

Staff Selection Commission And Ors vs Ashif Ali on 7 April, 2025

Author: Navin Chawla

Bench: Navin Chawla

\$~113

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 07.04.2025

+ W.P.(C) 2527/2025 & CM APPL. 11931/2025

STAFF SELECTION COMMISSION & ORSPetitioners

Through: Mr.Vikrant N. Goyal,
Ms.Shivani Yadva, Mr.Nishu,
Advs.

versus

ASHIF ALI

.....Respondent

Through: Ms.Esha Mazumdar,
Ms.Muskhan Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed, challenging the Orders dated 22.03.2024 and 08.04.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the „learned Tribunal) in Original Application (OA) No.752/2024, titled Ashif Ali v. Staff Selection Commission and Ors., and on an application, being Miscellaneous Application (MA) No.1235/2024, filed therein, respectively.

2. The learned Tribunal, by the Impugned Orders, had directed the petitioners to have a re-medical examination of the respondent carried out by any Government Hospital other than the one where the Detailed Medical Examination (in short, „DME) or the Review Medical Examination (in short, „RME) of the respondent was earlier conducted. It had further directed that the Medical Board should consist of a specialist in the subject.

3. Briefly stated, the facts giving rise to the present petition are that the respondent had applied for the post of Constable (Executive) (Male), pursuant to the Advertisement dated 01.09.2023 issued by the petitioners for the recruitment to the said post.

4. Having cleared the initial stages of selection, the respondent appeared before the DME. Based on an X-Ray Report dated 17.01.2024 from IPSC, Pain and Spine Hospital, the DME declared the respondent „unfit for appointment finding that the respondent suffered from "Calcified granuloma in right middle zone with few fibrotic infiltrates in right upper zone on chest x-ray".

5. Aggrieved of the above report, the respondent applied for RME. In the RME, the respondent was subjected to CECT Chest Investigation by Rathi Hospital, which inter alia reported as under:-

"Large calcified module of size 15x11 mm seen in apical segment of right upper lobe with adjacent fibroatelectatic changes xxx F/O Chronic infective etiology."

6. Based on this report, the RME also declared the respondent as „unfit for appointment, with remarks "Abnormal CT Chest Report".

7. Aggrieved of the same, the respondent approached the learned Tribunal in form of the above OA, which was allowed by the learned Tribunal by its Order dated 22.03.2024 passed in a batch of OAs including the one filed by the respondent herein. Thereafter, MA No.1235/2024 was filed seeking clarification of the final direction, which was allowed by the Order dated 08.04.2024.

8. The petitioners have challenged the Impugned Orders of the learned Tribunal stating that the findings of the DME and RME were based on a clinical assessment of the respondent in form of an X-Ray and later a CT scan, which both found the presence of calcification in the lungs of the respondent.

9. The learned counsel for the petitioner submits that these reports could not have been interfered with by the learned Tribunal in a casual manner based on the reports of a private hospital or even by a government clinic, as have been produced by the respondent.

10. On the other hand, the learned counsel for the respondent submits that there was some inconsistency between the report of the clinical investigation relied upon by the DME and that relied upon by the RME inasmuch as one relied upon by the DME also opined that the respondent was in fact suffering from "Old healed koch's". She submits that even in a medical examination that the respondent got conducted subsequently from Star Radiology, the finding given is of "an old infection". She further submits that the Medical Boards did not consist of a Pulmonary Specialist who could have opined if the condition suffered by the respondent would in any manner hamper his performance of duties. In support of her plea, she placed reliance on the Judgments of this Court in Kartikeya Arora v. Union of India & Ors. 2020:DHC:2684-DB, and in Staff Selection Commission and Ors. v. Aman Singh, 2024 SCC OnLine Del 7600.

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

12. At the outset, we would reiterate the general principles that are applicable while considering a challenge to the Reports of the medical experts in a recruitment process. This Court in Aman Singh (supra) has laid down these principles 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:

XXXXX

- (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.

(emphasis supplied)

13. As is evidenced above, one of the principles laid down by this Court is that for certain conditions, in case the DME and RME do not consist of a subject expert, the candidate should be referred to the expert in the field for obtaining an opinion on the medical fitness of the candidate.

14. In the present case, admittedly, neither the DME nor the RME consist of a Pulmonary Specialist. We are not the experts who can opine if there are any inconsistency in the reports that are relied upon by the DME and the RME. This has to be left on the experts to decide upon. It is also for the experts to decide whether the condition suffered by the respondent would in any manner affect the performance of his duties.

15. In similar circumstances, this Court in Kartikeya Arora (supra) had directed for a constitution of a Medical Board including a Pulmonary Specialist to carry out an examination of the petitioner therein. In that case there was also a discrepancy between the clinical reports relied upon by the RME and the final result of the RME itself.

16. In the present case, however, as there is no dispute on the reports that are relied upon by the DME and RME, we are of the opinion that a re-medical examination of the respondent need not have been ordered by the learned Tribunal. Given the peculiar facts of the present case, the only direction that needed to be passed was that these reports should be placed before a Pulmonary Specialist who can then opine if the condition suffered by the respondent would in any manner affect the performance of his duty if appointed, and would be sufficient to declare him „unfit for the post in question.

17. Accordingly, we modify the direction issued by the learned Tribunal in the Impugned Orders with respect to the Impugned OA, and direct the petitioners to place the reports from the IPSC, Pain and Spine Hospital (dated 17.01.2024) and the Rathi Hospital (dated 21.01.2024) before a Pulmonary Specialist and obtain an opinion if the respondent can be declared „fit or „unfit for recruitment. The report of the medical specialist shall be considered as final and the petitioner, in case the respondent is found to be „fit for appointment, shall further process the recruitment of the respondent for the post within a period of 4 weeks. In case the opinion is against the respondent, the same shall be treated as final with no further challenge to the same shall be maintainable. However, in such a scenario the petitioner must communicate the final opinion of the expert to the respondent within a period of four weeks.

18. With the above directions, the present petition is disposed of.

19. The pending application is also disposed of being infructuous.

NAVIN CHAWLA, J RENU BHATNAGAR, J APRIL 7, 2025/Arya/IK Click here to check corrigendum, if any