

**Ajay Panday Vs. Uoi and ors**

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**Court :** Delhi

**Decided On :** Jul-28-2014

**Judge :** Reva Khetrapal

**Appellant :** Ajay Panday

**Respondent :** Uoi and ors

**Advocate for Pet/Ap. :** Ms. Rekha Palli

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 1938/2011 AJAY PANDAY Through: ..... Petitioner Mrs.Rekha Palli and Ms.Ankita Patnaik, Advocates. versus UOI AND ORS Through: ..... Respondents Mr.Sunil Kumar, Advocate. AND + W.P.(C) 5421/2011 RAVINDER LAMBA Through: ..... Petitioner Mrs.Rekha Palli and Ms.Ankita Patnaik, Advocates. versus UOI AND ORS Through: % ..... Respondents Mr.Sunil Kumar, Advocate. Date of Decision : July 28, 2014 CORAM: HON'BLE MS. JUSTICE REVA KHETRAPAL HON'BLE MS. JUSTICE PRATIBHA RANI

**JUDGMENT**

**: REVA KHETRAPAL, J.**

1. Both the aforesaid writ petitions raise common questions of law. The first issue raised in these petitions is whether appointment to the rank of Sub Inspector (Exe) in the Central Industrial Security Force (for short CISF) by Limited Departmental

Competitive Examination (for short LDCE) is appointment by promotion or by direct recruitment. The second issue which arises and which is an offshoot of the first issue is as to whether the Respondents have prescribed different medical standards for eligibility of candidates to the same post, i.e., for those selected from the feeder cadre for promotion to the rank of Sub Inspector in the same organization and for those selected through LDCE for the same rank.

2. The facts in both the petitions are identical. Both the Petitioners are currently posted as Constables on General Duty in the CISF and claim to be fit in all respects. Both aspire to be Sub Inspectors and for the aforesaid purpose appeared in LDCE for appointment to the post of Sub Inspector (Exe). Pursuant thereto, they appeared in the written examinations and after duly qualifying the same appeared in and cleared the Physical Efficiency Test (PET) as well as the interview. Their respective names figured amongst the persons selected for appointment to the post of Sub Inspector (Exe) subject to their medical fitness. When they underwent medical examination, however, they were shocked to learn that they had been declared medically unfit on the ground of Sub Standard Vision, even though they had continued to be in Medical Shape-I in each of the Annual Medical Checkups which they had undergone as Constables in the CISF.

3. Subsequently, the Petitioners submitted appeals to the Inspector General for being examined by the Review Medical Board. The Petitioner in WP(C) No.1938/2011, namely, Constable Ajay Pandey was examined by a Review Medical Board on 14.03.2011 where his distant vision was found to be 6/6 but apparently for the reason that he had undergone a laser surgery he was once again declared medically unfit.

4. The Petitioner in WP(C) No.5421/2011, namely, Constable Ravinder Lamba on receipt of the letter dated 6th January, 2009 wherein it had been stated that he was having Sub Standard Vision submitted appeal to the Inspector General and requested for holding Review Medical Board. The case of the Petitioner though was sent for Review Medical by the Inspector General, the concerned Medical Officer got adamant and resorted to rebuking the Petitioner for making such a request. Thereafter, inspite of several requests to subject him into proper list, no

proper test was ever conducted and the Petitioner was again declared unfit. It was then that the Petitioner got his eyes tested again from Guru Nanak Eye Centre (a Delhi Government Hospital), All India Institute of Medical Sciences (AIIMS), New Delhi and Safdarjung Hospital and again requested the Respondents to consider his claim for appointment to the post of SubInspector as he was not suffering from any vision defect. The prayer of the Petitioner was not acceded to and the Petitioner thereupon filed Writ Petition No.1966/2010 titled as Ravinder Lamba vs. UOI and Ors. in this Court which was disposed of on 20.12.2010 with directions to the Respondents to have the Petitioner examined by the Medical Board in Army Hospital R&R and thereafter take appropriate decision. Accordingly, the Petitioner was again examined by a Board of the said hospital on 11.01.2011 but was again declared medically unfit on the ground that his unaided Visual Acuity was 6/9 both eyes and he had already undergone lasik surgery for correction of the refractory errors of the eyes. The Petitioner, however, subsequently got himself examined from RML Hospital on 16.03.2010 where he was declared fit with uncorrected Visual Acuity 6/6 both eyes.

5. The Petitioner in W.P.(C) No.1938/11, namely, Constable Ajay Pandey was subjected to a medical examination on 19.11.2010 wherein the Petitioner was declared unfit, i.e., Vision Defect - 6/18 B.E.

Subsequently he underwent an EPI Lasik Surgery at Shankar Netralaya, Chennai. On 22.11.2010, the Petitioner was examined by a specialist at District Hospital, Hoshangabad, M.P., who certified that his eye sight was 6/6 B.E.

The Petitioner was then examined by a Review Medical Board on 14.03.2011 (where his distant vision was found to be 6/6). However, the Respondents once again declared him unfit on the grounds of having undergone a minor laser surgery.

6. Aggrieved by the findings of the medical examination and the review medical examination, the Petitioners have filed the present writ petitions challenging the actions of the Respondents and seeking quashing of the respective findings of the Medical Boards and Review Medical Boards declaring them as medically unfit on the ground of Sub Standard Vision.

7. The Petitioner (Mr. Ajay Pandey) in W.P.(C) 1938/2011 also sought issuance of a writ of mandamus directing the Respondents to appoint him as Sub Inspector with all consequential benefits w.e.f. the date other candidates selected in LDCE2010 were appointed as Sub Inspectors (Exe).

8. The principal contention of the Petitioners is that the medical tests which have been got conducted by them (the Petitioners) in reputed Government hospitals are far more reliable than the medical tests conducted by the Respondents, since the same had been conducted in a more scientific manner and with the latest technology. Further, it is contended that there is no reason to disbelieve the reports of the aforesaid reputed Government hospitals. This is all the more so as the Petitioners as Constables have been found in Medical Shape-I in the Annual Medical Examinations conducted by the Respondents themselves every year. It is, therefore, highly unjust and arbitrary that the Petitioners be declared medically unfit for a higher post in the same organization. The action of the Respondents in finding the Petitioners physically fit and placing them in Medical Category Shape-I for performance of their duties as Constables but simultaneously finding them unfit for performance of duties of a higher post, i.e., Sub Inspector (Exe) which requires lesser physical input, is wholly irrational. This apart, it is contended, the Petitioners meet the prescribed medical standards and have been discharging their duties to the utmost satisfaction of their superiors without any complaint from any quarter.

9. It is urged by Ms. Rekha Palli, learned counsel for the Petitioners before us that the question whether the selection of candidates for appointment to a higher post by conducting LDCE is to be considered as selection for appointment by promotion or direct recruitment, has been settled by a Coordinate Bench of this Court in WP(C) 2887/2012 titled Man Singh vs. Union of India and Ors.

and WP(C) 2893/2012 titled Ajay Tripathi vs. Union of India and Ors.

. The Respondents counsel argues to the contrary. We accordingly extract hereinbelow the relevant portion of the said judgment pertaining to this aspect of the matter:

17. In support of her first contention, Ms. Rekha Palli, learned counsel for the petitioner has drawn our attention to the stand of the Ministry of Home Affairs (Personnel), New Delhi as well as the Department of Personnel and Training of the Government of India in their records which have been filed in a pending matter before the Supreme Court of India. The first noting (dated 18 th November, 2011) is extracted in extenso hereafter and reads as follows:

Department of Personnel & Training Estt (res) Reference notes of Ministry of Home Affairs on pages 2-3/ante.

2. Regarding clarification whether LDCE is Direct Recruitment or a mode of promotion, the RR Branch of this Department has clarified that the LDCE is a mode of promotion. On the issue of change in category of a person, who has been appointed on the basis of reservation, it is clarified vide this Departments OM dated 11.7.2002 that SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.-.sd(Sharad Kumar Srivastava) Under Secretary (Res) (underlining by us) 18. This noting was reiterated by the Ministry of Home Affairs in a noting dated 22nd November, 2011 of Shri R.P. Sati, Under Secretary referring to a writ petition filed in this court. The noting dated 22 nd November, 2011 reads as follows:

Ministry of Home Affairs Pers - II Reference note on pre-pages.

2. This is regarding Writ Petition(C)No.5460/2011 filed by Shri Sundeep Kumar Dubey, Constable (GD) of CRPF in the High Court of Delhi against his non-selection for the post of Sub, Insp(GD) through Limited Department Competitive Examination (LDCE), 2010.

3. The matter was considered in this Ministry (p-2/n) and DoP&T was requested to clarify the position as mentioned in para - 3(p-2/n). In this connection DoP&T vide their UO dated 18.11.2011 (p-4/n) has clarified the following:

Regarding clarification whether LDCE is Direct Recruitment or a mode of promotion, the RR Branch of this Department has clarified that the LDCE is a mode of promotion. On the issue of change in category of a person, who has been appointed on the basis of reservation, it is clarified vide this Departments OM dated 11.7.2002 that SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.

4. We may convey the above mentioned clarification of DoP&T to CRPF. Sd(R.P. Sati) Under Secretary 22.11.2011 Director (Pers)/DS(Pers-I) (Underlining supplied) The correctness and authenticity of these notings have not been disputed before us by the respondents.

19. The respondents have urged in the present proceedings that appointments through the LDCE is a mode of fast tracked promotion. In the above notings, the respondents have themselves taken the position that appointment through the LDCE is a mode of promotion. Given the stand of the respondents in the notings aforesaid and before this Court it is clear that appointment to LDCE is merely an appointment by promotion, albeit fast tracked. It would, therefore, follow that the recruitment rules or guidelines for appointments which would apply to appointments through the LDCE, would have to be those which are applicable to appointment by promotions.

(emphasis supplied) 10. On a specific query put by us to both counsel we are informed that the judgment in Man Singh (supra) has attained finality and there is no contrary view expressed by any other Court nor the judgment has been challenged in appeal.

11. We, however, deem it expedient to clarify at this juncture that it has been necessary for us to examine this issue in view of the fact that the Respondents have prescribed two different medical standards, one for appointments of Sub Inspectors through direct recruitment and another for appointments on the basis of departmental promotions in due course. It has, therefore, become imperative for us to place the candidature of the Petitioners in the instant case in one of the

aforesaid slots viz., direct recruitment or departmental promotion.

12. Having heard learned counsel for the parties and perused the notings of the Ministry of Home Affairs (Personnel), New Delhi as well as the Department of Personnel and Training of the Government of India in their records (reproduced hereinabove), we have no hesitation in coming to the conclusion that appointments through the LDCE would fall in the category of appointments by promotion being in a manner of speaking accelerated promotions effected departmentally though through competitive examinations. It has been so clarified in the aforesaid notings and relying upon the same a Coordinate Bench, as noted by us hereinabove, has already ruled that appointments through the LDCE is a mode of fast track promotion. The Respondents have themselves taken W.P.(C) Nos.1938/2011 and 5421/2011 appointments through the LDCE is a mode of promotion. The necessary corollary, to our mind, is that the recruitment rules or guidelines for appointments which would apply to appointments through the LDCE, would have to be those which are applicable to appointment by promotions and not those which are applicable to appointment of direct recruit candidates.

13. The next question which arises is whether different medical standards have been prescribed by the Respondents for those selected through LDCE and those promoted to the rank of Sub Inspector from the feeder cadre in the same organization. Ms. Rekha Palli, learned counsel for the Petitioner contends that the same rules would apply to the existing force personnel who are elevated to a higher post regardless of the fact whether it was by promotion in due course or by fast track promotion by participating in the LDCE examination. She further contends that applying one yardstick to those who are promoted in the said post in due course from the post of Constable and a different yardstick to the candidates appointed through LDCE would yield absurd results. To illustrate her point, she submits that if any personnel is rendered unfit for promotion by the LDCE in which he has successfully participated on the ground of more stringent standards, the said personnel would, after a period of time and in due course become eligible for promotion in the regular course of events on account of less stringent standards applicable to appointment by promotion. Thus, the very same personnel at an older age would become eligible for promotion in due course to the same post for

which he has been earlier declared unfit after clearing LDCE and despite his being medically unfit.

14. Ms. Rekha Palli, learned counsel for the Petitioners heavily relied upon a Division Bench judgment of this Court in WP(C) No.5077/2008 titled Sudesh Kumar and Ors. Vs. Union of India and Ors.

as well as the connected writ petitions to substantiate her contentions. The relevant extracts of the judgment are as follows:

2. Sudesh Kumar, the writ petitioner of WP(C)5077/2008 joined service as a Constable (General Duty) with the Central Industrial Security Force on 19.4.2003. Indisputably, he was medically examined at the time of his initial entry in the service and was found fit. He was not detected with any colour blindness. At each annual medical examination he was found fully fit. Responding to an advertisement dated 19.3.2007 he sought career progression when he offered his candidature for being appointed as a Sub-Inspector (Executive) through a Limited Departmental Competitive Examination proposed to be conducted by the Department. He successfully cleared the written examination held on 27.5.2007 as also the physical examination conducted on 2.6.2007 as also the interview held on 29.6.2007. Required to undergo another medical examination, he was medically examined at the CISF Hospital, Saket, New Delhi on 5.7.2007 and on 6.7.2007 was communicated a rejection on ground of being unfit. The medical unfitness detected was:

Defective Colour Vision. He had a right to seek a Review Medical Board and for which he was supposed to file an Appeal annexing therewith an opinion of a competent doctor to the contrary. Since by July 2007, the Unit to which the petitioner was attached was transferred Thalchar (Orissa), he got himself medically examined from an Eye-Specialist at Angul (Orissa) and obtained a certificate as per which it was certified that the he had normal colour vision. He also got himself examined from the District Hospital, Moradabad where it was certified that his colour vision was normal. Armed with the 2 certificates he preferred an appeal to the Inspector General CISF and grievance raised in the writ petition is that his Appeal was not being disposed of. During arguments of the writ

petition filed by him, counsel stated that directions may be issued to CISF to convene a Review Medical Board with a panel of 3 doctors; all of whom should be Ophthalmologist with further direction that latest techniques available to detect colour blindness should be considered by the Board and applied at the medical examination. The response of CISF, as per counter affidavit filed, is that the Appeal filed has been rejected inasmuch as Sudesh Kumar has not complied with the requirements of filing the Appeal. Though not stated with clarity in the counter affidavit filed as to what was not complied with by Sudesh Kumar, during arguments, Dr.Ashwani Bhardwaj Advocate, stated that the requirement to be complied with was to have it recorded in the certificates obtained by Sudesh Kumar from the Civil Hospitals that he had informed the doctors concerned of being detected with colour blindness by the doctors of CISF, and since the certificates did not so record, the Appeal was rejected. It is asserted that this fact was communicated to Sudesh Kumar on 7.9.2007.

x x x x

41. . In this context we seek to highlight a very anomalous situation created by the respondents evidenced by the case of Sudesh Kumar, the writ petitioner of WP(C) No.5077/2008 who joined service as a Constable (General Duty) under CISF on 19.4.2003 and was not detected with colour blindness then nor at any subsequent medical examination, but is being denied the fruits of promotion as a Sub-Inspector (Executive) notwithstanding he having successfully cleared the written and physical examination as also the interview on the ground that on 5.7.2007 he was detected with a defective colour vision. What is the exact extent of the defective colour vision has not been brought out. But what is unexplainable is that as per CISF he can continue to work as a Constable (General Duty), but not earn a promotion as a SubInspector (Executive). We just do not see any rationale in the action taken. We also find absurdity in the stand taken by the CISF of not convening a Review Medical Board on the ground of the deficiency in the language of the certificates obtained by him from civil hospitals. Law is clear. Unless the language of a document is statutorily prescribed, as long as there is substantial compliance with the substance of an issue, the language of a document is immaterial. We find no justification for CISF not to subject him to a

Review Medical Board, but in the final view which we have taken, there may be no requirement of so doing.

15. We highlight the fact that the same situation as in Sudesh Kumar (supra) prevails in the instant case. A Constable who has undergone a laser surgery and is deemed fit to continue to work as a Constable (and even adjudged to be in Medical Shape-I) cannot be promoted through the LDCE to the post of Sub-Inspector with the same degree of medical fitness. Eventually, such a Constable having defective vision is also liable to be promoted in due course through the regular promotion channel to the post of Sub Inspector again with the same defect of medical fitness. This, to say the least, appears to us to be arbitrary and discriminatory qua those who are promoted through the LDCE.

16. In the aforesaid backdrop, it is deemed expedient to refer to the instructions issued by the Ministry of Home Affairs, Per-II vide its U.O. No.I-45023/1/2006-Pers-II (Part-III) dated 07.02.2008, which are stated to be uniform guidelines for all CPFs on the parameters to be checked during physical efficiency test and medical examination of qualified candidates CPOs (SI) examination - 2007 onwards conducted by SSC wherein head 17 of the said guidelines/parameters is as under:

17. The eyes EYE SIGHT a) Minimum distant vision should be 6/6 each eye or 6/6 in dominant or shooting eye (6/6 right eye in right handed person or 6/6 in Left eye in left handed person) and 6/9 in other eye (6/9 in Left in right handed person or 6/9 in right eye in left handed person) without any type of correction including contact lens or Corneal Laser Surgery. Each eye must have full field of vision as tested by hand movements. Any morbid conditions of the eyes or lids liable to aggravate or recur will be cause of rejection of the candidate. b) Squint of any degree will be cause for rejection. In a left handed individual, who shoots from the left shoulder, the visual standards for the two eyes will be reversed. Normally, a candidate should be able to close each eye separately.

17. The aforesaid guidelines/parameters are heavily relied upon by the Respondents to contend that though eventually the distant vision of the Petitioners was found 6/6 B.E. but they had undergone laser surgery of the eyes, hence were declared unfit by the Review Medical Board as per the aforesaid guidelines.

18. Per contra, learned counsel for the Petitioners urges that the aforesaid guidelines are applicable only in the case of direct recruitment and have no application to those candidates who are selected through the LDCE. In order to buttress her contention, learned counsel for the Petitioners has relied upon the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, 1999 as amended by the notification dated 28 th June, 2001 bearing G.S.R. 484(E). The relevant portion of the said rules are extracted hereinbelow:

2. In the Schedule to the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, 1999, against serial number 4 relating to the post of sub-Inspector (Executive), for the existing entry the following entry shall be substituted, namely:

SCHEDULE	Name of the Post	Number of posts							
1	SubInspector	2							
2	Classification of selection	pay -cum seniority or selection by merit							
3	4	W.P.(C) Nos.1938/2011 and 5421/2011							
5	Age limit for direct recruits	6							
6	Whether benefit of added years of service admissible under Rule 30 of CCS (Pension) Rules, 1972.	7							
7	Educational Qualification and physical standards for direct recruits	8							
8	Medical Standards : (Executive) Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees	9							
9	19. Distant Vision	Near Vision	Better eye	Worse eye	Corrected vision	Corrected Vision			
6/6	6/12	OR69	6/9	J-I	J-II	Note: (a) Candidates for appointment are required to pass colour vision test. (b) The candidates must not have flat feet or squint in eyes. They must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties. Period of probation if any			
10	Method of recruitment whether by direct recruitment or by deputation/ absorption and percentage of the posts to be filled by various methods	11	In case of recruitment by Promotion/ deputation/absorption grades from which promotion/ deputation/ absorption to be made	12	(ii) Promotion: From the amongst the Asstt.SubInspector (Executive) who have completed five years service in the rank, being in medical category SHAPE-I and have successfully completed promotion cadre course of Sub- Inspector/Executive before being declared fit for promotion. If a Departmental Promotion Committee exists, what is its composition	13	Circumstances in which Union Public Service Commission is to be consulted in making recruitment	14	From the aforesaid extract of the relevant rules, it is amply clear that in case of recruitment by promotion from the post of

Assistant Sub Inspector (Executive) to the post of Sub Inspector (Executive), the requirement is that he should have completed five years service in the rank being in Medical Category Shape-I and successfully completed promotion cadre course of Sub Inspector/Executive before being declared fit for promotion. It is also beyond cavil that Sub Inspectors, whether they are appointed by direct recruitment or promoted through promotions in due course or through LDCE perform identical functions and since CISF is a paramilitary force, indubitably the medical standards of personnel employed in the force must be of the highest order. This, however, would not afford justification to the Respondents to draw a distinction between those appointed to the post of Sub Inspector through LDCE and those appointed by regular promotion in due course to Sub Inspectors.

20. It is the admitted case of the parties that both the Petitioners are in Medical Category Shape-I and have never been found to be medically unfit in their Annual Medical Examination. It is also not in dispute that both have rendered satisfactory service in the force and there is no complaint of any nature pending against them. Both have also performed creditably in the LDCE. Adjudged by the parameters of medical fitness laid down for promotion to the post of Sub Inspector (Executive), both are qualified for the post as they have been adjudged to be in Medical Category Shape-I which is the requirement of the recruitment rules. As discussed by us hereinabove, there is no logic or rationale in the prescription of different medical standards for those recruited by regular promotion and those recruited through LDCE. Presumably for this reason, no separate medical standards have been laid down for those who are to be recruited through limited departmental examination. Accordingly, in our view, for the existing force personnel who apply for recruitment through the LDCE the medical shape category determined for the visual standard in the case of recruitment by promotion shall apply also to those who apply from the feeder cadre for promotion through competitive examinations. In view of the aforesaid, we hereby quash the findings of the Medical Board held on 06.01.2009 and the Review Medical Board held on 11.01.2011 in the case of W.P.(C) 5421/2011 titled Ravinder Lamba vs. Union of India and Ors.

. We also quash the findings of the Medical Board held on 19.11.2010 and the Review Medical Board held on 14.03.2011 in the case of W.P.(C) 1938/2011 titled

Ajay Pandey vs. Union of India and Ors.

. Resultantly, the Petitioners are held entitled to be promoted to the post of Sub Inspector (Executive) through the LDCE.

21. We note that the learned counsel for the Petitioners has fairly conceded that in view of the time lapse since the filing of the writ petition the Respondents would be within their rights to require the Petitioners to undergo fresh medical examination prior to their appointment. We are not informed as to whether the Petitioners still are in the Medical Category of Shape-I and accordingly we direct that the Respondents shall constitute a Board for the medical examination of the Petitioners afresh within four weeks from today, which shall take into consideration the cumulative facts set out in the present order. In case the Petitioners are found medically fit for appointment in terms of the present order, the Respondents shall issue the letters of appointment to the Petitioners for the post of Sub Inspector as expeditiously as possible and not later than six weeks from their medical examination. In case, however, the Petitioners for any reason are found medically unfit for appointment, the findings of the Medical Board shall be forthwith communicated to the Petitioners to enable them to take such measures as they may be advised to assail the same in accordance with law. The Petitioners shall be entitled to notional promotion with seniority upon their appointment which shall relate back to the date when other personnel who participated in the LDCE selection were appointed. We, however, clarify that there shall be no entitlement to back wages.

22. The writ petitions are allowed in the above terms and stand disposed of accordingly. REVA KHETRAPAL JUDGE PRATIBHA RANI JUDGE July 28, 2014  
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