken or whose opinion was not given due weightage by the DMEB or the RMB, the Courts would be entitled to interfere even with the concurrent findings of the DMEB and the RMB. We must say that these cases though restricted are only illustrative in nature and we are not attempting to lay down an exhaustive list of cases where the Courts may interfere with the opinion of DMEB or the RMB.

11. In ***Aman Singh (supra)***, the Court further observed that the aspect of curability may assume significance in many cases, since certain medical conditions may be curable. However, if the applicable rules or guidelines themselves provide that the candidate would be declared unfit for appointment in the presence of such disease though curable in nature, the Courts will not intervene. A decision on whether a curable defect would also amount to a disqualification for appointment has to be left to the opinion of the experts and to the employer.

12. In ***Staff Selection Commission and Ors. v. Virendra Singh Rathore***, 2024 SCC OnLine Del 7985, this Court was confronted with a factual case where the candidate had got himself operated between the stage of the DME and the RME for the chronic tonsillitis. The RMB rejected the candidate, as the wound had not healed properly and slough was present. This Court interfered with such opinion holding that the RMB had failed to consider that there was no subsisting ailment and that the RMB had been conducted on the very next day, not giving sufficient time to the candidate for the wound of the candidate to have healed.

13. In ***Ashwani*** (supra) as well, this Court held that the employer

ought to have waited for a reasonable time before conducting a review of the medical conditions of the candidate, especially when their own guidelines provided that such review medical examination could be held within 21 days of the candidate being declared unfit by the DMEB Board.

14. In ***Ravi*** (supra), this Court emphasised that mere presence of a disability may not be sufficient to disqualify a candidate; the medical board also has to opine that such a disability is likely to interfere with the efficient performance of the duties by such candidates.

15. Applying the above principles to the facts of the present case, it needs to be emphasised that at the stage of the RMB, the respondent was referred to a specialist at the DBSA Hospital, where the specialist merely prescribed one medicine for 7 days along with diet. Instead of giving sufficient time to the respondent to heal, the RMB on the very same day, declared the respondent unfit for appointment for the presence of anal fissure. It did not give any opinion on whether the presence of anal fissure, for which the treatment had been advised by a specialist, would in any manner hamper the performance of duties by the respondent if appointed, and/or on whether it should be treated as absolute ground for rejecting the candidature of the respondent by the very presence of such ailment. It is also the case of the respondent that within a week of the said report, the respondent got himself re-examined at the very same hospital, which found the anal fissure had healed.

16. In matters of public employment, the opportunity for the candidates is very scarce. There is still a huge persisting desire to join

public service. Therefore, before declaring a candidate as disqualified on medical grounds, we are of the opinion that cogent material should be present before the DMEB and the RMB, and an opinion should be formed/recorded that the disability found is likely to interfere with the efficient discharge of duties by such candidates in case he/she is appointed to the post or such an ailment must be mentioned specifically as a disqualification in the medical guidelines or rules of appointment.

17. In the present case, the learned Tribunal has granted one more opportunity to the respondent to prove to the petitioners that he is fit for employment. Ultimate decision vests with the Medical Board which the petitioners have been directed to appoint. We have no reason to doubt that the Medical Board would look into the guidelines, the requirements of the employment, and other relevant factors before taking an informed decision on whether the respondent should be allowed to continue with the recruitment process or be disqualified at this stage itself.

18. In view of above, we do not find any merit in the present petition and the same, along with the pending applications, is, accordingly, dismissed.

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19. Similarly, in W.P. (C) 15795/2024, the respondent was declared unfit for appointment due to External and Internal Hemorrhoids, however, the RME, though took note of the opinion of the surgical specialist that the respondent needs treatment for Hemorrhoids before medical fitness, did not give any opportunity to the respondent for the

same and instead carried the REM and declared the respondent unfit for appointment. In such peculiar facts, no fault can be found in the order passed by the learned Tribunal in directing a re-medical examination of the respondent.

20. We, therefore, find no merit in this petition. The same is accordingly dismissed. The pending application also stands disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 30, 2024/ab/sk/as

Click here to check corrigendum, if any