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test on 23.09.1991, he was not found fit as the measurement of his chest was found to be ~~79~~ Cms. He made a representation to the Commissioner of Police, Delhi but the same was not maintainable.

3. It is also stated in the counter-affidavit that on 22.03.1991, the petitioner appeared and submitted an application alongwith medical certificate and prayed that he may be subjected to a fresh physical examination after expiry of a period of 15 days.

4. Annexure 'C' to the OA is a true copy of the certificate dated 20.09.1991 issued by Dr.J.M.Kapoor of the Shaili Nursing Home, Jhajjar (District Rohtak). According to this certificate, the petitioner was under the treatment of the said doctor with effect from 17.08.1991 to 20.09.1991 as he was suffering from chest pain, viral fever and had general weakness. In the opinion of the doctor, the petitioner required a rest for 15 days, i.e., upto 25.09.1991.

5. In the counter-affidavit, it is also alleged that a public announcement had been made that the final selection of Constables will take place after fresh medical examination. In the rejoinder-affidavit filed by the petitioner, this averment is denied. No explanation, much less a satisfactory explanation, has been offered for the postponement of the medical examination of the petitioner from 23.3.91 to 23.09.91. It appears to us that there is some force in the assertion made by the petitioner that immediately before 23.09.1991 he was not well. In our opinion, the authority concerned acted rather arbitrarily in refusing the request of the petitioner that his medical

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examination may be postponed for some time.

6. The question for consideration is as to what is the proper order to be passed in the circumstances of this case. Having considered the matter carefully, we are of the opinion that the petitioner should be given a fresh chance to appear in a medical test. To avoid all possible doubts, it will be fair if the petitioner is medically examined by a Doctor of a Government Hospital. The respondents shall, therefore, make arrangements for the re-measurement of the chest of the petitioner by a Doctor of a Government Hospital. They shall duly inform the petitioner of the date, time and the hospital where the re-measurement of his chest will be done. The doctor concerned shall remeasure the chest of the petitioner and thereafter submit his report. After receipt of the report, the respondents shall act strictly in accordance with the same.

7. In the counter-affidavit, a plea of limitation has been raised. It is asserted that the petitioner having been informed that he was found medically unfit on 23.9.1991 and this OA having been presented in this Tribunal on 28.11.1992 is barred by time. In the counter-affidavit, it is accepted that the petitioner had made a representation on 23.12.1991. However, the stand taken is that it was not permissible to make such a representation. We are not impressed with

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this defence. The petitioner had made a representation and, therefore, he was entitled to wait for a period of six months from the date of the making of the same. Therefore, it can be safely held that this OA had been filed within the time.

8. With these directions, this OA is disposed of finally but without any order as to costs.

P. J. *De*

(P.T. THIRUVENGADAM)
MEMBER(A)

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(S.K. DHAON)
VICE-CHAIRMAN

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