

Rajesh Kumar Verma vs Union Of India And Ors. on 28 March, 2025

Author: Navin Chawla

Bench: Navin Chawla

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28.3.2025

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W.P.(C) 8536/2024 & CM APPL. 35015/2024, CM APPL.
52990/2024, CM APPL. 52991/2024

RAJESH KUMAR VERMA

.....Petitioner

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Ms.Yashaswi, Adv.

Mr.S.K.Choksey, GP.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner, challenging the findings of the Review Medical Examination Report dated 11.10.2023, by which the petitioner has been declared „unfit for appointment to the post of Constable (Driver) under the Sashastra Seema Bal (in short, „SSB) under the Scheduled Caste Category.

2. The facts necessary for the adjudication of the present writ petition are that the petitioner had applied for the post of Constable (Driver) in the SSB under the Scheduled Caste Category pursuant to the Notification dated 28.07.2020. He successfully cleared all the three stages of the recruitment process and was shortlisted for the Detailed Medical Examination (in short, „DME). However, in the DME, vide a Report dated 06.10.2023, he was declared „unfit for appointment by the Medical Board, on the following grounds:

"i). External Haemorrhoids (Anal fissure) ii).

Varicose Vein (lt.) leg (anterior)."

3. Aggrieved thereby, the petitioner applied for a Review Medical Board. The Review Medical Board referred the petitioner to the Specialist at the Desun Hospital, Siliguri for the purpose of conducting

a Doppler Test for Varicose Vein.

4. The Desun Hospital, Siliguri, by a Report dated 10.10.2023, opined as under:

5. Thereafter, the petitioner was sent to the North Bengal Medical College and Hospital, Darjeeling for their opinion, who opined as under:

6. The Review Medical Examination Board, vide its Report dated 11.10.2023, declared the petitioner „unfit for appointment by observing as follows:

"Brief of Review Medical Examination & Finding thereof

- No Haemorrhoids/ Anal fissure noticed.

- Tortuous vein over Lt. leg.

- USG Doppler study Lt. leg

- dilated medical leg perforator with focal mild varicosities in medial mid leg. Final Opinion xxx Unfit on account of: - Varicose Vein - tortuous Perforator with varicosities (Lt. leg)."

7. Aggrieved by the above, the petitioner filed the present writ petition on or about 29.05.2024. In the meantime, the provisional list of selected candidates was published by the respondents, on 21.11.2023 and 17.01.2024.

8. The learned counsel for the petitioner submits that in the Doppler Test Report, no evidence of „sapheno-fermoral or sapheno- poplital reflux was found. Even the North Bengal Medical College and Hospital, Darjeeling had opined that the petitioner was „fit from surgical point of view. She submits that therefore, the RME has erred in still declaring the petitioner „unfit for appointment. She submits that the RME could not have acted against the above reports.

9. On the other hand, the learned counsel for the respondent has submitted that it is the DME and RME, who have been charged with the duty to determine if the candidate is fit for appointment to Armed Forces. The reports of the DME and RME have been consistent as far as presence of varicose veins in the petitioner is concerned. The said reports therefore, form valid basis for rejecting the candidature of the petitioner.

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

11. In Staff Selection Commission & Ors. v. Aman Singh, 2024:DHC:8441-DB, this Court, on a detailed examination of the precedents on the issue of scope of interference with the medical examination reports, has laid down the circumstances in which the Court may or may not exercise its power of judicial review. These are reproduced 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.
- (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."

12. From a reading of the above, it would be apparent that though there can be no absolute exclusion of judicial review against the decision of the Medical Boards, at the same time, the power of the judicial review is limited and the Court can only examine whether the manner in which the candidate was assessed by the Medical Boards and the conclusion drawn by the Medical Boards

transgress any established norm of law and procedure of fair play. The Court not being the medical expert, would not venture out to act as an appellate authority against such medical opinion.

13. In the present case, as would be evident from the above, before declaring the petitioner „unfit for appointment, the RME had referred the petitioner for a Doppler Study to the Desun Hospital, which found „one dilated perforator in the mild medical leg with focal varicosities . Though, the North Bengal Medical College and Hospital, Hospital, Darjeeling, opined that the petitioner is clinically fit from "surgical point of view" and that "no surgical intervention needed at present", it did report of small tortuous vein over left leg.

14. Paragraph 6 (29) of the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles (Revised Guidelines as on May 2015), prescribes the "General Grounds for Rejection", which reads as under:-

"6. GENERAL GROUNDS FOR REJECTION xxxxxx

29. Varicose veins. The diagnosis of varicose vein should be made on the basis of dilatation and tortuosity of veins and after confirmation of incompetency of Sapheno-femoral junction/ Sapheno-popliteal junction or perforators by relevant clinical tests. Only prominence of veins should not be criteria for rejection. Cases of Varicose veins, even if operated, are not to be accepted because basic defect remains unchanged."

15. Therefore, presence of varicose veins, be it mild or treatable or presently not requiring surgical intervention, is a ground for rejection of the candidate. The petitioner was, therefore, rightly declared „unfit for appointment by the Review Medical Board.

16. In view of the above, we find no merit in the present petition. The same is, accordingly, dismissed. The pending applications also stand disposed of.

17. There shall be no order as to costs.

NAVIN CHAWLA, J RENU BHATNAGAR, J MARCH 28, 2025 DG/sg Click here to check corrigendum, if any