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

\+ W.P.(C) 13821/2024, CM APPLs. 57902/2024 & 57904/2024

STAFF SELECTION COMMISSION & ORS. .....Petitioners
Through: Mr. Arnav Kumar, CGSC with Ms. Shreeya Sud, Adv.

versus

AMAN SINGH .....Respondent
Through: Ms. Esha Mazumdar, Ms. Unni Maya and Mr. Ishan Singh, Advs.

\+ W.P.(C) 13748/2024 & CM APPL. 57560/2024

STAFF SELECTION COMISSION AND ORS .....Petitioners
Through: Mr. Ashish K. Dixit, CGSC with Mr. Shivam Tiwari, Ms. Urmila Sharma and Ms. Venni Kakkar, Advs. for UOI

versus

DEEPAK .....Respondent
Through: Ms. Esha Mazumdar, Mr. Setu Niket and Ms. Unni Maya S, Advs.

\+ W.P.(C) 13717/2024 & CM APPL. 57416/2024, CM APPL. 57418/2024

STAFF SELECTION COMMISSION & ORS. .....Petitioners
Through: Mr. Arnav Kumar, CGSC with Ms. Shreeya Sud, Adv.

versus

VATAN SINGH .....Respondent
Through: Ms. Esha Mazumdar, Mr. Setu Niket, Mr. Ishan Singh, Ms. Unni Maya, Ms. Chetna and Mr. Devansh Khatter, Advs.

\+ W.P.(C) 13762/2024 and CM APPL. 57684/2024

STAFF SELECTION COMMISSION AND ORS .....Petitioners
Through: Mr. Rohan Jaitley, CGSC with Mr. Dev Pratap Shahi, Mr. Yogya Bhatia, Ms. Ranjana Jetley, Advocates

versus

KULDEEP .....Respondent
Through: Ms. Esha Mazumdar, Mr. Saket Niket, Ms. Unni Maya S., Mr. Ishan Singh and Mr. Devansh Khatter, Advocates

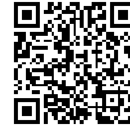
**HON'BLE MR. JUSTICE C. HARI SHANKAR**
**HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

**JUDGMENT (ORAL)**
**% 24.10.2024**

**C. HARI SHANKAR, J.**

**1.** We have, before us, a batch of writ petitions, assailing near-identical orders passed by the Central Administrative Tribunal[1]. In each case, the applicant before the learned Tribunal, who is the respondent before us, had applied for recruitment to the post of Constable in the Delhi Police, and was found unfit by a Medical Board and/or by a Review Medical Board. In each case, the learned Tribunal has directed the concerned applicant before it to be subjected to a "re-review", with the observation that the decision of the "re-review medical examination" would be final and binding on the parties. Aggrieved thereby, the Staff Selection Commission and the

[1] "the learned Tribunal", hereinafter



Delhi Police have petitioned this Court under Article 226 of the Constitution of India, contending that there was no justification for a direction to subject the respondents to a "re-review medical examination".

**2.** The impugned orders passed by the learned Tribunal are, to all intents and purposes, identical. By way of example, the impugned order in WP (C) 13821/2024, passed in OA 1828/2024 reads thus:

> "At the outset, learned counsel for the applicant states that the applicant is aggrieved by the result of the Review Medical Examination conducted by the respondents for recruitment to the post of Constable (Executive) Male and Female in Delhi Police Examination 2023, wherein the applicant has been declared medically unfit on the ground of "Haemorrhoid". He got himself re-examined at another Govt. Hospital where he was declared medically fit. The medical certificate to that effect has also been placed on record.
>
> **2.** Learned counsel for the applicant further states that the said medical ground on which the applicant has been declared unfit has neither been notified nor there is any finding that it is an impediment for functional performance of the duty as a Constable. She relies upon the Order passed on 10.05.2024 in ***(Teekam Singh Meena v SSC[2])*** which reads as under:-
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>> "5. Learned counsel for the applicant draws reference to the medical placed at page No.18 of the OA. She contends that in terms of the Order passed in OA No.823/2024, there has been an observation made by this Tribunal that the disability has to be categorized in terms of the guidelines or rules/instructions. ***The categorization has to be "Fit/Unfit or Temporarily Unfit".*** The same has not been done in the present case.
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>> 6. She further contends that there is no finding in the medical opinion qua the medical standard already prescribed and notified in terms of advertisement.

[2] OA 519/2024, wrongly cited in the impugned orders as "**Teekaram Singh Meena v SSC**"

Therefore, on this count the medical report should fail and the applicant should be re-medically examined.

7. She relies upon the medical opinion obtained from Govt. Hospital Safdarjung, New Delhi, which reads as under:-

> "Very small Umbilical defect of Less Than 5 mm, which does not require any surgical treatment."

and the applicant is "considered to be fit from surgery side"

Therefore, it cannot be regarded as deformity or any impediment in performing the functions in Delhi Police.

8. Learned counsel for the applicant further relies upon the following decisions on the issue of medical disease i.e. Hernia reported in:-

***Jatinder Singh v Union of India and Ors[3].*** wherein the Punjab and Haryana High Court held as under:-

> "5. The petitioner was suffering from Umbilical Hernia and got operated on 04.02.2022 i.e. prior to examination by Review Medical Board. The Review Medical Board has not considered the fact that petitioner has already got operated Hernia, thus, respondent was bound to consider case of the petitioner for appointment as driver."

9. In ***Dharamvir Singh v the State of Uttar Pradesh and Anr.[4]***, the Hon'ble Apex Court held as under:-

> "It is true that the petitioner was examined twice over and was found to be medically unfit.
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> However, considering the nature of ailment and medical condition, the issue appears to be remediable and not of any permanent character.
>
> We, therefore, allow this writ petition and direct the respondent-authorities to constitute a fresh Board of Medical Professionals who may undertake medical examination of the petitioner afresh. Let a Medical

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[3] Order dated 12 July 2023 in **CWP No. l0998/2022 (O&M)**

[4] Order dated 19 July 2019 in **W.P.(C) No.444/2019**

> Board of three medical professionals having expertise in the field be constituted by the Director of K.G.M.U. Lucknow.
>
> The medical board upon being constitute, may send an appropriate communication to the petitioner within 7 days, notice to appear before the Medical Board. The decision taken by the Medical Board as regards the medical condition and fitness of the petitioner shall be binding on either side."

10. She further contends that even in the counter affidavit there is an apparent bias as the medical re-examination was conducted at the same hospital as is evident from para 10, page 8 of the counter affidavit.

11. Learned counsel further draws attention to the OM dated 16.01.2024 placed at Annexure R-3 of the counter affidavit wherein the candidates who were approximately ten thousand in number, the following direction was mentioned:-

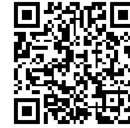
> *"The medical examination would require to be completed within a week's time"*

12. Besides taking the legal objections already taken in OA No.823/2024, the standing counsel for Delhi Police further urge this Tribunal to also look into the Order dated 22.04.2024 passed in ***Deepak Yadav v Staff Selection Commission***[5]**.**

13. Much emphasis is placed on the Order passed by this Tribunal in ***Abhishek Khandelwal v UOI***[6], wherein the following has been observed "

> "21. The Notification with regard to Rules for Civil Services Examination to be held by the UPSC in 2020 dated 12.02.2020 clearly provides that:
>
> > "11. The decision of the Commission as to the eligibility or otherwise of a candidate for admission to the examination shall be final. The candidates applying for the examination should ensure that they fulfil all

[5] Order dated 22 April 2024 in **OA No.597/2024**
[6] Order dated 19 April 2023 in **OA No.1102/2022**




the eligibility conditions for admission to the Examination. Their admission at all the stages of examination for which they are admitted by the Commission viz. Preliminary Examination, Main (Written) Examination and interview Test will be purely provisional, subject to their satisfying the prescribed eligibility conditions. If on verification at any time before or after the Preliminary Examination, Main (Written) Examination and interview Test, it is found that they do not fulfil any of the eligibility conditions, their candidature for the examination will be cancelled by the Commission."

22. In a catena of judgments, the law has been well settled that recruitment to Public Service should be held strictly in accordance with the advertisement and the Recruitment Rules. The Hon'ble Supreme Court in ***Yogesh Kumar v Government of NCT of Delhi***[7], has clearly held that recruitment to Public Services has to be held strictly in accordance with advertisement, as the deviation from the Rules allows entry of ineligible persons.

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24. In ***Bedanga Talukdar v Saifudaullah Khan & others***[8], the Hon'ble Supreme Court made the following observations:

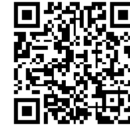
> "29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in

[7] **(2003) 3 SCC 548**
[8] **(2011) 12 SCC 85**

an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India."

"32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of respondent 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list.

33. In view of the above, the appeals are allowed and the impugned judgment and order dated 4-3-2010 passed in W.P.(C) No.950 of 2010 and the impugned judgment and order dated 2-07-2010 passed in W.P.(C)




No.3382 of 2010 of the High Court are set aside."

14. In furtherance of his contentions, learned counsel for the respondents has relied upon the following judgments:-

(i) ***Sh. Rajveer Singh v UPSC and Anr***[9]**.**;

(ii) ***Vidushi Gupta v Armed Forces Medical College***[10]

15. He states that the present OA is not maintainable as the applicant did not follow the prescribed instructions on the subject which read as under:-

> "(3) Re-examination only in case of possible error of Judgement It has been decided that there should be no right of appeal from the findings of a Civil Surgeon or an 'authorised medical attendant, but that, if Government are satisfied on the evidence - placed before them by the candidate concerned of the possibility of an error of judgment in the decision of the Civil Surgeon or the authorised medical attendant, it will be 'open to them to allow re-examination by 7 Item No. 75/C-4 OA 597/2024 another Civil Surgeon or a specialist or by a Medical Board, as may be considered necessary. The fees for such examination, if any, will be paid by the candidate concerned. [M.H. OM No. F.7(1)-27/51 M-II dated the 18th January, 1952 and M.H.A. Endt. No.38/5/52- Ests, dated the 1st February, 1962.1
>
> (4) -Evidence regarding -possible error of judgment must refer to original certificate with reference to the instructions contained in Order (3) above, it has been decided that if any medical certificate is produced by a candidate or Central Government servant as a piece of evidence about the' possibility of an error of judgment in the decision of Medical Board/Civil Surgeon or other medical officer who had examined him in the first instance, the certificate will not be taken into consideration unless it contains a note by the medical practitioner

[9] **2015 SCC OnLine CAT 1391**
[10] **2012 SCC OnLine Del 4274**

concerned to the effect – that it has been given in full knowledge of the fact that the candidate has already been rejected as unfit for service by a Medical Board, a Civil. Surgeon or other medical officer. [M.H. OM No. F.7(1)-6/53, M-II dated the 27th March, 1953.]

16. Since the applicant while obtaining a medical Certificate from a civil hospital did not even inform the medical practitioner that he was a candidate in Delhi Police and has already been declared unfit. It is settled Law that once it is prescribed that something is to be done in a particular manner, then it has to be done in that manner and in no other manner. In support of his contention, he relies upon the following judgments:-

(i) ***Sri Satya Sai University of Technology and Medical Sciences Sehore v Union of India and Ors.***[11]

(ii) ***State of U.P v Rahul***[12]

(iii) ***Mohan Kumar Gupta v State of U.P.***[13]

17. He lays much stress on the fact that it was a pre-requisite that if the applicant was suffering from any disease, it was incumbent upon him to disclose to such medical practitioner that his case for appointment in the armed force has earlier been rejected on the ground of medical unfitness. The doctor who has given the certificate was not even aware that the applicant is a candidate for Delhi Police recruitment process.

18. He contends that in ***Sri Satya Sai University of Technology and Medical Sciences Sehore v Union of India and Ors.***, the Hon'ble High Court has categorically held that once it is prescribed that something is to be done in a particular manner, then it has to be done in that manner and in no other manner.

19. Further, in ***Vijender Singh v Commissioner of Police***[14] the Hon'ble High Court held as under:-

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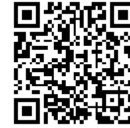
[11] **2023 SCC OnLine Del 4920**
[12] **MANU/UP/0197/2016**
[13] Order dated 9 December 2019 in **C.M.W.P No.15502/2019**
[14] Order dated 29 November 2022 in **WP(C) No.3830/2019**

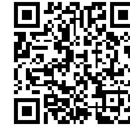



"7. The submission of Mr. Zoheb Hossain is that the petitioner is seeking an appointment as a Constable in Delhi Police and given the nature of duties the petitioner is required to be fit in all respects. Since the deformity, as opined by the medical board shall affect the discharge of duties by the petitioner as a Constable in Delhi Police, the action of the Delhi Police in cancelling the offer of appointment to the petitioner is justified. He has also relied upon the judgment of this Court in case of ***K.M Priyanka v Union of India &Ors***.[15], wherein the Court was concerned with the appointment of a Constable GD in Central Armed Police Forces and the petitioner therein was also suffering from an identical deformity of Cubitus Valgus" with an angle of less than 20 degrees i.e. 18 degrees, but still the Division Bench of this Court has not interfered with the decision of the respondents therein to declare the petitioner unfit for appointment in the Central Reserve Police Force. He states that in view of the decision of this Court with regard to an identical deformity, the petitioner's appointment being also in a police force, i.e., Delhi Police, the impugned action of the Delhi Police cannot be faulted.

8. This Court is in agreement with the submissions made by Mr. Hossain, when two medical boards have found that the petitioner unfit, then the Court cannot sit in an appeal over the decision of such expert bodies. The appointment being in Delhi Police, surely, the requirement of medical fitness would be of higher degree, as the nature of duties amongst many, including maintenance of law and order; including use of fire arms. The issue with regard to fitness of a person with identical deformity has been settled by a Coordinate Bench of this Court in ***K. M. Priyanka (supra)***, wherein in paragraph 8, this Court has held as under:-

> "We have on several occasions observed that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for civilian employment. We have, in ***Priti***

**[15] 2020 SCC OnLine Del 1851**



***Yadav v Union of India***[16]***, Jonu Tiwari v Union of India***[17]***, Nishant Kumar v Union of India***[18]***,*** and ***Sharvan Kumar Rai v Union of India***[19]**,** held that once no mala fides are attributed and the doctors of the Forces who are well aware of the demands of duties of the Forces in the terrain in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, opinion of private or other government doctors to the contrary cannot be accepted inasmuch as the recruited personnel are required to work for the Forces and not for the private doctors or the government hospitals and which medical professionals are unaware of the demands of the duties in the Forces. In fact, the case of ***Priti Yadav (supra)*** also related to "cubital valgus". It is also to be noted that the specialists that the petitioner had consulted had also found that the petitioner suffered from "cubital valgus" and therefore, the findings by the Medical Boards were not wrong."

9. In so far as the plea of the Counsel for the petitioner, that he is not seeking appointment in Delhi Police, but a direction, for re-examination of the petitioner in a hospital under the Central Government, is also not appealing, when admittedly two boards have given concurrent findings that the petitioner, in view of "Cubitus Valgus", is unfit for appointment as a Constable in Delhi Police. There is no justification for this court to discard such opinions, more so, the petitioner has not challenged the constitution/competency of the two boards, which have declared him unfit. That apart no allegation of mala fide have been made by the petitioner against the members of the boards."

20. In ***Amardeep Singh v. Union of India,***[20] the Hon'ble High Court held as under:

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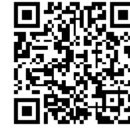
[16] **2020 SCC OnLine Del 951**
[17] **2020 SCC OnLine Del 855**
[18] **2020 SCC OnLine Del 808**
[19] **2020 SCC OnLine Del 924**
[20] **2011 SCC OnLine Del 4809**



16. This is no more res-integra that in policy matters this Court has a very limited scope of interference. In ***Tamil Nadu Education Dept. Ministerial and General Subordinate Services Association v. State of Tamil Nadu and Ors***[21], the Supreme Court while examining the scope of interference by the Courts in public policy held that the Court cannot strike down a circular/Government Order or a policy merely because there is a variation or contradiction. The Court observed: "Life is sometimes a contradiction and even inconsistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factors fouls the case. In that decision that Court also observed:

"Once, the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however, unhappy we be to see the seniors of yesterday becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hands-off policy."

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18. The Government is entitled to make pragmatic adjustments and policy decisions which may be necessary or called for under the prevalent peculiar circumstances. While deciding the said case, the Court referred to and relied upon its earlier judgments in ***State of Madhya Pradesh v Nandlal Jaiswal***[22] and ***Sachidanand Pandey v State of West Bengal***[23], in which the Court held that judicial interference with policy decision is permissible only if the decision is shown to be patently arbitrary, discriminatory or mala fide. A similar view has been reiterated in ***Union of India and Ors. v Dinesh Engineering Corporation and Anr***[24]. In ***Ugar Sugar Works Ltd. v Delhi Administration and Ors***[25], it has been held that in exercise of the powers

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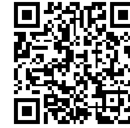
[21] **(1980) 3 SCC 97**
[22] **(1986) 4 SCC 566**
[23] **(1987) 2 SCC 295**
[24] **(2001) 8 SCC 491**
[25] **(2001) 3 SCC 635**




of judicial review, the Courts do not ordinarily interfere with policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. If the policy cannot be touched on any of these grounds, the mere fact that it may affect the interests of a party does not justify invalidating the policy.

19. In the circumstances, the plea of the learned counsel for the petitioner that Varicose Vein Rt. side, which had been corrected by surgical procedure, should not be a ground for declaring the petitioner to be medically unfit, cannot be accepted. If the petitioner is medically unfit, according to the uniform guidelines of medical standards laid down by the respondents, the petitioner is not entitled for any direction against the respondents to enlist him to the post of Constable (GD) as has been prayed for by the petitioner. Also there are no grounds for quashing the review medical examination conducted on 17th October, 2011 holding that the petitioner is medically unfit on account of Varicose Vein Rt. side being corrected by surgery. No cogent grounds have even contended for directing the respondents to constitute a special medical board for the medical examination to ascertain the fitness of the petitioner. This has not been disputed that the petitioner has Varicose Vein Rt. side and that it's correction by surgical procedure cannot be accepted, contrary to the yardstick laid down by the respondents as the medical fitness standards."

21. Learned counsel for the respondents contends that based on the above citations, it is evident that ordinarily the courts should not interfere in the selection process, more particularly, the constitution of medical board as the assessment has to be done by the board constituted by the respondents taking into consideration the functional requirements and the medical standards prescribed therein. Therefore, there is no requirement of constitution of a fresh medical examination.

22. Besides there is no ground to urge that there is an institutional bias nor the said respondents have been made party to the present proceedings i.e. the review medical board itself.

23. Learned counsel for the respondents relies upon the counter affidavit filed in OA No.519/2024 in all the similar matters. He broadly highlights the various ailments and the ratios laid down by various courts and the extent of interference by the courts in the matter of re-medical examination.

**24. ANALYSIS**

24.1 We have given thoughtful consideration to the contentions raised by the respective counsel for the parties. We are of the view that a detailed observation had been made in ***Salman's***[26] case i.e., wherein all contentions raised in the OA as well as the arguments put forth by the respective counsels for the parties were dealt with in great detail. We need not reiterate the same as the contentions and observations made therein be read as a part and parcel to the present OA as well.

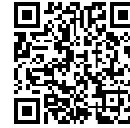
24.2 Additionally, we also observe that it is not in dispute that physical test i.e. PE&MT was conducted prior to the medical and review medical board. We also find that a circular was also issued on 16.01.2024 as highlighted above wherein large number of candidates had been informed that *the medical examination would require to be completed within a week's time.*

24.3 We are conscious of the limitations of the directions. However, taking note of the observations already made in Salman's case(supra), wherein decision of Deepak Yadav had also been cited, we are of the considered view that we cannot take a divergent view as already taken by a co-ordinate Bench of this Tribunal and therefore, dispose of the OA in terms of ***Deepak Yadav's*** case i.e. in OA No.597/2024 dated 22.04.2024.

24.4 We appreciate the valuable assistance given by the respective counsels namely, Ms. Esha Mazumdar, Mr. Anil Singal and Mr. Amit Yadav, standing counsel appearing for Delhi Police.

**25. CONCLUSION**

[26] Order dated 22 March 2024 in **OA No.823/2024**




25.1 In view of the above, we dispose of the present OA(s) by directing the respondents to get the applicant's re-medical examination done by a duly constituted Medical Board which would include, 'the specialist in the respective field(s) and in case of women, a female specialist shall be part of panel, who shall opine in light of Clause 13.2 so as to arrive at a just conclusion whether the applicant is physically fit for appointment to the post of Constable in Delhi Police.

25.2 In order to arrive at a conclusive determination of medical fitness, the applicant Should disclose and provide complete history of the past or existing aliments before the Review Medical Board. The candidate must also provide the full particulars of aliment(s) as to when it was diagnosed, nature of treatment undertaken by him/her, whether still undergoing treatment, is it temporary in nature or not, medication being undertaken and under whose medical supervision. Such disclosures shall be made by wav of an affidavit along with all medical records.

25.3 In the event, the Review Medical Board comes to a conclusion that the candidate is medically fit they must give a conclusive finding to that effect. In cases of temporary unfitness, they must give specific observation(s) whether the candidate Is functionally incapable to perform the duties as police constables keeping in mind that the said candidate has been declared medically fit by other similar organizations such as BSF, CRFP etc"

25.4 The re-review medical examination being undertaken now shall be final and binding on the parties.

25.5 Liberty is always there to verify the genuineness of the medical records/certificate of the candidates who are declared medically fit by the respondent authorities before issuing offer of appointment.

25.6 It is directed that the re-medical examination shall be undertaken within a period of 12 weeks from the date of receipt of a certified copy of this Order. Further, the respondents are directed to convey the decision to the applicant. In the event, the applicant is found to be fit, further action shall be taken in accordance with law. No order as to costs.

> 26. The OA is disposed of in the aforesaid terms. All pending applications, if any, are disposed of. No Costs."

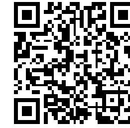
> 3. In rebuttal, learned counsel for the respondents, Mr. Amit Yadav reiterates the averments made in the counter reply filed in the aforesaid case i.e. OA No.519/2024 wherein detailed submissions were recorded. The said OA has been disposed of on 10.05.2024 vide a separate Order.
>
> 4. In the conspectus of things, we find that the facts in the present case and the ones in the aforesaid OA are similar, in all fours. Accordingly, the instant OA is also disposed of on the same analogy. Respondents are hereby directed to comply with the aforesaid directions (***Teekaram Singh Meena v SSC and Ors.)*** within twelve weeks from the date of receipt of a certified copy of this order.
>
> 5. No order as to costs.

**3.** In our considered opinion, the learned Tribunal has not appropriately applied its mind to the individual facts of these cases. It has merely reproduced an extract from its earlier judgment dated 10 May 2024 in ***Teekam Singh Meena*** and, thereafter, observing that "the facts in the present case and the ones in the aforesaid OA are similar, in all fours", has directed the petitioners to comply with the directions issued in ***Teekam Singh Meena***, to hold a "re-review medical examination" of the respondents. Ironically, the extract from ***Teekam Singh Meena***, on which the learned Tribunal has chosen to rely, has cited the judgments of Division Benches of this Court in ***Priyanka***, ***Vijender Singh*** and ***Amardeep Singh***, all of which advocate *against* directing a fresh medical examination, once the candidate had been found unsuitable by a Medical Board and a Review Medical Board. As to how, in the face of these decisions, the learned Tribunal directed the applicant in ***Teekam Singh Meena*** to be

subjected to a "re-review medical examination", finds no mention in the decision in that case, on which the learned Tribunal has chosen to rely in the cases before us. All that is stated that the entire aspect had been considered by the learned Tribunal in an earlier decision in ***Salman***. The entire cause title, or citation, of the omniscient ***Salman*** decision is not forthcoming; neither is there any mention of the registration number of the case, or the date when it was rendered, so as to enable one to trace the judgment at least by conducting an internet search. As to how ***Salman*** distinguished the decisions of this Court in ***Priyanka***, ***Vijender Singh*** and ***Amardeep Singh***, is also not forthcoming from the orders under challenge.

**4.** We, therefore, found ourselves, even at the outset, in, so to speak, a *cul de sac*, with no real idea as to which way to go.

**5.** Given the number of matters involved, however, we deemed it appropriate not to remand all the matters to the learned Tribunal for consideration afresh, but to examine whether, on merits, the direction for a fresh review examination of the cases of the concerned applicants before the learned Tribunal could be sustained. Applying the law in that regard, as we perceive it to be, we find that, in some cases, the case of the concerned applicant did merit a fresh look, while, in others, it did not. That, however, is on the basis of the facts of each case, and not by a blind application of the law. We are constrained to observe that, had the learned Tribunal undertaken this exercise – which was required, in law, to undertake – considerable time of this Court might have been saved.



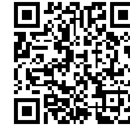

**6.** We must record our appreciation for Ms Esha Mazumdar, who, leading the arguments in the petitions covered by this judgment, prepared a meticulous chart identifying the individual distinguishing features of each case, and ably assisted us in arriving at what appears, to us, to be the appropriate order to be passed in each individual case.

**Rival Contentions**

**7.** Petitioners' submissions

**7.1** Learned Counsel who argued for the petitioners contend that the respondents were not entitled to be examined and re-examined *ad nauseam*, and that, once they had been disqualified by a Review Medical Board, the learned Tribunal was manifestly in error in directing their re-re-examination. It is submitted that no *mala fides* have been attributed either to the Medical Board or the Review Medical Board. Stressing the fact that the issue involves recruitment to the Police, which is a disciplined force on which the security and safety of the citizenry is dependent, learned Counsel submit that the standards of medical fitness are necessarily higher and more stringent. In the absence of manifest arbitrariness, it is submitted that Courts cannot direct yet another medical examination; else, the exercise would never end.

**7.2** Learned Counsel submit that there is a wealth of jurisprudence on the issue, and cite, in their support, several decisions in their

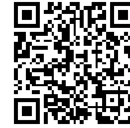



written submissions. For many, though, the petitioners have neither provided the date of judgment nor the citation. The decisions rendered by Division Benches of this Court, for which details are forthcoming are ***Himanshu Bansal v UOI***[27], ***Abhigyan Singh v UOI***[28], ***Priyanka***, ***Satender Kumar Yadav v UOI***[29], ***Vijender Singh***, ***Ashish Kumar Pandey v UOI***[30], ***Rockey v UOI***[31], ***Shailly Upadhyay v UOI***[32], ***Adhir Kumar Verma v CRPF***[33], ***Priti Yadav v UOI***[34], ***Gaurav Dalal v UOI***[35], ***Jonu Tiwari v UOI***[36], ***Pavan Kumar v UOI***[37], ***Rishi Bhardwaj v UOI***[38], ***Jatin v UOI***[39] and ***Yogesh v UOI***[40].

**8.** Respondents' submissions

**8.1** Ms Mazumdar, leading arguments for the respondents, submitted that, for one reason or another, the decision of the learned Tribunal to direct a fresh medical examination of the respondent was justified in each case. Among the infirmities which, according to her, plagued each case, were unseemly hurry in carrying out the Review Medical Examination[41] after the initial Detailed Medical Examination[42], discrepancies between the report of the DME and the RME, lack of specialists in the DME and RME Boards, failure on the

[27] **2022 SCC OnLine Del 3491 (DB)**
[28] **2022 SCC OnLine Del 252 (DB)**
[29] **2024 SCC OnLine Del 1886 (DB)**
[30] **2021 SCC OnLine Del 3083 (DB)**
[31] **2022 SCC OnLine Del 242 (DB)**
[32] **2024 SCC OnLine Del 1997 (DB)**
[33] **2022 SCC OnLine Del 144 (DB)**
[34] **2020 SCC OnLine Del 951 (DB)**
[35] **2022 SCC OnLine Del 170 (DB)**
[36] **2020 SCC OnLine Del 855 (DB)**
[37] Judgment dated 13 July 2021 in **WP (C) 1567/2021**
[38] **2021 SCC OnLine Del 3075 (DB)**
[39] **2021 SCC OnLine Del 5485 (DB)**
[40] Judgment dated 14 February 2019 in **WP (C) 242/2019**
[41] "RME" hereinafter
[42] "DME" hereinafter



part of the Review Medical Board to give any credence to the opinion of the doctors or hospitals to which the Review Medical Board itself referred the case, and the like. We have, while examining individual cases, found many of these objections to be substantial, thereby warranting a fresh look at the case, resulting in upholding of the impugned order. That, however, has, as already noted, been on the individual merits of the cases, and not on an omnibus application of the law, as the learned Tribunal has done.

**9.** We do not intend to catalogue the submissions of Ms Mazumdar here, as we would be referring to them while dealing with individual petitions. In law, however, Ms Mazumdar relied on order dated 19 July 2019 passed by the Supreme Court in ***Dharmvir Singh***, ***NTPC v Nakul Das***[43] and the judgments of Division Benches of this Court in ***Prashan Kumar v UOI***[44], ***Kamlesh Kumar Kamal v UOI***[45], ***Nisha v UOI***[46] and ***Faizan Siddiqui v Sashastra Seema Bal***[47].

**Analysis**

**10.** The law

**10.1** While the law normally advocates restraint, and deference, by a Court which has, before it, the reports of Medical Boards and Review Medical Boards which have assessed the suitability of a candidate for

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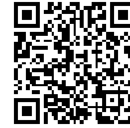
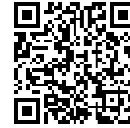
[43] **(2014) 9 SCC 385**
[44] **2023 SCC OnLine Del 4612 (DB)**
[45] **MANU/DE/2473/2010**
[46] **2022 SCC OnLine Del 504 (DB)**
[47] **(2011) 124 DRJ 542 (DB)**



recruitment to a service, there is no absolute proscription against interference. In the ultimate eventuate, what matters is the ubiquitous "judicial conscience". Within the well-recognized constraints that the law imposes, there can be no restraint against a Court rendering justice, where it espies injustice to be taking place. If, therefore, the Court finds that, ultimately, injustice has resulted to the candidate, it is within its competence to step in and set things aright.

**10.2** Two noteworthy examples of decisions of the Supreme Court may be cited, in this context. In ***Nakul Das***, the Supreme Court directed re-examination of the candidate, despite his having been disqualified by a duly constituted medical board, in the following terms:

> "19. Pursuant to the orders dated 9-5-2013 directing NTPC to appoint the selected candidates, two out of the aforesaid five appellants have been given appointment. However, cases of other three appellants are rejected as in the medical examination conducted, they are found medically unfit as suffering from "colour blindness". They are Appellants 1, 4 and 5. The learned counsel appearing for these appellants submitted that their medical examination was done in haste; they had made representation to NTPC regarding constitution of Medical Board to re-examine their cases to which NTPC was not agreeing; they had got themselves medically examined from the same hospital and same doctor, namely, NTPC, Kahalagaon Hospital and also outside doctor and they had duly certified that these appellants were not suffering from "colour blindness". Additional affidavit dated 26-6-2005 is filed including the result of their medical examination from out-patient department of NTPC, Kahalagaon Hospital, as well as opinion of some private doctors in support of the aforesaid submission.
>
> 20. Having regard to the aforesaid facts, we are of the opinion that it would be in the interest of justice that NTPC constitutes another Medical Board for re-examination of these three appellants and decide their fate on the basis of the opinion given and take



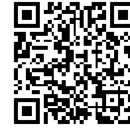
> further action on the basis of opinion given by the reconstituted Medical Board. This appeal is disposed of on the aforesaid terms."

While it may be arguable whether these paragraphs amount to declaration of any binding legal principle by the Supreme Court within the meaning of Article 141 of the Constitution of India, it is noteworthy that the Supreme Court felt it appropriate to direct a review medical board to be constituted to examine the candidates on their complaint that their medical examination had been done in haste, and that the very hospital which had examined them, as well as outside hospitals, had certified them as not suffering from colour blindness – the ailment by reason of which they were disqualified.

**10.3** ***Veer Pal Singh v Ministry of Defence***[48], rendered by a Bench of three Hon'ble Judges of the Supreme Court, is an even more extreme example. In the following passage from the decision, the Supreme Court has classically outlined the nature of approach that the Court should adopt, as one of reticence, but not of reverence:

> "10**.** Although, the courts are extremely loath to interfere with the opinion of the experts, *there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasised is that the opinion of the experts deserves respect and not worship* and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army *cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable*."
>
> (Emphasis supplied)

[48] **(2013) 8 SCC 83**




There is no reason why the italicized words of advice, with which the above passage concludes, should not apply as much in a case of assessing suitability for recruitment to a disciplined force, as to suitability for discharge therefrom. In either case, it is the suitability of the candidate to function and perform as a member of the force which is determinative.

**10.4** In the case before it, the appellant Veer Pal Singh applied for disability pension. The application was rejected on the ground that he was suffering from schizophrenia which was not attributable to army service. The appellant contested this finding. After a thorough study of schizophrenia, its various faces and facets, and examining literature on the subject, the Supreme Court found the certificate of the doctor, who certified Veer Pal Singh to be suffering from schizophrenia, to be faulty. The Supreme Court also faulted the Tribunal, from whose order it was deciding the appeal, for not having undertaken the requisite study and analysis in this regard and, instead, having rejected the case on a general observation that it could not sit in appeal over the decision of medical experts. Even more significantly, the Supreme Court also criticized the Tribunal for not having taken into consideration the degree of improvement in the medical condition of Veer Pal Singh after treatment. Paras 17 to 19 of the report are instructive, and read thus:

> "17**.** Unfortunately, the Tribunal did not even bother to look into the contents of the certificate issued by the Invaliding Medical Board and mechanically observed that it cannot sit in appeal over the opinion of the Medical Board. If the learned members of the Tribunal had taken pains to study the standard medical dictionaries and medical literature like The Theory and Practice of

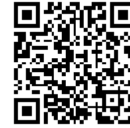
Psychiatry by F.C. Redlich and Daniel X. Freedman, and Modi's Medical Jurisprudence and Toxicology, then they would have definitely found that the observation made by Dr Lalitha Rao was substantially incompatible with the existing literature on the subject and the conclusion recorded by the Invaliding Medical Board that it was a case of schizophrenic reaction was not well founded and required a review in the context of the observation made by Dr Lalitha Rao herself that with the treatment the appellant had improved. In our considered view, having regard to the peculiar facts of this case, the Tribunal should have ordered constitution of Review Medical Board for re-examination of the appellant.

18. In ***Controller of Defence Accounts (Pension) v S. Balachandran Nair***[49] on which reliance has been placed by the Tribunal, this Court referred to Regulations 173 and 423 of the Pension Regulations and held that the definite opinion formed by the Medical Board that the disease suffered by the respondent was constitutional and was not attributable to military service was binding and the High Court was not justified in directing payment of disability pension to the respondent. The same view was reiterated in ***Ministry of Defence v A.V. Damodaran***[50]. However, in neither of those cases, this Court was called upon to consider a situation where the Medical Board had entirely relied upon an inchoate opinion expressed by the psychiatrist and no effort was made to consider the improvement made in the degree of illness after the treatment.

19. As a corollary to the above discussion, we hold that the impugned order as also the orders dated 14-7-2011 and 16-9-2011 passed by the Tribunal are legally unsustainable. In the result, the appeal is allowed. The orders passed by the Tribunal are set aside and the respondents are directed to refer the case to the Review Medical Board for reassessing the medical condition of the appellant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension."

**10.5** Thus, the Supreme Court, in ***Veer Pal Singh***, went to the extent of holding that the Tribunal (the Armed Forces Tribunal, in that case) ought to have perused authoritative texts on psychiatry, in which case

[49] **(2005) 13 SCC 128**
[50] **(2009) 9 SCC 140**



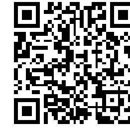
it would have found the opinion of the expert Dr Lalitha Rao unworthy of credence.

**10.6** In ***K. Srinivasa Reddy v UOI***[51], the Supreme Court held the appellant before it to be entitled to disability pension on the ground that, though the Medical Board and the Review Medical Board had both found him to be suffering from schizophrenia, no such diagnosis had been made at the time of his entry into service, and neither the Medical Board, nor the Review Medical Board, had opined that the ailment was not caused, or aggravated, by military service. On the principle that an ailment which found no mention at the time of enrolment in military service, and was later found to exist, had necessarily to be presumed to be attributable to military service, however, another two-Judge Bench of the Supreme Court expressed a contrary view, in ***Ex CFN Narsingh Yadav v UOI***[52]. The issue does not, however, concern us.

**10.7** Several Division Bench decisions of this Court have, as already noted earlier, been cited at the Bar, and it would be appropriate to briefly refer to them. One may proceed chronologically.

**10.8** ***Kamlesh Kumar Kamal***, authored by Gita Mittal J (as she then was) flagged, in the very opening paragraph, the importance of the issue which arose in that case, as "the manner in which medical boards are to be constituted and conducted by the Central Police

[51] **2014 SCC OnLine SC 1898**
[52] **(2019) 9 SCC 667**

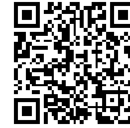



Organisation[53]". The Delhi Police, with which we are concerned, is not part of the CPO, but the decision contains important pointers, which are of aid in navigating these petitions. In that case, this Court relied on an Office Memorandum dated 30 March 1963, which stipulated the constitution of Medical Boards to conduct medical examinations for gazetted and non-gazetted posts in the Central Government. Reliance was also placed, by this Court, on an earlier decision rendered by the Division Bench in ***Anish Barla v UPSC***[54], which seriously disapproved a decision that the appellant before the Division Bench was disqualified from appointment on the ground that he had "inveterate skin disease", when the Medical Board which returned a finding did not contain any person qualified in dermatology. After referring to other decisions on the point, the Division Bench held as under, in paras 24 to 27 of the judgment:

> "24. The issue which has been raised in all the above cases as well as the present case is extremely imperative. Apart from the rights of the individuals who are medically examined, there is a large element of not only public interest but of national interest as well in as much as the personnel who are being evaluated with regard to medical fitness, are required to perform stringent and difficult duties not only within the borders of the country but in extremities of climate at remote places at the far off borders. Therefore, while cases relating to persons being wrongly declared as unfit have been brought to our notice, at the same time, the possibility of persons being wrongly declared as fit cannot be ruled out. It is, therefore, essential that wherever, there is any kind of a doubt with regard to the medical fitness of any person, the respondents must react promptly keeping in view the medical status and the discipline which may be involved.
>
> 25. As in the present case, on several occasions we have found that a board of experts constituted under our orders, has differed in their reports with the certification of medical unfitness of a

[53] "CPO" hereinafter

[54] **(2006) 131 DLT 170 (DB)**



> candidate by a review/appeal medical board which did not include a specialist. This fact by itself manifests that the respondents and authorities need to take a re-look at the policy framed almost four decades ago (thirty seven years ago to be precise in 1973). Having regard to the importance of the matter, we would have expected and appreciated a suo moto examination of the same by respondents, especially in the light of the aforesaid observations. But unfortunately, it has not happened.
>
> 26. The instructions and guidelines which are issued by the respondents are required to keep pace with not only the social developments but with developments in technology and in medical science as well as availability of superior diagnostic techniques as well as specialities and specialists in various discipline and specialities in medicine.
>
> The issue is urgent, but the matter relates to policy and administrative instructions. Our jurisdiction is limited. However, inasmuch as our previous observations and orders have made not a wit of a difference in the constitution of a medical board, we are compelled to issue the following directions.
>
> 27. In view of the above, the respondents are directed to ensure that the review/appellate medical board(s) which are constituted, shall include an expert of the medical specialty which is involved. In case such an expert is not available at the place where the candidate is being examined, the candidate will be informed of the same and shall be required to report to a medical board which shall be arranged at the closest available formation of the force/service concerned. In case such candidate is unwilling for any reason to report for a medical examination at such place for medical examination, it shall be open for the respondents to reject the review/appeal."

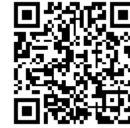
An important takeaway from the decision in ***Kamlesh Kumar Kamal***, which can really brook no cavil, is that, *where the ailment from which the petitioner is diagnosed as suffering, by the Medical Board or the Review Medical Board, is one which, ex facie, would require a specialist's opinion, and there is no specialist on either Board, the Court would legitimately step in. This, therefore, is one of the exceptions to the general principle of reticence, in the matter of*

*judicial review over the decisions of Medical Boards or Review Medical Boards.*

**10.9** To the same effect is the subsequent decision in ***Faizan Siddiqui***, also authored by Gita Mittal J, which involved a female candidate seeking recruitment into the Border Security Force[55], who was suffering from Complete Androgen Insensitivity Syndrome and had undergone Gonadectomy, as a remedial treatment. This Court disapproved a finding of unfitness, returned by a Medical Board which did not include an endocrinologist, and directed re-assessment of the candidate by a Medical Board which did include one.

**10.10** ***Amardeep Singh*** involved the case of candidates seeking appointment as Constable in the BSF. He was declared unfit on the ground that he had "varicose vein right side". The petitioner Amardeep Singh contended that he had been asked to get operated and obtain necessary medical certificate from a medical practitioner and file an appeal for review of the medical examination. He stated that he had undergone a minor surgery, after which he had been declared medically fit by the District Hospital. The Review Medical Board nonetheless declared him unfit on the ground of "Varicose Vein operated". Aggrieved thereby, Amardeep Singh approached this Court. The Division Bench noted that, in the notice inviting applications, it was specifically stipulated that the candidate must not suffer from Varicose Vein. Further, the Uniform Guidelines issued in this regard also categorically stated that operated cases of Varicose

[55] BSF




Vein would not be accepted. It was further noted that Amardeep Singh was unable to state who had advised him to undergo a surgical procedure for correction of his condition. This Court, therefore, refused to accept the contention. In these circumstances, it was held that no scope for interference had been made out and, accordingly, the writ petition was dismissed.

**10.11** *It is important to note that the Division Bench was considerably influenced by the fact that Amardeep Singh was unable to identify the person who had asked him to undergo an operation and obtain a certificate of fitness, as well as by the fact that the applicable guidelines specifically stipulated not only that a candidate with Varicose Veins would not be eligible for appointment, but that this ineligibility would also extend to operated cases of Varicose Vein.*

**10.12** ***Yogesh*** was a case in which the petitioner had been examined by a Special Medical Board as well as an Appellate Medical Board, both of which declared him unfit for admission to the National Defence Academy. The Appellate Medical Board included a specialist in the requisite discipline. The petitioner Yogesh sought a fresh examination on the basis of a certificate obtained from the All India Institute of Medical Sciences[56]. This Court held that if the Medical Board, which contained a specialist, had found Yogesh to suffer from the disabling ailment, no case for referring the matter for fresh examination existed. This decision, therefore, clearly holds that, where the Medical Board which examined the candidate included a

[56] AIIMS

specialist in the discipline concerned, a certificate from another hospital, irrespective of its eminence or status, would not make out a case for directing a fresh examination.

**10.13** ***Priti Yadav*** was a case in which the petitioner Priti Yadav[57] was disqualified from entry into the Air Force on the ground that she suffered from cubitus valgus, a condition in which the arms are abnormally angled away from the body. She was considered by a Medical Board, a Review Medical Board and an Appellate Medical Board, all of which returned concurrent findings regarding the disability. Priti petitioned this Court. This Court found that, while the Medical Board and the Appellate Medical Board arrived at their findings on a visual examination without aid of any mechanical devices, the Review Medical Board, by the senior most radiologists at the Army Research & Referral Hospital had, on visual as well as mechanical and manual examinations, confirmed the diagnosis of the Medical Board and the Appellate Medical Board and found Priti unfit for recruitment to the Air Force. In these circumstances, this Court, in paras 9 and 10 of the report, found that no case for interference had been made out:

> "9. We have today again considered whether the petitioner is entitled to yet another chance and are unable to find any justification for the same. We have already in the order dated 6th July, 2020 observed that fitness for serving requisite duties in the Air Force is a matter of opinion and if in the opinion of the authorities constituted under the Rules of the Air Force the petitioner is unfit, a report of a medical practitioner of another organization which does not intend to recruit the petitioner and which will not be affected by the medical unfitness of the

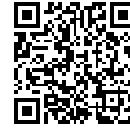
[57] "Priti" hereinafter

petitioner, cannot be the basis for interfering with the assessment by the Air Force. It cannot be lost sight of that just as in justice delivery, appeal provisions are provided to eliminate the possibility of human error, so have a sufficient number of opportunities of preferring an appeal and thereafter preferring a review have been provided in the matter of medical examination and just like the decision making before the Courts cannot be indefinite, so can the decision making with respect to medical fitness in the Air Force, cannot be indefinite. There has to be a finality in decision making, as is there in the justice delivery system. It cannot be lost sight of that no *mala fides* are attributed with respect to any of the medical examinations or to the team of medical professionals conducting the medical examination. It is the medical practitioners of the Air Force and Defence Services, who have themselves undergone the requisite trainings and discharge the functions of the organization, who are best suited to form an opinion as to the medical fitness of the candidates to be recruited and once they have so formed their opinion, there can be no interference therewith, at the mere asking of a rejected/disgruntled candidate.

10. *We also find sufficient explanation in the record produced by the counsel for the respondents, for the differences highlighted by the counsel for the petitioner in the successive medical reports and are satisfied that no doubt remains with respect to the finding of medical unfitness of the petitioner. It cannot also be lost sight of, that it is not a case where any of the three successive Medical Boards found the petitioner medically fit for recruitment in the Air Force; all the three Medical Boards have found the petitioner unfit with the difference only in extent of unfitness.*"

(Emphasis supplied)

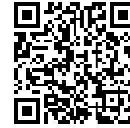
Thus, while, in para 9 of the judgment, the Division Bench has impressed on the need for finality in decision making and the advisability to avoid directing fresh examinations where no mala fides are attributed to the professionals who performed the medical examinations, para 10 also notes the fact that, though there were discrepancies in the results of the examinations which had been undertaken, they were satisfactorily explained by the Counsel for the Union of India and that the petitioner had been found unfit for



recruitment to the Air Force by three successive Medical Boards, who were concurrent in their decision.

**10.14** The petitioner in ***Jonu Tiwari*** applied for recruitment as an Airman in the Indian Air Force. He was found unfit for recruitment both by the Medical Board as well as by the Appeal Medical Board as he suffered from "Varicocele (Left)". Contending that the District Hospital, Agra had opined to the contrary, Jonu Tiwari petitioned this Court, praying that the respondents be directed to re-examine him. It was also contended that he had undergone surgery, which had corrected his condition. It was further submitted that varicocele could be minor or major, and the reports of the Medical Board and the Appeal Medical Board did not clarify the position. Certain other contentions, regarding the manner in which the examination was conducted, were also advanced which, on perusal of the records, were found to be unmerited.

**10.15** This Court declined to accede to the request of Jonu. It was observed that "what may be considered as 'minor' or 'slight' may have a major effect on the functions required to be performed". The private medical practitioners, whom Jonu contacted, it was observed, were not in a position to judge the effect of the varicocele, from which Jonu suffered, on the discharge of his functions as an Airman. Doctors of the Air Force alone would be possessed of the requisite expertise in this regard. Relying on its earlier decision in ***Priti Yadav***, the Division Bench held, further, that an outside medical report could not be the basis for interfering with the assessment of the petitioner




conducted by a specialist of the Air Force. It was also observed, in conclusion, that Jonu had not been able to make out a case on the basis of which the Court could entertain any doubt about the correctness of the findings of the Medical Board or the Appeal Medical Board.

**10.16** ***Priyanka*** involved a candidate aspiring to the post of Constable in the Central Armed Police Forces. She was declared medically unfit for recruitment as she was suffering from Cubitus Valgus, with carrying angle, on both sides, exceeding $20^o$. She obtained the opinion of a specialist orthopaedic surgeon from a private hospital who declared her to be fit, observing that "there is a bit Cubitus Valgus carrying angle < $20^o$ ($18^o$)". Two other reports, also from private hospitals, certifying that the degree of Cubitus Valgus, from which Priyanka suffered was less then $20^o$, were also produced.

**10.17** Among the contentions which Priyanka raised before this Court was the submission that, as per the applicable Guidelines, one subject specialist was required to be included in the Review Medical Board, and, in fact, no such subject specialist was present. This Court, however, observed that no basis for this allegation was forthcoming from ***Priyanka***, and that her Counsel was also unable to disclose the source of his information that no subject specialist was present on the Review Medical Board. As such, this contention was not accepted.

**10.18** The Court, thereafter, went on to hold, in paras 8 to 10 of the report, thus:

"8. *We have on several occasions observed that the standard of physical fitness for the Armed Forces <u>and the Police Forces</u> is more stringent than for civilian employment*. We have, in ***Priti Yadav v. Union of India***, ***Jonu Tiwari v. Union of India***, ***Nishant Kumar v. Union of India***[58], and ***Sharvan Kumar Rai v. Union of India***[59], held that *once no mala fides are attributed and the doctors of the Forces who are well aware of the demands of duties of the Forces in the terrain in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, opinion of private or other government doctors to the contrary cannot be accepted* inasmuch as the recruited personnel are required to work for the Forces and not for the private doctors or the government hospitals and which medical professionals are unaware of the demands of the duties in the Forces. In fact, the case of ***Priti Yadav (supra)*** also related to 'cubital valgus'. It is also to be noted that the specialists that the petitioner had consulted had also found that the petitioner suffered from 'cubital valgus' and therefore, the findings by the Medical Boards were not wrong.

9. *What may seem as a minor difference in the assessment of the Civil doctors in comparison to the assessment of the Medical Boards, may blow up into a serious health condition during the course of service with the CAPFs. It is not in the interest of either the Police Forces or candidates that their medical problems are brushed aside only on the plea that it was a question of employment. The general health of candidates would be permanently impacted due to the stress, both physical and mental, on account of these medical shortcomings*. On the other hand, the government would be saddled with a Police Force where such personnel would seek soft postings because of their health conditions and low medical category. This would lead to dissatisfaction amongst the personnel in the Forces as some people, who ought not to have been taken into the Forces, would always benefit, whereas the others would be mostly faced with hard postings and duties.

10. The petitioner has availed of all opportunities to get a second opinion during the Appeal/Review Medical Board and there is no purpose left in getting a further medical examination conducted."

(Emphasis supplied)

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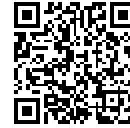
[58] **2020 SCC OnLine Del 808**
[59] **2020 SCC OnLine Del 924**




**10.19** Three aspects are underscored in this decision; firstly, that standards of medical fitness for recruitment to Armed Forces or to the Police are more rigorous than for civil employment; secondly, that, if no mala fides are attributed to the Medical Board, which consists of doctors who are aware of the requirements of the Force to which recruitment is being made, the opinion of other government or private doctors, requisitioned by the candidate, cannot be a ground to direct the re-examination; and, thirdly, that an ailment which may appear to be minor to a civilian doctor might blow up into a serious hindrance in the discharge of duties by the candidate concerned, consequent to on recruitment.

**10.20** ***Ashish Kumar Pandey***, on facts, is similar to ***Priyanka***. The petitioner Ashish Kumar Pandey[60] was disqualified from admission to the National Defence Academy by a Medical Board as well as by an Appeal Medical Board on the ground that he had substandard unaided vision in both eyes and refractive error beyond the permissible limit. Premised on such reports obtained by him from the AIIMS and other government hospitals, certifying him to be fit, Ashish petitioned this Court, praying that a Review Medical Board be directed to be constituted. It was also pleaded, by Ashish, that he could be accommodated in other branches of the Armed Forces, but the Court found that there was no evidence that he had opted for recruitment to any other branch. This Court, however, rejected the writ petition of Ashish primarily on the ground of inordinate delay in approaching the Court, as the writ petition was filed nearly 2 years after he had been

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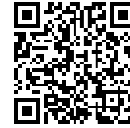
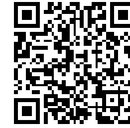
[60] "Ashish", hereinafter



found and fixed by the Medical Board. On merits, the Court reiterated the view earlier expressed by it in ***Priti Yadav*** and ***Jonu Tiwari*** that, as Ashish had been disqualified by doctors of the Forces, who were best aware of the demands of duties of persons who joined, no *mala fides* had been attributed, opinions of private or other Government doctors could not be taken into account in such circumstances and the fitness standards required to be made for joining the Armed Forces were necessarily higher than for joining civilian jobs, no case for interference existed.

**10.21** ***Pavan Kumar*** involved a batch of writ petitions of candidates who desired to join as Head Constable in the BSF and who had been declared medically unfit by a Medical Board and by a Review Medical Board as suffering from varicocele in some cases, and haemorrhoids in others. The candidates had undergone corrective surgeries, and one of the contentions that were raised was that a candidate required at least 6 months after such surgery to be declared fit, and the Review Medical Board was constituted within 6 months of the surgery.

**10.22** This Court found that the applicable instructions in the Medical Manual specified 6 months from the date of surgery in post-operative cases, and that the candidates had in fact been examined by the Review Medical Board before the said period of 6 months was over. Having so observed, the Division Bench went on, nonetheless, to dismiss the writ petitions, observing and holding as under in paras 11 to 14 of the judgment:




"11. From a bare reading of the provisions of the policy, it is clear that the petitioners require six months time after the corrective surgery to be declared medically fit. The petitioners in the present petitions underwent corrective surgery for Varicocele/Haemorrhoids on 23rd September, 2020/ 29th September, 2020 on account of which they were declared medically unfit by the Review Medical Board on 6th January, 2021/ 16th January, 2021. It is not denied that the petitioners have been examined by the Review Medical Board before the expiry of the aforesaid period of six months. Even though, the counsel for the petitioner in W.P.(C) No.1567/2021 has submitted that there is nothing on record to show that the petitioner did not suffer from that degree of Varicocele which meets the criteria for being declared medically unfit, it is obvious that the petitioner was conscious of the fact that he suffered from Varicocele and therefore underwent a corrective surgery.

12. Once the Medical Manual requires a period of six months after the date of surgery for a candidate to be declared fit, strict adherence thereto is necessary. It has been held in repeated judgments that terms and conditions of the policy of the respondents have to be strictly followed for recruitment to the Armed Forces. Reference in this regard may be made to the judgment dated 27th May, 2021 in W.P.(C) No.1341/2021 titled as ***Pooja v Union of India & Ors.***, ***Ishwar Singh v Union of India***[61], ***Priti Yadav v Union of India***, ***Aman Yadav v Union of India***[62], ***Sharvan Kumar Rai v Union of India***[63], ***Jonu Tiwari v Union of India & Ors***. (Special Leave Petition (Civil) No. 13492/2020 preferred against which was dismissed on 17th December, 2020) and judgment dated 24th September, 2020 in W.P.(C) 2591/2020 titled ***Pavnesh Kumar v Union of India***[64].

13. We have also noted in the judgment dated 7th July, 2021 in W.P.(C) 6163/2021 titled as ***Nitin Jhakar v Union of India & Ors.*** that the level of fitness required for a person to serve in Armed Forces is much higher than in normal civilian life, therefore it is the opinion rendered by the medical experts of the respondents, who are well versed with the demands of the duties of the forces and not of doctors of other private or government hospitals, which has to prevail, unless some doubt is created with respect to the opinion of the medical experts of the respondents or any error in the conduct of medical examination is shown.

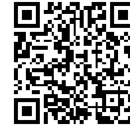
[61] **2021 SCC OnLine Del 2573**
[62] **2021 SCC OnLine Del 2495**
[63] **2020 SCC OnLine Del 924**
[64] **2020 SCC OnLine Del 2746**

> No such case is made out in the present case.
>
> 14. Therefore, the Review Medical Board has rightly declared the petitioners to be unfit as per the provisions of the Medical Manual. No interference is called for."

**10.23** With greatest respect, it does not appear, to us, to be very clear, from the decision in ***Pavan Kumar***, as to why, after having observed that, where the applicable instructions required 6 months after surgery for a candidate to be declared fit from varicocele or haemorrhoids, and having noted that the Review Medical Board, in the case of the petitioners before it had in fact been conducted within 6 months of the surgery, the Division Bench nonetheless dismissed the petitions. It appears that the judgment proceeds more on the premise that no illegality, in the proceedings of the Review Medical Board, was pointed out. Also, from the reading of the extracted instructions from the Medical Manual, it is not clear as to whether the Manual in fact required the Review Medical Board to be constituted more than 6 months after the surgery was conducted, or merely stipulated that, post-surgery, the candidate would take at least 6 months to become fit for duty. In the former eventuality, it is possible that the Division Bench did not treat the instructions as mandating a lapse of a period of 6 months between surgery and the Review Medical Board. Viewed any which way, the decision in ***Pavan Kumar*** must be regarded as turning on its own facts.

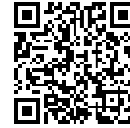
**10.24** In ***Abhigyan Singh***, the petitioner[65] desired to be appointed to the Indian Air Force. The Initial Medical Board found him medically

[65] "Abhigyan", hereinafter




unfit as he suffered from scoliosis of the lumbar spine, and his Electrocardiogram[66] also showed “right bundle branch block”[67]. He was referred, for a second opinion, to the Command Hospital. The Senior Cardiologist in the Command Hospital performed an Echocardiogram[68] on Abhigyan, on the basis of which he was declared fit. Abhigyan, thereafter, appealed to the Appeal Medical Board[69], stating that his unfitness was only on account of scoliosis of the lumbar spine. The AMB conducted an x-ray of Abhigyan’s spine and also directed him to undergo another Echo test at the Base Hospital. Following this test, Abhigyan was declared medically unfit, as his ECG was abnormal. The Court, in the circumstances, directed the doctors who had examined Abhigyan to be present during the hearing by video link. The cardiologist explained that an echocardiogram would only show organic heart disease but that, as the ECG itself showed Abhigyan to be suffering from RBBB, it was not possible to declare him fit. He also referred, in this context, to a clause in the advertisement in response to which Abhigyan had applied, which only permitted “incomplete RBBB” at the initial stage, as permissible level of disability, whereas Abhigyan’s case was one of complete RBBB. In these circumstances, even while relying, in general, on the principle of circumspection while dealing with cases where adverse medical reports were before the Court, the decision turned on the fact that Abhigyan suffered from complete RBBB, and had two concurrent adverse medical opinions against him on this issue, by the Initial Medical Board and the AMB.

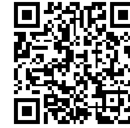
[66] “ECG”, hereinafter
[67] “RBBB”, hereinafter
[68] "Echo", hereinafter
[69] "AMB", hereinafter




**10.25** The petitioner in ***Rockey*** applied for induction into the Indo Tibetan Border Police[70] force as a Constable. In his DME, Rockey was found to suffer from defective distant vision and anal fistula and was, therefore, declared to be medically unfit. The Review Medical Board declared Rockey fit ophthalmologically, with 6/6 vision, but referred him to one Dr. Manoj Gupta, in a private hospital, to examine him for anal fistula. Dr. Manoj Gupta declared Rockey unfit as suffering from anal fistula. Rockey sought a re-examination, unsuccessfully. In these circumstances, Rockey petitioned this Court and relied on an examination report by the Medical Officer, Government Hospital, Bhiwani, who had declared him to be medically fit. Among the contentions advanced by Rockey before this Court was the plea that the Notification inviting applications for recruitment had stipulated a 15 day gap between the DME and the RME, whereas, in his case, the RME had been conducted a mere 2 days after the DME. He contended that anal fistula was a temporary condition and that, had the RME been conducted after the stipulated period from the DME, he would have been found to be fit.

**10.26** The Court, in the circumstances, questioned Dr. Anil Kumar, a surgeon, who had medically examined Rockey at the RME stage. Dr. Anil Kumar stated that Rockey had been found to be suffering from anal fistula during examination. While acknowledging that the post-operative recovery in such cases was fairly short, he submitted that anal fistula was a stipulated disqualification in the applicable

[70] "ITBP", hereinafter




guidelines for recruitment to the Central Armed Police Forces. Apropos the issue of why the RME was conducted 2 days after the DME, Dr. Anil Kumar relied on an Office Memorandum dated 31 May 2021, which amended the Guidelines and required the RME to be conducted within 2 days of the DME.

**10.27** This Court found that anal fistula was one of the enumerated disqualifications in the guidelines applicable to DME and, therefore, held that the curability, or temporary nature, of the condition, was irrelevant. It was observed that this Court could not redefine the medical standards applicable for recruitment to the Armed Forces, which were necessarily much more stringent and vigorous than those for civilian employment. It was also noted that there was no challenge to the stipulation, in the Guidelines, disqualifying a candidate suffering from anal fistula from recruitment to the Armed Forces. The plea that the RME had been conducted within 15 days of the DME was also rejected, in view of the amendment to the Guidelines, requiring the RME to be conducted on the very next day of the DME and, in any event, within two days. An important observation, by the Division Bench, in this decision, is to be found in para 19 of the report, which holds that "the purpose of the RME is not to give time to the candidates to cure the disqualification but to assure that the IMB has not made a mistake in examination of the candidate". This position of law, it was noted, had earlier been exposited by this Court itself in ***Avin Dalal v UOI***[71]. The Court also relied on its earlier decisions in, among others, ***Priyanka***, to reiterate that favourable

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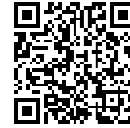
**[71] 2022 SCC OnLine Del 32**

opinions from outside hospitals could not constitute a legitimate basis for directing a fresh medical examination of the candidate.

**10.28** In ***Nisha***, the petitioner Nisha applied for appointment as Sub-Inspector in the Delhi Police and other Central Armed Police Forces. In the DME which was conducted, she was declared medically unfit as she was found to be suffering from anaemia, knock knee and flat foot. The RME declared her unfit only on the ground of flat foot, but did not find her to be unfit as suffering from anaemia or knock knee. She was nonetheless held to be ineligible for appointment as Sub Inspector. She, therefore, petitioned this Court.

**10.29** Before this Court, Nisha contended that the respondents themselves had, prior to the RME, referred her to the Jawahar Lal Nehru Hospital[72] for medical examination and that the JLN Hospital had found her not to be suffering from any of the disqualifications noted in the DME, including flat foot. It was also pointed out that she had earlier been found medically fit for appointment as Sub Inspector in 2016, but could not qualify on merits in the examination. She also relied on reports from the Dr. Ram Manohar Lohia Hospital[73] and Deen Dayal Upadhyay Hospital[74], New Delhi, where she had been examined by orthopaedists who had not found her to be suffering from flat foot. This Court summoned the records of the JLN Hospital and found that Nisha had indeed not been found to be suffering from flat

[72] "the JLN Hospital", hereinafter
[73] "the RML Hospital", hereinafter
[74] "the DDU Hospital", hereinafter

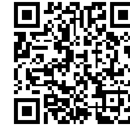



foot by the said Hospital. Despite this, it was noted that the RME had noted, in her case, "clinically flat foot present".

**10.30** In these circumstances, this Court, while acknowledging that the report of the JLN Hospital might not have been binding on the RME, held that as Nisha had been referred to the JLN Hospital by the respondents themselves, and the opinion of the JLN Hospital was in her favour, which also was in sync with the reports of the RML Hospital and the DDU Hospital, the case was fit for a re-examination of Nisha, for which she was refer to the Army Research and Referral Hospital. The writ petition was, therefore, allowed to that extent.

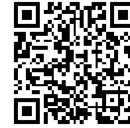
**10.31** ***Himanshu Bansal***, though also a case in which the petitioner had been declared unfit in the DME and the RME as suffering from defective distant vision in his right eye, cannot be regarded as of any binding precedential value, as this Court, apparently *ex debito justitiae* and keeping in mind the fact that he belonged to the Other Backward Classes, directed the respondents to re-examine the petitioner Himanshu Bansal, specifically stating that it was not "commenting on the merits of the case".

**10.32** The relevant extract from the decision in ***Vijender Singh*** already stands reproduced in the extracted the portion from the judgment of the learned Tribunal in ***Teekam Singh Meena***, which forms the mainstay of the impugned orders. It is not necessary, therefore, to refer to the decision in ***Vijender Singh*** in any particular detail. Suffice it to state, however, that this Court was, in that case,



also concerned with a writ petition challenging the decision of the learned Tribunal, in the case of recruitment to the Delhi Police, and of a candidate who had been found suffering from cubitus valgus by the DME and the RME. This Court specifically refused to interfere with the decision of the learned Tribunal, rejecting the petitioner's prayer for constitution of a fresh medical Board.

**10.33** In ***Prashan Kumar***, the petitioner Prashan Kumar had been disqualified from recruitment to the Central Armed Police Forces as suffering from hypertension and haemorrhoids, both in the DME and the RME. The Division Bench, which was petitioned by Prashan Kumar, found that the applicable "Guidelines for review in medical examination in Central Armed Police Forces" prescribed that, before rejecting a candidate on the ground of hypertension, she, or he, was required to have been admitted/hospitalised by the Review Medical Board, and that the report of hospitalisation was required to indicate whether the rise in blood pressure was only transient or attributable to an organic disease. He further required, in such cases, x-ray, electrocardiographic examination and blood examinations such as cholesterol, lipid profile, serum creatinine, etc., to be undertaken. In the case of haemorrhoids, the Guidelines disqualified candidates only if they were suffering from haemorrhoids with evidence of bleeding. As the RME had not followed these guidelines, this Court held its report to be unacceptable and, accordingly, set it aside. The respondents were directed to constitute a fresh Review Medical Board, which would examine the petitioner Prashan Kumar in




accordance with the applicable Guidelines. The writ petition was, therefore, allowed.

**10.34** This decision, therefore, clearly holds that strict adherence to the applicable Guidelines governing Medical Examination, where such Guidelines exist, is mandatory, and deviation therefrom would render the report of the Medical Examination to be unacceptable in law, justifying direction for a fresh medical examination.

**10.35** The petitioner[75] in ***Satender Kumar Yadav*** was disqualified from joining a Short Service Commission in the Indian Army on the ground of medical and fitness, as he was found to have a hyperpigmentation lesion on the chest. The Special Medical Board[76] and the Appeal Medical Board[77] were concurrent on the issue. Relying on an opinion from a skin specialist in a private medical college, Satender petitioned this Court, praying that his case be referred to a Review Medical Board[78] . This Court rejected the prayer. It was noted, *inter alia*, that "abnormal pigmentation in the form of hypo or hyperpigmentation" was specifically stipulated as "not acceptable" in the Guidelines contained in the applicable Manual on Medical Examination. Besides, the Court noted that there were specialised experts both in the SMB and the AMB, who had concurrently opined that Satender had a hyperpigmentation lesion on his chest and was, therefore, medically unfit for Short Service Commission. This Court, it was observed, could not sit in appeal over

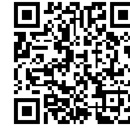
[75] "Satender" hereinafter
[76] "SMB" hereinafter
[77] "AMB" hereinafter
[78] "RMB" hereinafter

the decision, in the absence of any charge of bias, mala fides or arbitrariness. In these circumstances, the opinion from the external skin specialist was found to be of no avail. The petitioner was therefore dismissed.

**10.36** The inbuilt proscription against judicial interference, where specialists in the field had rendered medical opinions disqualifying the concerned candidate, therefore, stands underscored in this decision. Besides, if, in the prescribed guidelines, a particular pathological condition is specified as rendering the candidate unfit for recruitment, the Court cannot hold otherwise.

**10.37** The last decision which requires to be noted, rendered by the same Bench which rendered ***Satender Kumar Yadav***, is ***Shailly Upadhyay***, delivered four days after ***Satender Kumar Yadav***. It is not necessary to advert, in any detail, to the said decision, as it follows ***Satender Kumar Yadav***, and the only distinguishing feature between the two decisions is the ailment from which the candidate suffered, the petitioner in ***Shailly Upadhyay*** having been disqualified on the ground of "malunited left clavicle shaft fracture with dropping of left shoulder". As in ***Satender Kumar Yadav***, this was a specified disqualifying ailment, and the petitioner had been concurrently found to be suffering from it by the DME and the RME, both of which were conducted by panels involving experts in the field.

The applicable principles

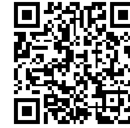


**10.38** In our considered opinion, the following principles would apply:

(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.[79]

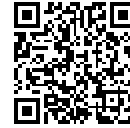
[79] This follows from the well-established principle, enunciated in **Taylor v Taylor, (1875) 1 Ch D 426** and subsequently followed by the Privy Council in **Nazir Ahmed v King Emperor, AIR 1936 PC 253** and by the Supreme Court in a catena of cases including **State of UP v Singhara Singh**, **AIR 1964 SC 358** that, where the statute, or the law, requires an act to be done in a particular manner, that act has to be done in that manner alone and in no other, all other modes of doing the act being necessarily forbidden.

(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

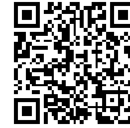


reasons for not accepting the verdict of the said doctor or hospital, nonetheless disqualifies the candidate, a case for interference is made out.

(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.

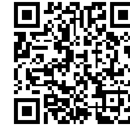
(f) If there are applicable Guidelines, Rules or Regulations governing the manner in which Medical Examination of the candidate is required to be conducted, then, if the DME or the RME breaches the stipulated protocol, a clear case for interference is made out.

(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



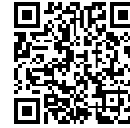

or the Review Medical Board consists of doctors who are sufficiently equipped and qualified to pronounce on the candidate's condition, then an outside medical opinion obtained by the candidate of his own volition, even if favourable to him and contrary to the findings of the DME or the RME, would not 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.

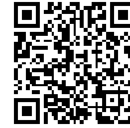




**10.39** There is another aspect of the matter, which cannot be ignored. Unlike most of the cases which were decided by the judgments of the Division Benches of this Court, cited *supra*, we are not exercising first instance jurisdiction in these writ petitions. We are sitting in *certiorari* over decisions rendered by the learned Tribunal. The parameters of *certiorari* jurisdiction are more circumscribed than the parameters of extraordinary original writ jurisdiction exercised by the Court. The peripheries of *certiorari* jurisdiction stand well delineated by the following classic passage from the decision in ***Syed Yakoob v K.S. Radhakrishnan***[80]:

> "7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. *A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or in properly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.* In regard to finding of fact recorded by the Tribunal, *a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as*

[80] **AIR 1964 SC 477**




*an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.*

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. *What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened*."

(Emphasis supplied)

In applying the principles enunciated in the judgments cited *supra*, to the orders of the learned Tribunal under challenge before us in this batch of writ petitions, we, therefore, have to be conscious of the limitations of our jurisdiction. It is only if the decision of the learned Tribunal is one which merits interference within the peripheries of *certiorari* jurisdiction as defined in the afore extracted paras from ***K.S. Radhakrishnan***, that we will interfere. If the decision of the learned Tribunal is one which it is plausible to take in the circumstances of the case, we would not interfere merely because we might not have acted the same way, or might have decided the case differently.

Application of the above principles to the individual writ petitions

**WP (C) 13821/2024 (*SSC v Aman Singh*)**

**11.** In this case, the candidate suffered from haemorrhoids. There is concurrence of opinion between the DME and RME regarding the existence of a haemorrhoid, though the DME stated that the candidate had an internal haemorrhoid whereas the RME merely stated that the candidate had a haemorrhoid. It is not as though, therefore, the opinions of the DME and RME were essentially different because both certified that the respondent was suffering from haemorrhoid.

**12.** Be it noted, the case is not one in which the DME opined that the respondent had an internal haemorrhoid whereas the RME certified that he had an external haemorrhoid. Had that been the case, perhaps interference might have been justified.

**13.** The existence, or otherwise, of haemorrhoids is not a condition which requires an expert medical opinion. Haemorrhoids are visible to the naked eye. Even if no specialist had seen the respondent, we are of the opinion that as there is concurrence of medical opinion between the DME and RME with respect to the existence of a haemorrhoid, and the respondent has been found unfit for joining the service in Delhi Police on that ground, the learned Tribunal ought not to have referred the matter to a fresh medical opinion.

**14.** Though the respondent has placed on record medical reports stating that he had no haemorrhoids, these reports were not from the hospitals to which he had been referred either by the DME or the RME. These reports were from the hospital which the respondent himself had approached. Such reports cannot be the basis to discredit the opinion of the DME and RME, in view of the decision of the Division Bench of this Court in ***Priyanka***.

**15.** We cannot certify as to whether the existence of a haemorrhoid itself would, or would not, be sufficient as a ground not to appoint a person to the Delhi Police. That is an aspect on which we must defer to the decision of the petitioners.

**16.** We, therefore, set aside the order of the learned Tribunal insofar as it directs reference of the case of the respondent to a third medical board.

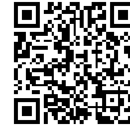
**17.** The writ petition stands allowed in the aforesaid terms.

**WP (C) 13748/2024 [*SSC v Deepak*]**

**18.** The DME, in this case, certified the respondent Deepak as unfit for appointment on account of (i) elbow varus deformity, (ii) hypertension and (iii) chronic skin infection over buttock". The RME did not find any evidence of infirmities (i) and (iii), but disqualified the respondent from appointment on account of (i) hypertension and (ii) trace TR[81], found on carrying out 2D echocardiogram. There is, therefore, in this case, clear dissonance between the findings of the DME and the RME. The only grounds on which the respondent Deepak was ultimately found unfit for appointment were hypertension and trace TR. The two other infirmities noted in the DME, of elbow deformity and skin infection over the buttock, were not found in the RME. They, therefore, are not of consequence, as they have not operated to disqualify the respondent from appointment. The finding of trace TR figured only in the report of the RME. If this finding were ignored, it may be arguable as to whether, solely on account of hypertension, the respondent would have been regarded as unfit for appointment.

**19.** As in this case, there is a difference of opinion between the DME and the RME with respect to the existence of regurgitation and TR, we do not find it to be a fit case for interference with the decision of the learned Tribunal to refer the matter to a third Medical Board for

[81] Tricuspid Valve Regurgitation




a fresh medical examination.

**20.** We especially say so, because the respondent was found unfit for service not because he was merely suffering from hypertension but on the ground that he was suffering from hypertension along with TR. In the event that the finding of TR is not upheld by the Third Medical Board, it would have to be then examined whether, merely on the ground of hypertension, the respondent can be disqualified. We express no opinion thereon.

**21.** With the above comments, we uphold the decision of the learned Tribunal and dismiss this writ petition.

**WP (C) 13717/2024 [*SSC v Vatan Singh*]**

**22.** In this case, the respondent was found, by the DME, to be unfit for recruitment on account of "varicocele (L) sided". The Review Medical Board referred him to Baba Saheb Ambedkar Hospital for opinion and a USG scrotum regarding the left varicocele, specifically stating that it was for recruitment. The opening recital in the prescription of the BSA Hospital reads "Refd from BS Hospital for opinion and USG Scrotum (Lt Vericocele) for recruitment RME". The BSA hospital, in its report, opined that though the respondent had bilateral vericocele, he "may require surgical intervention" (for fitness)".

**23.** The said opinion was rendered on 27 January 2024. A mere two

days thereafter, on 29 January 2024, the Review Medical Board declared him unfit for appointment with the following remarks:

> "1) Reason for Medical Unfitness: Varicocele (L) sided
>
> 2) Brief of Review Medical Examination & finding thereof:
> Specialist opinion- B/L Varicocele present.
> USG scrotum-B/L varicocele largest diameter 43 cm rt.
> 39 cm lt side.
>
> Requires surg- intervention for fitness
>
> 3) Final Opinion
> (b) Unfit on account of: UNFIT B/L Varicocele"

**24.** In the present case, the DMB, which convened on 19 January 2024, found the respondent to be suffering from varicocele. The Review Medical Board, eight days later, on 27 January 2024, referred the respondent to the BSA hospital for opinion, specifically stating that it was "for recruitment". Once such a reference was made, the Review Medical Board could not merely brush the opinion of the hospital to which the respondent had been referred under the carpet. The hospital, on the very same day, opined that, if the respondent underwent surgical intervention, he may have been fit for appointment.

**25.** Instead of waiting for the respondent to undergo surgical intervention and correct his condition, the RME, a mere two days thereafter, on 29 January 2024, rejected the respondent's candidature, ironically noting, even while doing so, that the respondent required surgical intervention for fitness.

**26.** If this decision of the Review Medical Board were to be accepted, it would render the very purpose of referring the respondent to the BSA hospital for opinion regarding his entitlement for recruitment completely redundant and an exercise in futility.

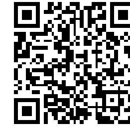
**27.** The respondent claims to have undergone a surgery and that he is now fit for appointment. Unlike the situation which obtained in ***Rockey***, the petitioner has not drawn our attention to any instruction or guideline which mandated only requires the RME to be conducted within a stipulated number of days of the DME. We are of the view, therefore, that the respondent ought to have been allowed to undergo surgery and attempt to correct his condition, especially as the BSA Hospital, to which the Review Medical Board itself referred his case, opined that, with surgery, he would become fit for appointment.

**28.** Now that the respondent claims to have undergone surgery, we are of the opinion that a fresh assessment of his medical condition, and his fitness for recruitment as a Constable, would eminently serve the interests of justice.

**29.** In the peculiar facts of this case, therefore, we do not find any reason to interfere with the decision of the learned Tribunal in exercise of our jurisdiction under Article 226 of the Constitution of India.

**30.** The writ petition is accordingly dismissed.

**WP (C) 13762/2024 [*SSC v Kuldeep*]**



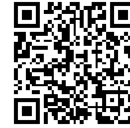

**31.** The DME, in this case, found the respondent Kuldeep unfit for appointment as a Constable on account of "generalised fungal infection over whole body". The Review Medical Board referred him for specialist opinion, as per the Recruitment Guidelines, to the Felix Hospital. The OPD card in the Felix Hospital, dated 23 January 2024, reads:

> "Candidate for CT/GD Recruitment Delhi Police.
>
> Reason for UNFIT in DME (1) Generalised fungal infection over body.
>
> Refer to Dermatology OPD for specialist opinion as per recruitment guidelines."

The Consultant Dermatologist in the Felix Hospital examined the respondent. He prescribed certain tablets and creams, and that the respondent was to take bath twice or thrice a day with Softeren soap and water. *In conclusion, the prescription opined that the respondent was "medically fit from dermatology side for duties"*. He was asked to report for review after 2 weeks.

**32.** As in the case of WP (C) 13717/2024, the Review Medical Board, without even waiting for the respondent Kuldeep to undertake the recommended treatment, convened the very next day, i.e. on 24 January 2024, and declared him unfit for appointment on account of extensive *tinea cruris* (fungal infection).

**33.** In this case, from the facts, it becomes apparent that there was no dermatologist either in the DME or in the RME. Generalized



fungal infection over the body is not a routine medical condition regarding which an opinion can be rendered by an ordinary medical practitioner. This is why, in fact, the Review Medical Board itself referred the matter to a Dermatology OPD for specialist opinion as per the Recruitment Guidelines on 23 January 2024 specifically stating that the candidate was being examined for recruitment in the Delhi Police. The Hospital to which the Review Medical Board had referred the case, *inter alia* opined that the "respondent was medically fit from Dermatology side for duties" and suggested certain therapeutic remedies to alleviate the respondent's condition. On the very next date, the Review Medical Board disqualified the respondent, on the ground that he had *Tinea Cruris* (Extensive).

**34.** We feel the direction, for a fresh medical examination of the respondent to be justified in the present case, for the following reasons:

(i) It is obvious that there was no specialist either in the DME or in the RME; else no occasion would have arisen to refer the matter for a specialist opinion. In fact the reference was specifically made as per the applicable Recruitment Guidelines which required the opinion of the specialist to be obtained, where the condition from which the candidate was found to be suffering required such an opinion.

(ii) The reference to the Dermatologist for opinion was specifically made by the Review Medical Board. This,

therefore, is not a case in which the respondent *suo motu* obtained the opinion of a private hospital.

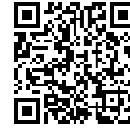
(iii) While referring the case, the Review Medical Board stated that the reference was made for CT/GD[82] recruitment of Delhi Police and required the opinion of a Dermatologist as per the Recruitment Guidelines.

(iv) The Dermatologist to whom the Review Medical Board had referred the case found the respondent, though suffering from Tinea Cruris (Extensive), to be "medically fit from Dermatologist side for duties" and suggested certain therapeutic remedies to be taken by the respondent, which review was to be undertaken after two weeks.

(v) The decision of the Review Medical Board which was taken the very next day merely notes the opinion of the Dermatologist as "S/O. Tinea Cruris (Extensive)", *omitting to note that the Dermatologist has separately certified that the respondent was "medically fit from Dermatology side for duties", thereby indicating that the Review Medical Board had not holistically seen the opinion of the Dermatologist*.

(viii) At the very least, in these circumstances, in the absence of any binding Guidelines or instruction requiring the RME to return a finding in a time bound frame, the respondent ought to

[82] Constable/General Duty



have been allowed to undertake the therapy suggested by the dermatologist, before assessing his fitness for recruitment. Needless to say, this would not mean that the RME would have to be indefinitely postponed, awaiting the recovery of the respondent. However, as the dermatologist, to whom the respondent had been referred by the Review Medical Board itself, had certified that he was dermatologically fit for duties, if the Review Medical Board felt otherwise, there had to be some reason for it to do so, and that reason had to be forthcoming in its decision.

(ix) It has to be borne in mind that the reference to the dermatologist was not made by the Review Medical Board *de hors* any guidelines, but was as per the Recruitment Guidelines governing recruitment to the post of Constable. In that view of the matter, the Review Medical Board could not blindly ignore the opinion of the dermatologist. The dermatologist specifically found the respondent to be "medically fit from dermatology side for duties". Inasmuch as the reference had been made as per the Recruitment Guidelines, this opinion could not have been blindly ignored. If this were permitted, the stipulation, in the Recruitment Guidelines, for reference of the candidate to a specialist in appropriate cases, would be reduced to a redundancy.

(x) In fact, it appears that the Review Medical Board, in the present case, overlooked the specific opinion, by the

dermatologist at the Felix Hospital, that the respondent was medically fit for duties. There is no reference to the said opinion in the final decision of the Review Medical Board. Even on the ground of failure to take cognizance of the material before it, therefore, the decision of the Review Medical Board would be vulnerable to interference.

**35.** In these circumstances, we concur with the decision of the learned Tribunal to refer the matter to fresh Medical Board for examination, but for our own reasons, elucidated supra.

**36.** The petition is therefore dismissed.

**C. HARI SHANKAR, J**.

**DR. SUDHIR KUMAR JAIN, J**.

**OCTOBER 24, 2024/***dsn/yg*

*Click here to check corrigendum, if any*