



2024:DHC:9347-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 30.11.2024***

+ W.P.(C) 15802/2024 & CM APPL. 66361/2024

STAFF SELECTION COMMISSION AND ORS

.....Petitioners

Through: Ms. Rupali Bandhopadhy,
CGSC with Mr. Abhijeet
Kumar, Adv.

versus

MUKESH KUMAR BARWAR

.....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****SHALINDER KAUR, J. (Oral)**

1. The present petition under Article 226 of the Constitution of India, has been filed assailing the Order dated 14.05.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (in short, 'Tribunal'), in the Original Application (in short, 'OA') No.1528/2024 titled ***Mukesh Kumar Barwar vs. Staff Selection Commission & Ors.***, whereby the learned Tribunal allowed the OA filed by the respondent herein and directed the petitioners herein to conduct a re-medical examination of the respondent by constituting a fresh Medical Board that would include a Specialist(s)



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in the respective field(s), within twelve weeks from the date of receipt of a certified copy of the Impugned Order.

2. The present petition involves the issue with respect to the recruitment of the respondent to the post of Constable (Executive) in the Delhi Police, pursuant to the Notification/Advertisement dated 01.09.2023 issued by the petitioners. It is the case of the petitioners that the respondent had applied for recruitment to the aforesaid post and successfully qualified the Computer Based Examination (CBE). He was then shortlisted for the Physical Endurance and Measurement Test (PE&MT). Thereafter, a Detailed Medical Examination (in short, "DME") was conducted on 22.01.2024, wherein the respondent was found 'unfit' on the ground of 'ear discharge'. Thereafter, the respondent was subjected to a Review Medical Examination (in short, 'RME') on 28.01.2024, and the Review Medical Board (in short, 'RMB') also declared him 'unfit' as the ENT opinion was not in his favour on account of the discharge found in his left ear.

3. Aggrieved of the same, the respondent herein challenged the opinion of the RMB before the learned Tribunal, who *vide* Impugned Order dated 14.05.2024, allowed the OA and directed the petitioners herein to constitute a fresh Medical Board for the re-medical examination of the respondent herein. Dissatisfied by the Impugned Order, the petitioners have approached this Court.

4. The learned counsel for the petitioners submits that the learned Tribunal has failed to consider the Delhi Police (Appointment and Recruitment) Rules, 1980, Standing Order dated 08.06.2022, and the Notification/Advertisement dated 01.09.2023, issued by the



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petitioners and has passed a non-speaking order. She submits that the Impugned Order has been passed mechanically without considering the settled law that selection procedure, as stipulated in the advertisement, is to be followed strictly and the Courts have no power to relax the conditions as mentioned in such advertisement. The Delhi Police (Appointment and Recruitment) Rules clearly prohibit the induction of an individual with defect, deformities and disease, and any deviation from the said Rules is not permitted. Moreso, the respondent has already been examined twice by the Medical Boards constituted by the petitioners and has been declared 'unfit' by both. The learned Tribunal could not have disbelieved the opinions of two Boards without assigning any reasons and, therefore, the Impugned Order is liable to be quashed.

5. *Per contra*, the learned counsel for the respondent, while refuting the submissions of the petitioners, contends that the DME and the RME reports are contradictory as the DME has found the respondent 'unfit' on account of defective left eye with 6/12 vision and DNS, whereas the RMB found him fit with respect to his defective vision and only found mild DNS but declared him 'unfit' on account of discharge in the left ear. The learned counsel submits that the Impugned Order does not warrant any interference by this Court. She places reliance on the decision of the Supreme Court dated 19.07.2019 in W.P.(Civil) 444/2019 titled ***Dharamvir Singh vs. The State of Uttar Pradesh & Anr.*** and on the decision of this Court dated 11.11.2024 in W.P.(C) 15619/2024 titled ***Ayush Dubey vs. Union of India & Ors.***



6. The learned counsel further draws our attention to the reports of the doctors of the Lok Nayak (in short, 'LNJP') Hospital dated 21.03.2024 and of the Ram Manohar Lohia (in short, 'RML') Hospital dated 22.03.2024, where the respondent had gotten himself examined on his own, who have opined that currently the left ear of the respondent was found to be non-active/dry and healthy.

7. We have heard the submissions made by learned counsels for the parties and perused the record.

8. We find that there is no concurrence of opinion delivered by the two Medical Boards constituted by the petitioners. The DME had recommended rejection of the respondent's candidature on account of right DNS, defective left eye with 6/12 vision, and left TM perforation. On the other hand, the RMB found the respondent fit with respect to the said left eye defect, however, it found a mild DNS and declared the respondent 'unfit' on the basis of his left ear discharge.

9. Pertinently, The LNJP Hospital, where the respondent went for his medical examination on his own, opined that no active ENT intervention is needed as the left ear TM graft was intact, mastoid cavity was well epithelialized and the ear was found to be "*non-active/dry and healthy*". The RML Hospital, confirmed the findings of the LNJP Hospital by opining that "*no advice is intended from ENT*" and "*ear TM graft intact*" and "*ear was well epithelialized and healthy*".

10. Needless to say, the respondent was examined twice by the Medical Boards constituted by the petitioners and was found to be



medically ‘Unfit’ for different reasons. On the other hand, the opinion of the LNJP and the RML Hospitals, where the respondent got himself examined on his own, did not find any abnormality in the left ear of the respondent, for which he was declared ‘unfit’ by the RMB.

11. We may reproduce the relevant extract from the Order dated 11.11.2024 passed by this Court in **Ayush Dubey** (supra) which reads as under:

“7. Keeping in view the difference of opinion between the Detailed Medical Examination, the Review Medical Board, and the reports from the other hospitals on which the petitioner is relying upon as mentioned hereinabove, and keeping in view the fact that the further selection process for the examination will continue, thereby, leading to rights being created in favour of third parties, we are of the opinion, that without going into the merits of the contentions raised by the petitioner, the petitioner should be immediately examined by a Medical Board to be constituted by the Army Hospital (R & R), Delhi Cantt, New Delhi, within a period of one week from today.”

12. From the above, it emerges that when there is a difference in the opinions rendered by the Medical Boards constituted for the selection process and by the other hospitals, on the ailment of a selected candidate for recruitment. It is appropriate to direct a fresh medical re-examination.

13. Keeping in view the above, we find no infirmity in the Impugned Order dated 14.05.2024 passed by the learned Tribunal. Accordingly, we uphold the decision of the learned Tribunal, which



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hereby stands affirmed. However, we make it clear that the decision of the Medical Board, which is to be constituted afresh for re-examining the respondent, shall be binding on the parties.

14. The petition is dismissed in the above terms. Pending application also stands dismissed.

SHALINDER KAUR, J

NAVIN CHAWLA, J

NOVEMBER 30, 2024/ab/KM/SJ

Click here to check corrigendum, if any