

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**OA NO.1813/2015
WITH
OA NO.1814/2015
OA NO.1816/2015
OA NO.1819/2015
OA NO.1820/2015
OA NO.1831/2015
&
OA NO.2081/2015**

Orders reserved on 17.01.2017
Common order pronounced on 24.01.2017

HON'BLE SHRI P.K. BASU, MEMBER (A)
HON'BLE DR B. A. AGRAWAL, MEMBER (J)

OA NO.1813/2015

Indra Singh Jakhar, aged about 27 years,
S/o Shri Chandra Ram,
R/o Village Nangal (Nathusar),
Tehsil Sri Madhopur,
Distt. Sikar, Rajasthan-332712.
(Candidate towards the post of Constable
(Driver) in Delhi Police).

...Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Commissioner of Police,
PHQ, MSO Building,
IP Estate, New Delhi.
2. Deputy Commissioner of Police
(Recruitment Cell),
New Police Lines,
Kingsway Camp, Delhi.
3. Additional Deputy Commissioner of
Police (Recruitment Cell),
New Police Lines,
Kingsway Camp, Delhi.

...Respondents

(By Advocate: Mr. Amit Anand)

OA NO.1814/2015

Ashish Kumar, aged about 29 years,
 S/o Shri Chandrahash,
 R/o V & PO Beejwad- Chouhan,
 Tehsil Mundwar, Dist. Alwar,
 Rajasthan-301401.
 (Candidate towards the post of Constable
 (Driver) in Delhi Police).

...Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Commissioner of Police,
 PHQ, MSO Building,
 IP Estate, New Delhi.
2. Deputy Commissioner of Police
 (Recruitment Cell),
 New Police Lines,
 Kingsway Camp, Delhi.
3. Additional Deputy Commissioner of
 Police (Recruitment Cell),
 New Police Lines,
 Kingsway Camp, Delhi.

...Respondents

(By Advocate: Mr. K.M. Singh)

OA NO.1816/2015

Somveer, aged about 25 years,
 S/o Shri Surender Singh,
 R/o V & PO Bhainsru Khurd,
 Tehsil Sampla, Dist. Rohtak,
 Haryana-124501.
 (Candidate towards the post of Constable
 (Driver) in Delhi Police).

...Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Commissioner of Police,

PHQ, MSO Building,
IP Estate, New Delhi.

2. Deputy Commissioner of Police
(Recruitment Cell),
New Police Lines,
Kingsway Camp, Delhi.
3. Additional Deputy Commissioner of
Police (Recruitment Cell),
New Police Lines,
Kingsway Camp, Delhi.

...Respondents

(By Advocate: Mr. B.N.P. Pathak)

OA NO.1819/2015

Anil Kumar, aged about 28 years,
S/o Shri Hajari Lal,
R/o V & PO Talwana,
Tehsil Behror, Dist. Alwar,
Rajasthan-301703.
(Candidate towards the post of Constable
(Driver) in Delhi Police).

...Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Commissioner of Police,
PHQ, MSO Building,
IP Estate, New Delhi.
2. Deputy Commissioner of Police
(Recruitment Cell),
New Police Lines,
Kingsway Camp, Delhi.
3. Additional Deputy Commissioner of
Police (Recruitment Cell),
New Police Lines,
Kingsway Camp, Delhi.

...Respondents

(By Advocate: Mr. Vijay Kumar Pandita)

OA NO.1820/2015

Bhupender Kumar, aged about 29 years,

S/o Shri Manohar Lal Sharma,
 R/o V & PO Talwana,
 Tehsil Behror, Dist. Alwar,
 Rajasthan-301703.
 (Candidate towards the post of Constable
 (Driver) in Delhi Police).

...Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Commissioner of Police,
 PHQ, MSO Building,
 IP Estate, New Delhi.
2. Deputy Commissioner of Police
 (Recruitment Cell),
 New Police Lines,
 Kingsway Camp, Delhi.
3. Additional Deputy Commissioner of
 Police (Recruitment Cell),
 New Police Lines,
 Kingsway Camp, Delhi.

...Respondents

(By Advocate: Ms. Sangita Rai)

OA NO.1831/2015

Shri Krishna, aged about 27 years,
 S/o Shri Videshi,
 R/o V & PO Piparsandi,
 PS Belghat, Distt. Gorakhpur,
 Uttar Pradesh-273404.
 (Candidate towards the post of Constable
 (Driver) in Delhi Police).

...Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Commissioner of Police,
 PHQ, MSO Building,
 IP Estate, New Delhi.

2. Deputy Commissioner of Police
(Recruitment Cell),
New Police Lines,
Kingsway Camp, Delhi.
3. Additional Deputy Commissioner of
Police (Recruitment Cell),
New Police Lines,
Kingsway Camp, Delhi.

...Respondents

(By Advocate: Ms. Harvinder Oberoi)

OA NO.2081/2015

Munshee Lal Yadav, aged about 26 years,
S/o Shri Vijay Singh,
R/o Village Gugaria Post Basai,
Tehsil Behror, Distt. Alwar,
Rajasthan-301707.
(Candidate towards the post of Constable
(Driver) in Delhi Police).

...Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Commissioner of Police,
PHQ, MSO Building,
IP Estate, New Delhi.
2. Deputy Commissioner of Police
(Recruitment Cell),
New Police Lines,
Kingsway Camp, Delhi.
3. Additional Deputy Commissioner of
Police (Recruitment Cell),
New Police Lines,
Kingsway Camp, Delhi.

...Respondents

(By Advocate: Ms. Rashmi Chopra)

:ORDER:**DR BRAHM AVTAR AGRAWAL, MEMBER (J):**

The above seven OAs have been heard together and are being disposed of by this common Order, as they, though slightly different on facts, involve same question of law.

2.1 The applicants are aspirants for the post of 'Constable (Driver) Male' in Delhi Police and participated in 2012 recruitment exam. They could not make it solely for the reason that they were declared medically unfit not only in the initial medical examination at different Govt. Hospitals in Delhi but also in the appellate medical examination at Aruna Asaf Ali Govt. Hospital, Delhi.

2.2 The medical conditions stated in the respective certificates are given below:

Sl No.	OA No.	Medical Condition
(i)	1813/2015	B/L Genu Varum
(ii)	1814/2015	Amputation through Distal Phalanx (Lt) Middle Finger
(iii)	1816/2015	B/L Tibia Vara
(iv)	1819/2015	B/L Genu Varum
(v)	1820/2015	B/L Flat Feet
(vi)	1831/2015	Fixed Flexion Deformity (Rt) Elbow
(vii)	2081/2015	Amputation of Distal Phalax (Rt) Index, Middle and Ring Finger

2.3 The stock appellate medical certificates read:

"He is Unfit due to(medical condition) as opined by Board of Concerned Speciality on 4.2.2015 for this assigned Post." (vide, e.g., page 30 in the OA No.1820/2015).

2.4 Similar Show Cause Notices were issued to the applicants and the one dated 30.03.2015 (Annexure A-2) in the OA No.1820/2015 is reproduced hereinunder:

"Subject: Recruitment to the post of Constable (Driver) Male in Delhi Police-2012 –regarding issue of show cause notice.

Memo.

You candidate Shri Bhupender Kumar, Roll No.803845 were selected provisionally for the post of Constable (Driver) Male in Delhi Police-2012, subject to medical fitness, verification of character & antecedents and final checking of documents etc.

You appeared for your initial medical examination at Lal Bahadur Shastri Hospital and were declared unfit on account of "B/L flat feet". Accordingly, you were informed vide this office memo No.321-349/R.Cell (R-I)/Const. dated 28.01.2014 through Regd. AD about your medical unfitness by the board and also that you can prefer an appeal for your re-medical examination by a Special Medical Board. Your appeal was received on 13.02.2014 for your re-medical examination. On your appeal a Special Medical Board was constituted at Aruna Asaf Ali Govt. Hospital, Delhi for your re-medical examination. You were medically examined by Special Medical Board, Aruna Asaf Ali Govt. Hospital and you were declared unfit on account of "B/L flat feet" during the re-medical examination. As per eligibility criteria for the post of Constable (Driver) Male in Delhi Police, the candidate should be no malformation, deficiency or defect of any essential part and should be perfect motion in every joint and good physical development power, but you have not been found medically fit for the post of Constable (Driver) Male in Delhi Police on the basis of the medical reports of Government Hospitals – Lal Bahadur Shastri Hospital and Aruna Asaf Ali Govt. Hospital, Delhi.

Therefore, you are hereby called upon to show cause as to why your candidature for the post of Constable (Driver) in Delhi Police-2012 should not be cancelled for the reasons mentioned above. Your reply, if any, should reach this office within 15 days from the date of receipt of this notice, failing which it will be presumed that you have nothing to say in your defense and the case will be decided ex-parte on its merit."

(sic)

2.5 Followed the impugned order dated 29.04.2015 (Annexure A-1) in the said OA, which reads as under:

"Subject: Recruitment to the post of Constable (Driver) Male in Delhi Police-2012 (Cancellation of candidature – regarding).

Memo.

You candidate Shri Bhupender Kumar S/o Shri Manohar Lal Sharma had applied for the post of Constable (Driver) Male in Delhi Police-2012 and selected provisionally against Roll No.803845, subject to medical fitness, verification of character & antecedents and final checking of documents etc.

You appeared for your initial medical examination at Lal Bahadur Shastri Hospital and were declared unfit on account of "B/L flat feet". Accordingly, you were informed vide this office memo No.321-349/R.Cell (R-I)/Const. dated 28.01.2014 through Regd. AD about your medical unfitness by the board and also that you can prefer an appeal for your re-medical examination by a Special Medical Board. Your appeal was received on 13.02.2014 for your re-medical examination. On your appeal a Special Medical Board was constituted at Aruna Asaf Ali Govt. Hospital, Delhi for your re-medical examination. You were medically examined by Special Medical Board, Aruna Asaf Ali Govt. Hospital and you were declared unfit on account of "B/L flat feet" during the re-medical examination. As per eligibility criteria for the post of Constable (Driver) Male in Delhi Police, the candidate should be no malformation, deficiency or defect of any essential part and should be perfect motion in every joint and good physical development power, but you have not been found medically fit for the post of Constable (Driver) Male in Delhi Police on the basis of the medical reports of Government Hospitals – Lal Bahadur Shastri Hospital and Aruna Asaf Ali Govt. Hospital, Delhi. Accordingly, your case was examined and you were issued a show cause notice vide this office memo No.3073/R.Cell (R-VI)/NPL dated 30.03.2015 through Regd. Post, as to why your candidature for the post of Constable (Driver) Male in Delhi Police-2012 should not be cancelled for the reasons mentioned therein by giving 15 days time, failing which it would be presumed that you have nothing to say in your defense and the case will be decided ex-parte on its merit. You failed to submit your reply to show cause notice within the stipulated period. Therefore, the show cause notice is decided ex-parte and your candidature for the post of Constable (Driver) Male in Delhi Police-2012 is hereby cancelled with immediate effect."

(sic)

2.6 The applicants through their respective OAs pray that the impugned order dated 29.04.2015 (Annexure A-1) and the SCN dated 30.03.2015 (Annexure A-2) be quashed, that the

respondents be directed to appoint the applicants on the aforesaid post with all consequential benefits and that, if need be, they be subjected to a fresh medical examination towards functional requirements of the post in question at any premier hospital of the Govt. like AIIMS etc.

3. We have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given our thoughtful consideration to the matter.

4.1 Rules 9 (v) (e) and 24 of the Delhi Police (Appointment and Recruitment) Rules 1980 read as under:

Rule 9 (v) (e)

“(v) Physical, educational, age and other standards for recruitment to the rank of constables shall be as under:-

...

“(e) Physical standard	Sound state of health, free from defect/deformity disease, vision 6/12 without glasses both eyes, free from colour blindness.”	No relaxation permissible
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Rule 24

“**Medical examination of candidates.** – (1) Before enrolment, every candidate shall be medically examined and certified physically fit for police service by the police surgeon or medical officer appointed by the Commissioner of Police. A certificate, in forms ‘D’ ‘E’ duly signed by the medical officer, is essential for enrolment. Before his medical examination the candidates shall be required to give a declaration in form ‘C’ in the presence of the medical officer such declaration being a precondition for enrolment. The candidates declared medically unfit shall be informed, in writing, of the reasons of unfitness.

(2) The medical examination shall be conducted in accordance with the instructions contained in Appendix-XXX. The medical officer shall test the eye sight, speech and hearing of the candidate, his freedom from physical defects, organic or contagious

disease, his age or any other defects or tendency likely to render him unfit for police service. Candidate shall be rejected for any disease or defect likely to render them unfit for the duties of a police officer at any stage.

(3) The appointing authorities may themselves reject candidates whose general standards of physique and intelligence are not satisfactory. Only those candidates shall be sent for medical examination who measure upto the requisite physical standards."

... ."

4.2 The aforesaid Appendix contains points to be observed by Medical Officers in examining candidates for recruitment to the Delhi Police and its paragraph (k) reads as under:

"The medical officer will reject a recruit for any **disease or defect which is likely to render him unfit for the duties of the particular branch of the service** in which he is desirous of being enrolled.

Note:- The following points should not be overlooked:-

...

(v) Loss or deformity of fingers, flat feet, hanner toes with painful coms or bursae on the dersum of toes. Halux valgus, halux rigidus, knock-knee, deformity of chest and joints, abnormal curvature of the spine.

...

Slight curvature of leg, is however, to be treated as normal and should not lead to unnecessary rejection."

(highlighted for emphasis)

5. The gravamen of the arguments advanced by Shri Ajesh Luthra, learned counsel for the applicants, is that while rejecting the candidates, there has been given no finding that the particular disease or defect rendered the candidate concerned unfit for the duties of the post in question, i.e., his functional disability, and that third medical examination could be done on

payment of fee by the candidate (vide 'Swamy's Complete Manual on Establishment and Administration for Central Government Officers', 14th ed., 2014, page 276). He has also submitted that perhaps the concerned Medical Boards were not aware of the duties of the post and in view of the fact that the candidates had already qualified the driving test, it was essential to consider them with reference to their functional ability.

6. It has been contended by the learned counsel for the respondents that there is no provision for a third medical examination, and that the applicants failed in strict medical parameters and, therefore, declared "unfit".

7. We may now take note of the following observations of the Hon'ble Supreme Court in **ICAR & Anr. Vs. Smt. Shashi Gupta**, AIR 1994 SC 1241 :

"We do not agree with the reasoning and the conclusions reached by the tribunal. We are of the view that once the medical board and the Appellate Medical Board found the respondent medically unfit for the post of Scientist Grade S the tribunal had no jurisdiction whatsoever to have got over the medical opinions and directed her appointment to the Service. The Tribunal out-stepped its jurisdiction and acted with an utter perversity. Medical fitness is the sine qua non for appointment to public services. It is the inherent right of an employer to be satisfied about the medical fitness of a person before offering employment to him/her."

8. The crucial question in these cases is as to whether the applicants were considered as to their medical fitness vis-à-vis the post in question, i.e., keeping in view the functional requirements of the post. The medical certificates do not inspire

conviction that functional ability of the candidates was properly considered and reported upon.

9. In this light of the matter, we are of the view that the OAs deserve to partly succeed. We are not directing a third medical examination. However, the appellate medical examination at Aruna Asaf Ali Govt. Hospital, Delhi should be held afresh and the candidates considered also keeping in view the functional requirements of the post in question. This shall be done within one month from the date of receipt of a copy of this Order. Consequences, either way, will follow.

10. The OAs are disposed of with the above directions. No order as to costs.

(DR B.A. AGRAWAL)
MEMBER (J)

(P.K. BASU)
MEMBER (A)

/jk/