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

Date of decision: 30.11.2024

\+ W.P.(C) 14749/2024 & CM APPL. 61948/2024
STAFF SELECTION COMMISSIONER & ORS.

.....Petitioners

Through: Mr.Farman Ali, SPC with Ms.Laavanya Kaushik, GP, Ms.Usha Jamnal, Mr.Krishan Kumar, Advs.

versus

NEELAM RANI & ANR. .....Respondents

Through: Ms.Esha Mazumdar, Mr.Setu Niket, Ms.Unni Maya S., Mr.Devansh Khatter, Advs. for R-1
Mr.Kanav Vir Singh, SPC for R-2.

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

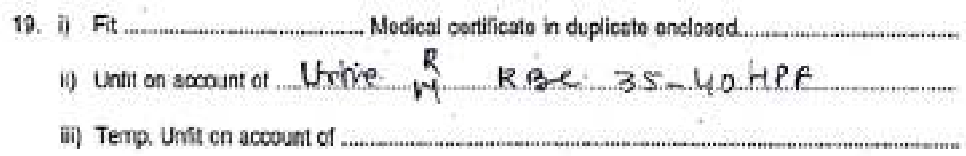
NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioners challenging the Order dated 22.03.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in Original Application (in short, 'OA') No.441/2024 titled ***Neelam Rani v. Staff Selection Commission & Ors.,*** whereby the said petition filed by the respondent no.1 herein was allowed and the petitioners herein were directed to constitute a fresh medical board, which must include a specialist, within a period of six weeks from the date of receipt of the certified copy of the said Impugned

Order, for examining the respondent no.1 herein. It was also directed that in the event the respondent no.1 herein is declared medically fit, then, subject to meeting other criteria, the respondent no.1 herein shall be appointed to the post of Constable (Executive) Female in the Delhi Police.

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 the Delhi Police *vide* notification/advertisement dated 01.09.2023. The respondent no.1 applied for the said post and underwent the Computer Based Examination (CBE) and the Physical Endurance and Measurement Test (PE&MT). Thereafter, the respondent no.1 was subjected to an examination by a Detailed Medical Examination (in short, "DME") Board, which *vide* report dated 22.01.2024 declared the respondent no.1 unfit for appointment to the post of Constable (Executive), by observing as under:


19. i) Fit ..... Medical certificate in duplicate enclosed.....
ii) Unfit on account of Urine R/M RBC 35-40 HPF .....
iii) Temp. Unfit on account of .....

b. Thereafter, the respondent no.1 applied for an examination by the Review Medical Examination (in short, 'RME') Board, which was conducted on 28.01.2024. The RMB again declared the respondent no.1 unfit for appointment on the ground of "B/L renal calculi" and "hematuria".

c. The respondent no.1 claims to have got herself examined at the Maharishi Valmiki Hospital, where no malfunction in the kidney was found. The respondent no.1 then got herself examined at Dr. Mishra's X-Ray & Ultrasound Clinic, where it was reported that "*Both kidneys are normal in shape, size, outline and position. No hydronephrosis or calculus is seen on either side*."

d. Armed with these reports, the respondent no.1 approached the learned Tribunal seeking the relief of appointment to the post of Constable (Executive) Female in the Delhi Police.

e. The said petition, as noted hereinabove, has been allowed by the learned Tribunal directing the petitioners herein to constitute a fresh medical board for examining the respondent no.1.

3. The learned counsel for the petitioners submits that in the present case, the Review Medical Board had based its opinion on the Clinical Study Reports of the respondent no.1, which clearly shows the presence of stones in the kidneys and also the presence of blood in her urine. She submits that these reports could not have been brushed aside by the learned Tribunal based on some subsequent reports produced by the respondent no.1.

4. On the other hand, the learned counsel for the respondent no.1 submits that there is an inconsistency between the report of the DME Board and the RME Board; the DME Board only reported presence of red blood cells in the urine of the respondent no.1 and not hematuria, which was the basis on which the RME Board declared the respondent no.1 unfit for appointment. Further, there was no report of presence of

kidney stones in the DME, and this was a new finding given by the RME Board.

5. We have considered the submissions made by the learned counsels of the parties.

6. This Court in ***Staff Selection Commission & Ors. v. Aman Singh*** 2024:DHC:8441-DB, on a detailed examination of the precedents on the subject, has stated the following principles as applicable to a challenge to a medical examination of a candidate for appointment in the Delhi Police:

> *"**10.38** In our considered opinion, the following principles would apply:*
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> *(i) The principles that apply in the case of recruitment to disciplined Forces, involved with safety and security, internal and external, such as the Armed and Paramilitary Forces, or the Police, are distinct and different from those which apply to normal civilian recruitment. The standards of fitness, and the rigour of the examination to be conducted, are undoubtedly higher and stricter.*
>
> *(ii) There is no absolute proscription against judicial review of, or of judicial interference with, decisions of Medical Boards or Review Medical Boards. In appropriate cases, the Court can interfere.*
>
> *(iii) The general principle is, however, undoubtedly one of circumspection. The Court is to remain mindful of the fact that it is not peopled either with persons having intricate medical knowledge, or were aware of the needs of the Force to which the concerned candidate seeks entry. There is an irrebuttable presumption that judges are not medical men or persons conversant with the intricacies of*

medicine, therapeutics or medical conditions. They must, therefore, defer to the decisions of the authorities in that regard, specifically of the Medical Boards which may have assessed the candidate. The function of the Court can only, therefore, be to examine whether the manner in which the candidate was assessed by the Medical Boards, and the conclusion which the Medical Boards have arrived, inspires confidence, or transgresses any established norm of law, procedure or fair play. If it does not, the Court cannot itself examine the material on record to come to a conclusion as to whether the candidate does, or does not, suffer from the concerned ailment, as that would amount to sitting in appeal over the decision of the Medical Boards, which is not permissible in law.

(iv) The situations in which a Court can legitimately interfere with the final outcome of the examination of the candidate by the Medical Board or the Review Medical Board are limited, but well-defined. Some of these may be enumerated as under:

> *(a) A breach of the prescribed procedure that is required to be followed during examination constitutes a legitimate ground for interference. If the examination of the candidate has not taken place in the manner in which the applicable Guidelines or prescribed procedure requires it to be undertaken, the examination, and its results, would ipso facto stand vitiated.*
>
> *(b) If there is a notable discrepancy between the findings of the DME and the RME, or the Appellate Medical Board, interference may be justified. In this, the Court has to be conscious of what constitutes a "discrepancy". A situation in which, for example, the DME finds the candidate to be suffering from three medical conditions, whereas*

the RME, or the Appellate Medical Board, finds the candidate to be suffering only from one of the said three conditions, would not constitute a discrepancy, so long as the candidate is disqualified because of the presence of the condition concurrently found by the DME and the RME or the Appellate Medical Board. This is because, insofar as the existence of the said condition is concerned, there is concurrence and uniformity of opinion between the DME and the RME, or the Appellate Medical Board. In such a circumstance, the Court would ordinarily accept that the candidate suffered from the said condition. Thereafter, as the issue of whether the said condition is sufficient to justify exclusion of the candidate from the Force is not an aspect which would concern the Court, the candidate's petition would have to be rejected.

(c) If the condition is one which requires a specialist opinion, and there is no specialist on the Boards which have examined the candidate, a case for interference is made out. In this, however, the Court must be satisfied that the condition is one which requires examination by a specialist. One may differentiate, for example, the existence of a haemorrhoid or a skin lesion which is apparent to any doctor who sees the candidate, with an internal orthopaedic deformity, which may require radiographic examination and analysis, or an ophthalmological impairment. Where the existence of a medical condition which ordinarily would require a specialist for assessment is certified only by Medical Boards which do not include any such specialist, the Court would be justified in directing a fresh examination of the candidate by a

specialist, or a Board which includes a specialist. This would be all the more so if the candidate has himself contacted a specialist who has opined in his favour.

(d) Where the Medical Board, be it the DME or the RME or the Appellate Medical Board, itself refers the candidate to a specialist or to another hospital or doctor for opinion, even if the said opinion is not binding, the Medical Board is to provide reasons for disregarding the opinion and holding contrary to it. If, therefore, on the aspect of whether the candidate does, or does not, suffer from a particular ailment, the respondents themselves refer the candidate to another doctor or hospital, and the opinion of the said doctor or hospital is in the candidate's favour, then, if the Medical Board, without providing any reasons for not accepting the verdict of the said doctor or hospital, nonetheless disqualifies the candidate, a case for interference is made out.

(e) Similarly, if the Medical Board requisitions specialist investigations such as radiographic or ultrasonological tests, the results of the said tests cannot be ignored by the Medical Board. If it does so, a case for interference is made out.

(f) If there are applicable Guidelines, Rules or Regulations governing the manner in which Medical Examination of the candidate is required to be conducted, then, if the DME or the RME breaches the stipulated protocol, a clear case for interference is made out.

(v) Opinions of private, or even government, hospitals, obtained by the concerned candidate, cannot constitute a legitimate basis for referring the case for re-examination. At

the same time, if the condition is such as require a specialist's view, and the Medical Board and Review Medical Board do not include such specialists, then the Court may be justified in directing the candidate to be re-examined by a specialist or by a Medical Board which includes a specialist. In passing such a direction, the Court may legitimately place reliance on the opinion of such a specialist, even if privately obtained by the candidate. It is reiterated, however, that, if the Medical Board or the Review Medical Board consists of doctors who are sufficiently equipped and qualified to pronounce on the candidate's condition, then an outside medical opinion obtained by the candidate of his own volition, even if favourable to him and contrary to the findings of the DME or the RME, would not justify referring the candidate for a fresh medical examination.

(vi) The aspect of "curability" assumes significance in many cases. Certain medical conditions may be curable. The Court has to be cautious in dealing with such cases. If the condition is itself specified, in the applicable Rules or Guidelines, as one which, by its very existence, renders the candidate unfit, the Court may discredit the aspect of curability. If there is no such stipulation, and the condition is curable with treatment, then, depending on the facts of the case, the Court may opine that the Review Medical Board ought to have given the candidate a chance to have his condition treated and cured. That cannot, however, be undertaken by the Court of its own volition, as a Court cannot hazard a medical opinion regarding curability, or the advisability of allowing the candidate a chance to cure the ailment. Such a decision can be taken only if there is authoritative medical opinion, from a source to which the respondents themselves have sought opinion or referred the candidate, that the condition is curable with treatment. In such a case, if there is no binding time frame

within which the Review Medical Board is to pronounce its decision on the candidate's fitness, the Court may, in a given case, direct a fresh examination of the candidate after she, or he, has been afforded an opportunity to remedy her, or his, condition. It has to be remembered that the provision for a Review Medical Board is not envisaged as a chance for unfit candidates to make themselves fit, but only to verify the correctness of the decision of the initial Medical Board which assessed the candidate.

(vii) The extent of judicial review has, at all times, to be restricted to the medical examination of the candidate concerned. The Court is completely proscribed even from observing, much less opining, that the medical disability from which the candidate may be suffering is not such as would interfere with the discharge, by her, or him, of her, or his, duties as a member of the concerned Force. The suitability of the candidates to function as a member of the Force, given the medical condition from which the candidate suffers, has to be entirely left to the members of the Force to assess the candidate, as they alone are aware of the nature of the work that the candidate, if appointed, would have to undertake, and the capacity of the candidates to undertake the said work. In other words, once the Court finds that the decision that the candidate concerned suffers from a particular ailment does not merit judicial interference, the matter must rest there. The Court cannot proceed one step further and examine whether the ailment is such as would render the candidate unfit for appointment as a member of the concerned Force."

7. In the present case, though the DME Board does not expressly say that the respondent no.1 is suffering from hematuria, at the same time, as per the medical literature, presence of red blood cells in the

urine is itself called hematuria. In any case, the RME Board has based its opinion on the clinical examination report of the ultrasound and CT of the respondent no.1. These reports have also been produced before us in the present petition.

8. As held by this Court in ***Aman Singh*** (supra), once the Medical Boards have followed the procedure in detail and there is no infirmity found in the same, being based on the clinical examination reports, the power of judicial review available with the Court is rather restricted. The Court cannot substitute its own opinion based on some medical reports produced by a candidate at a later stage.

9. Accordingly, we are of the opinion that the learned Tribunal has erred in allowing the OA filed by the respondent no.1 and issuing directions to the petitioners to have the respondent no.1 re-examined by a fresh medical board. This would lead to an unending exercise of recruitment which cannot be permitted in the absence of very cogent material that may lead to a serious doubt being raised on the reports of the DME Board or the RME Board. In our view, the respondent no.1 had not met this threshold for interference of the Court.

10. Accordingly, we allow the present petition and set aside the Impugned Order dated 22.03.2024 passed by the learned Tribunal. The pending application also stands disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 30, 2024*/rv/SJ*

Click here to check corrigendum, if any