

# Ankit Tyagi vs State Of U.P. Thru. Prin. Secy. Home ... on 3 March, 2025

**Author: Alok Mathur**

**Bench: Alok Mathur**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12430

Court No. - 6

Case :- WRIT - A No. - 2435 of 2025

Petitioner :- Ankit Tyagi

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. U.P. Lko. And 5 Others

Counsel for Petitioner :- Deo Prakash Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Deo Prakash Srivastava, learned counsel for the petitioner as well as learned Standing Counsel for the respondents. With the consent of learned counsel for the parties, present writ petition is heard and decided at admission stage itself.

2. It has been submitted by learned counsel for the petitioner that petitioner has applied for compassionate appointment on the ground of death of his father on 30.07.2022 due to heart attack. It is stated that father of petitioner, late Tejpal Singh Tyagi was working on the post of Sub Inspector in Civil Police. The respondents in order to ascertain physical fitness of the petitioner for appointing him on compassionate ground, fixed date for physical test on 07.11.2023, but the petitioner could

not participate because he was suffering from partial tear of anterior cruciate ligament of right leg and on account of the fact that he was suffering from partial tear of anterior cruciate ligament of right leg and the fact that he had also intimated this fact to the respondents, on 13.12.2023, another date was fixed for the petitioner to participate in physical test. It is stated that on the said date again petitioner could not appear as he was still suffering from partial tear of anterior cruciate ligament of right leg and moved an application requesting the respondents to fix another date for physical test. On the third occasion also ie. on 03.10.2024, the petitioner could not participate as he suffered from partial tear of anterior cruciate ligament of right leg.

3. It has been submitted by learned counsel for the petitioner that subsequent to 03.10.2024, no further date has been fixed and in the meanwhile petitioner received a letter dated 16.11.2024, issued by the respondents stating that petitioner has not appeared on the dates fixed for physical efficiency test so he is ineligible for the post of Sub Inspector and he may apply for the other lower post, accordingly present writ petition has been filed and prayer has been made for direction to the respondents to permit the petitioner to participate in physical test.

4. Learned Standing Counsel on the other hand has opposed the writ petition and submitted that three opportunities have already been granted to the petitioner and accordingly it cannot be said that respondents have acted in arbitrary manner by not giving due opportunity to the petitioner to participate in the physical test for appointment on the department.

5. Considering rival submissions, it is noticed that in similar circumstances, this Court had interfered where it has been found that due to genuine physical ailment person seeking appointment on compassionate ground could not appear in the physical test. This Court in Writ Petition No. 35983 (S/S) of 2019 - Kaushal Sharma Vs. State of U.P. and Others (alongwith one connected case), 2020 (38) LCD 1059, has observed as under :-

"This Court in Service Single No.15721 of 2016, Vineet Kumar Mishra Vs. State of U.P. and others, vide order dated 26.4.2017, has considered the medical ailment of that petitioner and perused the documents relating to the medical advice and found that the said petitioner was not capable to appear in the physical efficiency test, therefore, it has been directed to the respondents to fix a fresh date for physical examination for that petitioner afresh for compassionate appointment.

Following the direction of this Court in Vineet Kumar Mishra (supra), this Court in Service Single No.7758 of 2019, Dharmendra Fugat Vs. U.P. Police Recruitment & Promotion Board and others, has issued the similar direction vide order dated 15.3.2019, which reads as under:-

"The present Writ Petition has been filed seeking a direction to the opposite parties to conduct physical efficiency test afresh for the post of Sub-Inspector of Police under the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 on account of the fact that the petitioner was suffering from illness on the date when the physical efficiency test was scheduled.

Similar controversy had already been adjudicated by this Court by means of judgment and order dated 26.04.2017 passed in Writ Petition No.15721 (S/S) of 2016, which is reproduced hereinafter :

"Heard learned counsel for the parties.

No counter affidavit has been filed yet but the instructions have been received by the learned standing counsel. A copy of the said instructions has been placed before the Court, the same be placed on record. The instructions merely reiterates the reasons already given in the impugned order, therefore, there is no need to call for any counter affidavit.

The instructions received by the learned standing counsel do not disclose any justifiable cause for not acceding to the request of the petitioner for fixing a date for physical test as on the date already fixed, the petitioner was not well and was suffering from Jaundice and had been advised three weeks rest which is evident from the documents at page no. 30-31 of the paper book, therefore, in these circumstances the contention that on the Website it had been specifically mentioned that no second chance would be given to the candidate is of no avail as if a person is suffering from Jaundice obviously he could not participate in physical races etc. and specially as the consideration being for compassionate appointment, a compassionate view ought to have been taken into the matter, as such, the impugned order containing the aforesaid reason is hereby quashed. The respondents shall fix a fresh date for a physical examination for the petitioner afresh for compassionate appointment. Let this be done within three weeks and thereafter within next three weeks the physical examination shall be held. Consequences shall follow as per law.

The writ petition is disposed of in the aforesaid terms."

Since grievance of the petitioner in the present petition is similar to one which has already been adjudicated hereinabove, the benefit of the aforesaid order dated 26.4.2017 shall also be made available to the petitioner in the same terms.

The Writ Petition is disposed of finally subject to the observations made herein above."

The State Government has filed Special Appeal Defective No.346 of 2019 assailing the order dated 15.3.2019 and the said special appeal was dismissed by this Court vide order dated 26.8.2019, which reads as under:-

"Heard Sri Q. H. Rizvi, learned Standing Counsel for the appellants and Sri Gyanendra Kumar Pandey, learned Counsel for the respondent.

This Special Appeal has been filed against an order dated 15.3.2019 passed in Writ Petition No. 7758 (SS) of 2019, Dharmendra Fugat v. U. P. Police Recruitment &

Promotion Board through Chairman & Others whereby the learned Writ Court relying on the decision of the order dated 26.4.2017 passed in Writ Petition No. 15721 (SS) of 2016 disposed of the writ petition with a direction that the benefit of the aforesaid order dated 26.4.2017 shall also be available to the respondent.

Brief facts of the present case are that in pursuance of the advertisement issued for recruitment in U. P. Police Department for the posts of Constables, Constables P.A.C. and Fireman, the respondent applied on 25.12.2013 and thereafter, he appeared in the preliminary written examination held on 15.12.2013. He was selected and a letter has been issued for scrutiny of records and medical examination. As he was not well and was suffering from high fever and was confined to bed from 25.8.2018 to 10.9.2018, therefore, he could not appear before the authority concerned.

Learned Counsel for the appellants has submitted that in the case relied upon by the learned Single Judge, the petitioner applied for the post of Sub-Inspector under the U. P. Recruitment of Dependents of the government Servants Dying-in-Harness Rules, 1974 and in the aforesaid case, the petitioner was suffering from jaundice and has been advised to three weeks rest and therefore, he could not mark his presence before the authority concerned to participate in the physical test. Thus his submission is that the aforesaid judgment will not be applicable to the present case.

On due consideration of the aforesaid so also the order dated 26.4.2017 passed in Writ Petition No.15721 (SS) of 2016, we are of the view that the case of the present petitioner is squarely covered by the aforesaid judgment as the petitioner was unwell from 25.8.2018 to 10.9.2018 and therefore, the learned Writ Court has rightly disposed of the writ petition relying upon the aforesaid order. No case is made out to interfere with the aforesaid order passed by the learned Single Judge.

The Special Appeal lacks merit and is accordingly dismissed."

6. In the present case, the petitioner was given opportunity to appear before the respondents but due to one reason or the other he could not appear and accordingly written instructions were received by learned Standing counsel wherein it has been stated that numerous opportunities were given to the petitioner and subsequently looking into the fact that the petitioner was not appearing in the selection the opportunity has been closed and even written examination for appointment under compassionate appointment has been completed on 12.12.2024 as all the vacancies have been filled-up.

7. However, from perusal of judgment and order of the coordinate Bench of this Court in the case of Kaushal Sharma Vs. State of U.P. and Others (supra), this Court finds that facts of the present case are similar to the facts of the case as narrated in the judgment of the coordinate Bench.

8. Accordingly, the petitioner in the present case is also entitled to be granted relief as granted in the order dated 26.04.2017 in the case of Vineet Kumar Mishra v. State of U.P. and Others (supra) and

Dharmendra Fugat v. U.P. Police Recruitment & Promotion Board and Others (supra).

9. Accordingly, considering the fact that recruitment process for appointment under Dying in Harness Rules is already over, opportunity is given to the petitioner to move a suitable application, whenever next round of recruitment process takes place where the petitioner would be entitled to appear before the respondents on the date fixed for the recruitment and no further time shall be given to him and if he does not appear, the opportunity shall be closed.

10. It is made clear that no further opportunity shall be given to the petitioner to participate in the physical test.

11. With above directions the writ petition stands disposed of.

(Alok Mathur, J.) Order Date :- 3.3.2025 RKM.