

**Pavnesk Kumar v. union of India , 2023 SCeJ 0657 = 2023 PLRonline 468685 (SC)
= (2023-4)212 PLR 557**

Supreme Court of India

Before : Justice Abhay S. Oka , Justice Pankaj Mithal

PAVNESH KUMAR – Appellant,

Versus

UNION OF INDIA & ORS.

Civil Appeal No.3641 Of 2023

Service Law – Constitution of India, Art.136 – Post of BSF Sub-Inspector (GD) – Regular promotion criteria cannot be applied with regard to medical fitness in selection through LDCE – Post of BSF Sub-Inspector (GD) – Medically unfit – Promotion by selection through LDCE vis-à-vis competitive examination is a facility or a chance given for out of their promotion without waiting for the normal course of promotion – Is selection through competitive examination within the limited category of candidates – Cannot be equated with normal promotion – Regular promotion criteria can not be applied with regard to medical fitness even in the matter of selection through LDCE . [Para 16]

Service Law – Post of BSF Sub-Inspector (GD) – Regular promotion criteria cannot be applied with regard to medical fitness in selection through LDCE – Post of BSF Sub-Inspector (GD) – Appellant never qualified stage V of detail medical examination – Non-selection to BSF Sub-Inspector post, for being medically unfit, held proper – Scheme of selection in advertisement categorically provided clearing of examination in all five stages, which included detailed medical examination – This was independent and in addition of eligibility condition that candidate must possess medical category SHAPE-I, while working on lower post – Appellant was qualified stage-I to stage-IV of process of examination – However never qualified stage-V, which consisted of detailed medical examination – There was no review of medical of appellant and declaration, that he is “medically unfit”, is not contrary to any earlier reports – As appellant was never declared to be medically fit – Appeal is liable to be dismissed. [Para 17, 18]

Appellant was never declared medically fit for the post of Sub-Inspector (GD) pursuant to his candidature for the said post through LDCE – The appellant had undergone routine annual medical check-up as a constable and was declared in medical category SHAPE-I, which was the eligibility condition for applying to the post of Sub-Inspector (GD) through LDCE – The appellant was never declared medically fit in the process of selection for the post of Sub-Inspector (GD). – he appellant may have qualified stage-I to stage-IV of the process of examination but never qualified stage-V which consisted of the detailed medical examination – Appellant never successfully qualified all the five stages of examination as

advertised for the selection to the post of Sub-Inspector (GD) through LDCE.

Petitioner Counsel: Alakh Alok Srivastava, Respondent Counsel: B. V. Balaram Das (Dead / Retired / Elevated), Arvind Kumar Sharma

JUDGEMENT

Pankaj Mithal, J. - (28.11.2023) - Learned counsel appearing for the parties were heard.

2. The appellant who was working as a constable with the Border Security Force (BSF), applied for the post of Sub-Inspector General Duty (GD) through Limited Departmental Competitive Examination (LDCE) 2018-19 but was declared medically unfit and the said order was not disturbed even in the review medical examination by Board of three doctors.

3. Aggrieved by the above action of the respondent BSF declaring him medically unfit for the post of Sub-Inspector (GD) through LDCE, the appellant preferred a writ petition before the Delhi High Court for quashing the medical result dated 27.02.2020 of the review medical examination and for a direction to the respondent BSF to treat him medically fit.

4. The writ petition (civil) so filed by the appellant was dismissed by the High Court vide impugned order dated 24.09.2020.

5. In the above factual scenario, the appellant has preferred this appeal.

6. Learned Counsel for the appellant submitted that the appellant was found medically fit on 16.12.2019 and as such the respondent BSF was not competent to declare him unfit subsequently on 23.12.2019. The appellant underwent a small surgery whereupon he was found to be medically fit for the post but even then, the review medical examination on 27.02.2020 declined to clear him as medically fit to hold the post of Sub- Inspector (GD).

7. The appellant was appointed as a Constable (GD) with the BSF w.e.f. 04.04.2012. After the appellant had put in about 8 years of service as a Constable, an advertisement was issued by the respondent BSF inviting applications from serving BSF Male/Female Constables (GD), Head Constables (GD), ASI (GD) etc for selection to the post of Sub Inspector (GD) through LDCE 2018-19. The advertisement provided for the eligibility conditions and for the scheme of examination. The eligibility conditions provided; (i) the upper age limit of 32 years on the closing date of application for appearing in LDCE; (ii) that the candidate should have completed 4 years of service including basic training; (iii) graduation with unblemished clean record of entire service until the issuance of offer of appointment; and (iv) must fulfil the physical standards laid down. Another eligibility condition was that candidate should qualify SHAPE-I medical category. The scheme of examination consisted of five stages. In the stage-I, service records were to be checked and verified, in stage-II, the candidates were to undergo written examination (OMR based), stage-III was of a physical measurements (PST) and stage-IV was a physical efficiency test (PET). Upon successful completion of all the above four stages, the candidates were to undergo detailed medical examination i.e. stage-V wherein they must be declared medically fit for the post.

8. In view of the above terms and conditions of the advertisement for the post of Sub-Inspector (GD) through LDCE, the candidates were supposed to successfully complete the first four stages of the examination and then have to be medically declared fit for the post in the fifth stage. The declaration of medically fit after undergoing the four stages of the examination was in addition to the eligibility condition of being in the medical category SHAPE-I which was a condition precedent for participating in LDCE. The declaration of any candidate in the medical category SHAPE-I was not sufficient enough to treat him to be medically fit for the post.

9. The appellant was issued a call letter dated 16.11.2019 by the recruitment officer to appear in the detailed medical examination for selection to the post of Sub-Inspector (GD) in BSF through LDCE 2018-19. The said letter indicates that the appellant was called for stage-V detailed medical examination on 23.12.2019. Upon such medical examination on the aforesaid date, the appellant was not found medically fit for the reason that he suffered from Right Sided Varicocele, Varicose Vein left calf, Tachycardia pulse rate 110/min (normal range 60-110/min).

10. The appellant appealed against the above decision whereupon the review medical examination by Board of three members on 27.02.2020 confirmed the medical report and declared the appellant to be unfit. The Medical Board recorded the reasons of unfitness of the appellant noticing the fact that he was operated upon on 28.12.2019.

11. The submission of the Counsel for the appellant that once the appellant was declared medically fit, the respondent BSF could not have reviewed the matter to take a contrary decision declaring him medically unfit.

12. The above submission of the counsel is ex-facie bereft of merit as the appellant was never declared medically fit for the post of Sub-Inspector (GD) pursuant to his candidature for the said post through LDCE. The appellant had undergone routine annual medical check-up as a constable and was declared in medical category SHAPE-I, which was the eligibility condition for applying to the post of Sub-Inspector (GD) through LDCE. The appellant was never declared medically fit in the process of selection for the post of Sub-Inspector (GD). The appellant may have qualified stage-I to stage-IV of the process of examination but never qualified stage-V which consisted of the detailed medical examination. The said detailed medical examination as per the call letter referred to above was done only on 23.12.2019 and not on any earlier date. In the said detailed medical examination the appellant was declared unfit which decision was upheld by the review medical examination by the board of three members despite appellant having undergone a minor surgery for the cure of medical deficiencies pointed out earlier. The medical examination of the appellant conducted on 16.12.1999 was a routine annual examination which declared him in medical category SHAPE-I. It was not a part of examination process for selection to the post of Sub-Inspector (GD) through LDCE. The appellant never successfully qualified all the five stages of examination as advertised for the selection to the post of Sub-Inspector (GD) through LDCE.

13. It was next contended that the appointment through LDCE is like fast-track promotion

and is not a fresh appointment. Therefore, recruitment rules and guidelines applicable to the normal mode of promotion would have been applied and not any different medical standards.

14. No doubt appointment to a higher post of an incumbent working on lower post is in the form of an accelerated promotion but it cannot be equated with normal mode of promotion. This is evident from the advertisement itself which in unequivocal terms states that applications are invited for selection to the post of Sub-Inspector (GD) in BSF through LDCE. The very fact that the applications were invited for selection to the post of Sub-Inspector (GD) connotes that it was not a normal promotion rather selection to the higher post from amongst the eligible candidates working on the lower post. Thus, the submission that the normal rules of promotion or medical examination ought to have been applied, is not acceptable.

15. This apart, selection was to be conducted in terms of the advertisement. The scheme of the selection contained in the advertisement categorically provided clearing of the examination in all the five stages which included detailed medical examination. This was independent and in addition of the eligibility condition that a candidate must possess the medical category SHAPE-I while working on the lower post.

16. Additionally, a distinction has to be drawn between a normal promotion and promotion by selection through LDCE. Promotion by selection through LDCE vis-à-vis competitive examination is a facility or a chance given for out of their promotion without waiting for the normal course of promotion. It in effect is selection through competitive examination within the limited category of candidates and cannot be equated with normal promotion. This being the position, the argument that regular promotion criteria had to be applied with regard to medical fitness even in the matter of selection through LDCE is not acceptable.

17. In view of the above facts and circumstances, we find no substance in the appeal. There is no review of the medical of the appellant and the declaration that he is “medically unfit”, is not contrary to any earlier reports as he was never declared to be medically fit in the process of examination for selection to Sub- Inspector (GD) through LDCE.

18. The judgment and order of the High Court dismissing the writ petition upholding the decision of the Medical Board declaring the appellant as medically unfit does not suffer from any error of law or fact. Accordingly, the appeal is dismissed with no order as to cost.