$~4 & 7

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

Date of decision: 30.11.2024

(4)+ W.P.(C) 14731/2024

STAFF SELECTION COMMISSION & ORS. .....Petitioners

Through: Mr.Harshit Goel &Ms.Meghna Rao, Advs. for Mr.Nune Balraj, SPC.

versus

VINEET KUMAR .....Respondent

Through: Ms.Esha Mazumdar, Mr.Setu Niket, Ms.Unni Maya S. & Mr.DevanshKhatter, Advs.

(7)+ W.P.(C) 14831/2024

GOVT OF NCT OF DELHI & ANR. .....Petitioners

Through: Mr.P.S. Singh, CGSC with Ms.Annu Singh, Mr.Praneet Kumar &Mr.Amrendra K. Singh, Advs.

versus

RAMBABU VERMA .....Respondent

Through: Mr.Rajesh Chauhan, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

CM APPL. 61865/2024 (Exemption) in W.P.(C) 14731/2024
CM APPL. 62307/2024 (Exemption) in W.P.(C) 14831/2024

1. Allowed, subject to all just exceptions.

CAV 523/2024 in W.P.(C) 14831/2024

2. As the learned counsel for the respondent enters appearance on advance notice, the caveat stands discharged.

3. With the consent of the learned counsels for the parties, the petitions are being taken up for final hearing.

W.P.(C) 14731/2024 & CM APPL. 61863/2024

4. This petition has been filed by the petitioners challenging the Order dated 22.03.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi, (hereinafter referred to as, 'Tribunal'), in Original Application (in short, 'OA') No.760/204, titled ***Vineet Kumar v. Staff Selection Commission &Ors.,*** whereby the learned Tribunal allowed the said petition filed by the respondent herein and directed the petitioners herein to, within a period of six weeks from the date of receipt of the certified copy of the said order, constitute a fresh medical board for examining the respondent herein, which should include a specialist in the field, and in the event the respondent herein is declared medically fit, then, subject to the condition of his meeting other criteria of his appointment, appoint him to the post of Constable (Executive) Male in the Delhi Police to the respondent.

5. The facts giving rise to the present petition may be summarised as under:

a. The petitioners advertised 7547 posts of Constable (Executive) Male and Female in the Delhi Police *vide* notification/advertisement dated 01.09.2023. The respondent applied for the said post and underwent the Computer Based Examination (CBE) and the Physical Endurance and Measurement Test (in short, 'PE&MT').

b. Thereafter, the respondent was subjected to an examination by a

Detailed Medical Examination (in short, "DME") Board, which, *vide* report dated 22.01.2024, declared the respondent unfit for appointment to the post of Constable (Executive) on the ground of presence of "Hypertension 164/98 mmHG".

c. Aggrieved of the above, the respondent applied for a Review Medical Examination (in short, "RME"), which was conducted on 03.02.2024, again declaring the respondent unfit for appointment on account of "Hypertension".

d. The respondent claims to have, thereafter, on 05.02.2024, got himself examined at the Community Service Centre, Tappal, Aligarh, wherein his Blood Pressure was found normal. He thereafter, got himself examined at the Primary Health Centre, Jewar, Gautam Buddha Nagar and at the All India Institute Of Medical Sciences, Delhi (in short, 'AIIMS'), where his BP was again found to be normal.

e. Armed with these reports, the respondent approached the learned Tribunal seeking the relief of appointment to the post of Constable (Executive) Male in the Delhi Police.

f. The said Original Application, as noted hereinabove, has been allowed by the learned Tribunal, directing the petitioners herein to constitute a fresh medical board for examining the respondent.

6. The learned counsel for the petitioners submits that the opinion of the DMEB and the RMB could not have been interfered with by the learned Tribunal, as they were based on the reports of experts. He submits that the purpose of Review Medical Examination (in short,

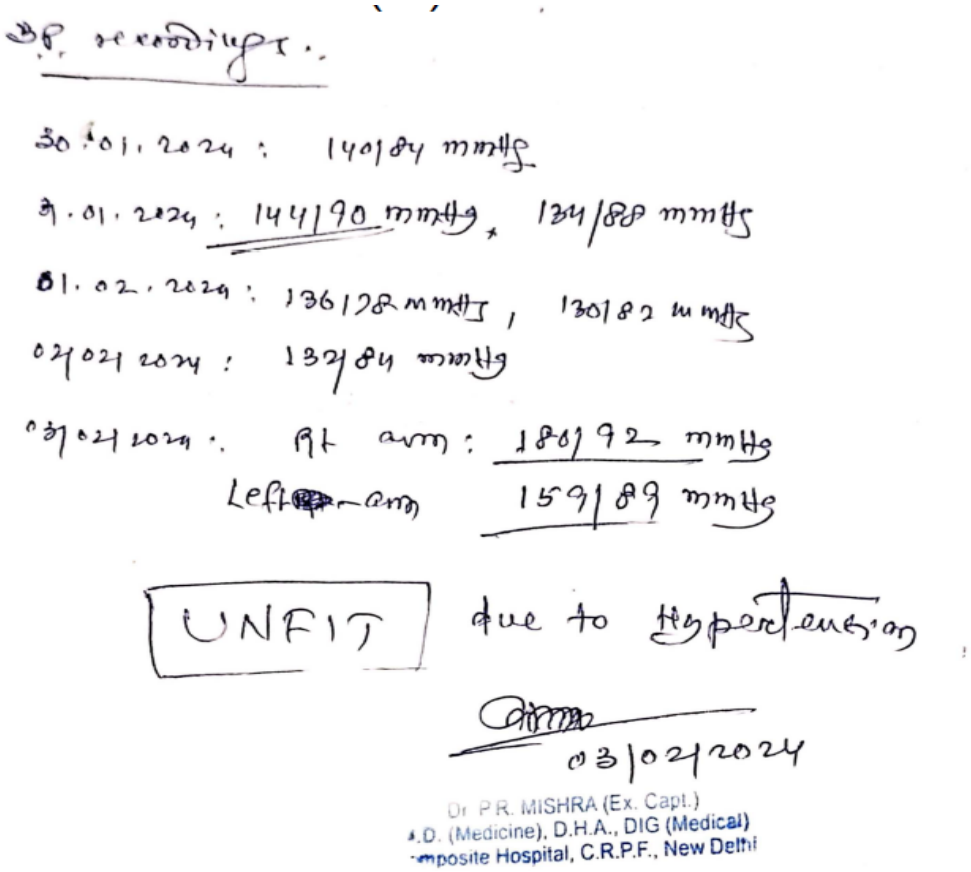
"RME") is not to give time to the candidate to cure himself/ herself of the ailment that has been found in the Detailed Medical Examination (in short, "DME") but to ensure that no error has crept in the examination by the DMEB. He submits that in the present case, the RMB had taken the BP readings of the respondent over a period of five days with multiple times during the day, and each time the BP was found to be above normal. He submits that, therefore, the learned Tribunal has erred in interfering with these opinions and directing the petitioners to conduct a re-medical examination of the respondent. In support, he places reliance on the Judgment of this Court in ***Staff Selection Commission & Ors. v. Aman Singh***, 2024 SCC OnLine Del 7600.

7. On the other hand, the learned counsel for the respondent places reliance on the reports from Community Service Centre, Tappal, Aligarh, the Primary Health Centre, Jewar, Gautam Buddha Nagar, and at the AIIMS, where respondent's BP was found to be normal. He submits that the learned Tribunal has rightly directed a re-examination of the respondent by a fresh medical board to be constituted by the petitioners.

8. We have considered the submissions made by the parties.

9. In the Detailed Medical Board Examination, the respondent was declared unfit for appointment on the ground that he is suffering from hypertension. The BP was measured as 164/98 mmHG. The respondent applied for a Review Medical Board. The Review Medical Board advised that the respondent be admitted and his BP be recorded thrice daily for three days. The BP of the respondent, on admission,

was recorded as under, and he was declared unfit due to Hypertension:-



10. The respondent, claiming that he got himself examined at the All India Institute Of Medical Sciences Delhi, where his BP was recorded as 135/86 mmHg, and also at the Primary Health Centre at Gautam Buddha Nagar, where his BP was recorded as near perfect, that is, 120/80 mmHG and Prathmik Swasthya Kendra, Aligarh, where his BP was recorded as 110/75 mmHG, approached the learned Tribunal seeking a re-examination of his medical condition. The learned Tribunal, deciding a batch of petitions, allowed the Original Application filed by the respondent, without adverting to the peculiar

facts of this case as narrated hereinabove.

11. In the present case, as highlighted hereinabove, the Review Medical Board, before giving its opinion, had advised the admission of the respondent for three days and for the BP to be measured three times a day. The measurements of the BP of the respondent have been reproduced by us hereinabove. On most occasions, it has been found to be above normal. This, therefore, cannot be passed off as a simpliciter case of white-coat hypertension.

12. The learned counsel for the petitioners has also drawn our attention to the lipid profile report of the respondent, which shows that even the VLDL of the respondent was above normal. As per the medical literature, a high level of VLDL cholesterol is associated with the development of plaque deposits on arteries walls. Therefore, there was other empirical material also before the Review Medical Board for opining that the respondent be declared unfit on account of suffering from hypertension. The medical opinions from the AIIMS and the Health Centres themselves cannot be sufficient grounds to reopen the medical examination of the respondent without finding any *mala fide* or procedural irregularities committed by the Medical Boards appointed by the petitioners. The opinion of the Medical Board has to be considered as final and can be interfered with only in rare circumstances. It is to be remembered that the respondent was seeking appointment to the Delhi Police, where the rigours of duties are very tough. It is, therefore, essential that the appointed candidate must be of perfect health and even a doubt on his/her fitness can give rise to a justifiable cause for rejection of his/her candidature.

13. In ***Staff Selection Commission & Ors. v. Aman Singh***, 2024:DHC:8441-DB, this Court, on a detailed examination of the precedents on the issue, laid down the circumstances in which the Court may or may not exercise its power of judicial review. They are reproduced as under:-

> *"**10.38** In our considered opinion, the following principles would apply:*
>
> *(i) The principles that apply in the case of recruitment to disciplined Forces, involved with safety and security, internal and external, such as the Armed and Paramilitary Forces, or the Police, are distinct and different from those which apply to normal civilian recruitment. The standards of fitness, and the rigour of the examination to be conducted, are undoubtedly higher and stricter.*
>
> *(ii) There is no absolute proscription against judicial review of, or of judicial interference with, decisions of Medical Boards or Review Medical Boards. In appropriate cases, the Court can interfere.*
>
> *(iii) The general principle is, however, undoubtedly one of circumspection. The Court is to remain mindful of the fact that it is not peopled either with persons having intricate medical knowledge, or were aware of the needs of the Force to which the concerned candidate seeks entry. There is an irrebuttable presumption that judges are not medical men or persons conversant with the intricacies of medicine, therapeutics or medical conditions. They must, therefore, defer to the decisions of the authorities in that regard, specifically of the Medical Boards which may have assessed the candidate. The function of the Court can only, therefore, be to examine whether the manner in which the candidate was assessed by the Medical Boards, and the conclusion which the Medical Boards have arrived,*

inspires confidence, or transgresses any established norm of law, procedure or fair play. If it does not, the Court cannot itself examine the material on record to come to a conclusion as to whether the candidate does, or does not, suffer from the concerned ailment, as that would amount to sitting in appeal over the decision of the Medical Boards, which is not permissible in law.

(iv) The situations in which a Court can legitimately interfere with the final outcome of the examination of the candidate by the Medical Board or the Review Medical Board are limited, but well-defined. Some of these may be enumerated as under:

> *(a) A breach of the prescribed procedure that is required to be followed during examination constitutes a legitimate ground for interference. If the examination of the candidate has not taken place in the manner in which the applicable Guidelines or prescribed procedure requires it to be undertaken, the examination, and its results, would ipso facto stand vitiated.*
>
> *(b) If there is a notable discrepancy between the findings of the DME and the RME, or the Appellate Medical Board, interference may be justified. In this, the Court has to be conscious of what constitutes a "discrepancy". A situation in which, for example, the DME finds the candidate to be suffering from three medical conditions, whereas the RME, or the Appellate Medical Board, finds the candidate to be suffering only from one of the said three conditions, would not constitute a discrepancy, so long as the candidate is disqualified because of the presence of the condition concurrently found by the DME and the RME or the Appellate Medical Board. This is because, insofar*

as the existence of the said condition is concerned, there is concurrence and uniformity of opinion between the DME and the RME, or the Appellate Medical Board. In such a circumstance, the Court would ordinarily accept that the candidate suffered from the said condition. Thereafter, as the issue of whether the said condition is sufficient to justify exclusion of the candidate from the Force is not an aspect which would concern the Court, the candidate's petition would have to be rejected.

(c) If the condition is one which requires a specialist opinion, and there is no specialist on the Boards which have examined the candidate, a case for interference is made out. In this, however, the Court must be satisfied that the condition is one which requires examination by a specialist. One may differentiate, for example, the existence of a haemorrhoid or a skin lesion which is apparent to any doctor who sees the candidate, with an internal orthopaedic deformity, which may require radiographic examination and analysis, or an ophthalmological impairment. Where the existence of a medical condition which ordinarily would require a specialist for assessment is certified only by Medical Boards which do not include any such specialist, the Court would be justified in directing a fresh examination of the candidate by a specialist, or a Board which includes a specialist. This would be all the more so if the candidate has himself contacted a specialist who has opined in his favour.

(d) Where the Medical Board, be it the DME or the RME or the Appellate Medical Board, itself refers the candidate to a specialist or to another hospital or doctor for opinion, even if

the said opinion is not binding, the Medical Board is to provide reasons for disregarding the opinion and holding contrary to it. If, therefore, on the aspect of whether the candidate does, or does not, suffer from a particular ailment, the respondents themselves refer the candidate to another doctor or hospital, and the opinion of the said doctor or hospital is in the candidate's favour, then, if the Medical Board, without providing any reasons for not accepting the verdict of the said doctor or hospital, nonetheless disqualifies the candidate, a case for interference is made out.

(e) Similarly, if the Medical Board requisitions specialist investigations such as radiographic or ultrasonological tests, the results of the said tests cannot be ignored by the Medical Board. If it does so, a case for interference is made out.

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

(v) Opinions of private, or even government, hospitals, obtained by the concerned candidate, cannot constitute a legitimate basis for referring the case for re-examination. At the same time, if the condition is such as require a specialist's view, and the Medical Board and Review Medical Board do not include such specialists, then the Court may be justified in directing the candidate to be re-examined by a specialist or by a Medical Board which includes a specialist. In passing such a direction, the Court may legitimately place reliance on the opinion of such a

specialist, even if privately obtained by the candidate. It is reiterated, however, that, if the Medical Board or the Review Medical Board consists of doctors who are sufficiently equipped and qualified to pronounce on the candidate's condition, then an outside medical opinion obtained by the candidate of his own volition, even if favourable to him and contrary to the findings of the DME or the RME, would not justify referring the candidate for a fresh medical examination.

(vi) The aspect of "curability" assumes significance in many cases. Certain medical conditions may be curable. The Court has to be cautious in dealing with such cases. If the condition is itself specified, in the applicable Rules or Guidelines, as one which, by its very existence, renders the candidate unfit, the Court may discredit the aspect of curability. If there is no such stipulation, and the condition is curable with treatment, then, depending on the facts of the case, the Court may opine that the Review Medical Board ought to have given the candidate a chance to have his condition treated and cured. That cannot, however, be undertaken by the Court of its own volition, as a Court cannot hazard a medical opinion regarding curability, or the advisability of allowing the candidate a chance to cure the ailment. Such a decision can be taken only if there is authoritative medical opinion, from a source to which the respondents themselves have sought opinion or referred the candidate, that the condition is curable with treatment. In such a case, if there is no binding time frame within which the Review Medical Board is to pronounce its decision on the candidate's fitness, the Court may, in a given case, direct a fresh examination of the candidate after she, or he, has been afforded an opportunity to remedy her, or his, condition. It has to be remembered that the provision for a Review Medical Board is not envisaged as a chance for unfit candidates to make themselves fit, but

only to verify the correctness of the decision of the initial Medical Board which assessed the candidate.

(vii) The extent of judicial review has, at all times, to be restricted to the medical examination of the candidate concerned. The Court is completely proscribed even from observing, much less opining, that the medical disability from which the candidate may be suffering is not such as would interfere with the discharge, by her, or him, of her, or his, duties as a member of the concerned Force. The suitability of the candidates to function as a member of the Force, given the medical condition from which the candidate suffers, has to be entirely left to the members of the Force to assess the candidate, as they alone are aware of the nature of the work that the candidate, if appointed, would have to undertake, and the capacity of the candidates to undertake the said work. In other words, once the Court finds that the decision that the candidate concerned suffers from a particular ailment does not merit judicial interference, the matter must rest there. The Court cannot proceed one step further and examine whether the ailment is such as would render the candidate unfit for appointment as a member of the concerned Force."

14. Applying the above principles to the facts of the present case, in our view, the learned Tribunal erred in directing a fresh medical examination of the respondent based only on the medical reports that the respondent produced. The learned Tribunal could not have been oblivious to the fact that the BP can be brought to normal range by taking medication, however, that would not cure the underlying issue that the candidate is suffering from. Especially keeping in view the harsh conditions in which the candidate, if appointed, may have to

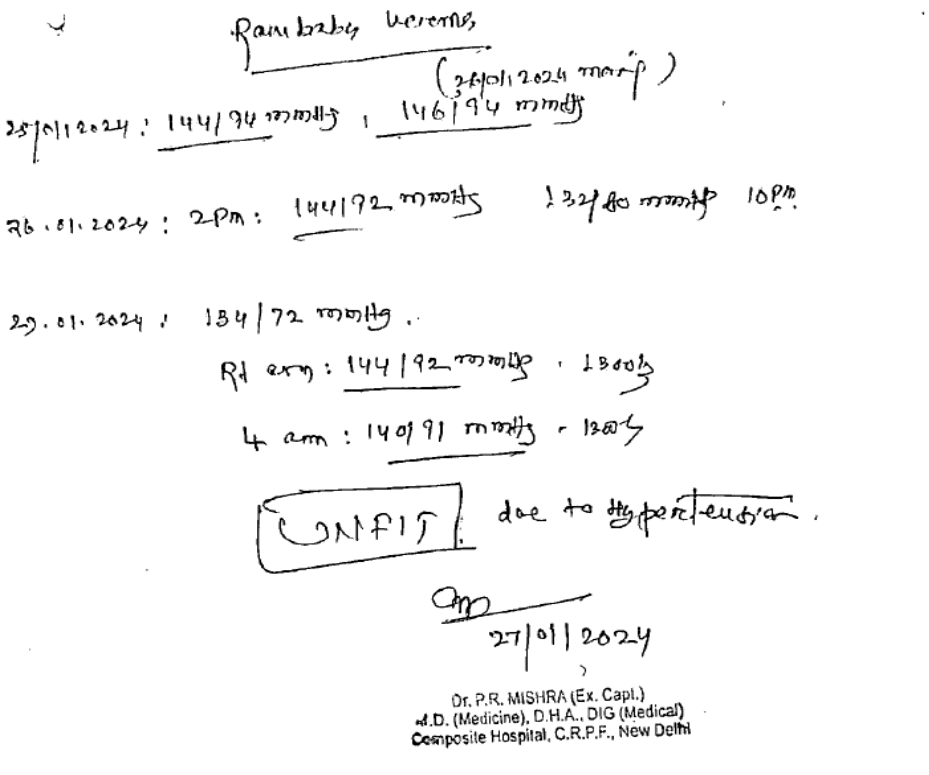
work, we are of the opinion that a strict standard has to be applied by the petitioners for such appointment. Tested on this standard, there was no infirmity in the rejection of the candidature of the respondent. The learned Tribunal, therefore, erred in interfering with the same and the Impugned Order cannot be sustained.

15. Accordingly, we allow the present petition and set aside the Impugned Order passed by the learned Tribunal.

16. There shall be no order as to costs.

W.P.(C) 14831/2024 & CM APPL. 62306/2024

17. In this Writ Petition as well, the respondent had been admitted for recording his BP over a period of three days. The readings that were recorded are as under:-



18. The would clearly show that the BP of the respondent was high

on all occasions. It could not, therefore, be attributed simply to white-coat Hypertension. The learned Tribunal has failed to advert to this important and relevant factor in passing the Impugned Directions.

19. For reasons recorded herein above, we, therefore, set aside the Impugned Order.

20. The petition is allowed. The pending applications stand disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 30, 2024/*rv/DG*

Click here to check corrigendum, if any