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

% ***Date of decision: 28.10.2022***

+ W.P.(C) 14613/2022

NEHA

..... Petitioner

Through: Mr. O.P. Agarwal & Mr. Sansar
Kumar, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Mr.
Vinod Tiwari (GP) & Ms. Priya
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT (oral)

1. The petitioner before us, vide the present writ petition, is seeking the following reliefs:

“(a) Issue a writ of mandamus or any other appropriate Writ, Order or direction setting aside the result of Review Medical Examination of the Petitioner for the post of Head Constable (General Duty), CISF and all subsequent acts/proceedings for selection and appointment to the post of Head Constable (General Duty), CISF pursuant to Notification No. DAVP 19113/11/0005/2122 conducted by Respondent No. 2;

(b) Direct the Respondent No. 2 to conduct the Re-medical of the Petitioner and possible recommendation be made accordingly;”

2. When the present petition was listed on 17.10.2022 for the first time,

this Court issued Notice and directed the learned counsel for respondents, appearing on advance notice, to apprise this Court on the next of hearing as to whether any candidate has been selected in the '81 kg above' category in Boxing and also provide a list of candidates who have cleared the Medical Examination in the said category. Today, although the learned counsel for respondents submits that an affidavit in compliance thereof has been filed but the same is not on record. However, the concerned officials connected with the issue involved, who are present in Court, have handed over a photocopy of the affidavit across the Board for our perusal. We have gone through and kept the same for our perusal.

3. As per the facts pleaded, the petitioner, a boxer, claims to have participated and won many medals in various events in weight category ranging from 81-85 kgs. The respondent no.2-Deputy General, Central Industrial Security Force¹ issued a Notification no. DAVP 19113/11/0005/2122 dated 01.01.2022 inviting applications for the post of Head Constable (General Duty) in CISF against Sports quota for the year 2021 in different disciplines including Boxing for 10 different weight categories for 'Women' ranging from 48kg to 81kg above with only 01 vacancy in each of the said categories. The petitioner applied for the said post in the '81kg above' category through proper channel and after issuance of Admit Card, was called for sports trial on 28.06.2022 at the CISF Unit IOC Guwahati, Post-Noonmati, Guwahati, Assam. As such, the petitioner went and participated in the said trial.

¹ Hereinafter referred as "CISF"

4. The respondents then issued a list of 'provisionally selected candidates' on 28.06.2022 itself including the name of petitioner and called her for medical examination on 08.08.2022 at CISF Unit SSG Greater Noida, Post-Surajpur, Gautam Budh Nagar, Uttar Pradesh. The petitioner appeared for the same wherein she was declared *medically unfit* for the reason "*Obesity (Ht. 168 cm, Wt.-89 kg, BMI-31.52kg/m³)*". Resultantly, the petitioner applied for a Review Medical Examination² within 24 hrs as per Clause 7(f)(vi) of the above-noted Notification. Though the said RME was to be conducted on 10.08.2022, however, due to paucity of time, the same was deferred for 18.08.2022, on which date, the petitioner was again declared *medically unfit* for the same reason i.e., "*Obesity (Ht. 168 cms, Wt.-82 kg, BMI-29.05kg/m³)*".

5. Hence the present writ petition for the foregoing reliefs claiming that there was no specific mention in the above-stated Notification that Body Mass Index³ can be one of the reasons for rejection by respondents and further that the action of the respondents was arbitrary as obesity is not a permanent or incurable illness.

6. It is not disputed that the petitioner has been declared *medically unfit* twice for the same reason, initially when she appeared for the medical examination and then again when she appeared for the RME. Learned counsel for the petitioner claims that the petitioner, being a Boxer, comes from a sports background where everything depends upon fitness, especially as Boxing is a weight related sport. The concerned officials of respondents present in Court today on the other hand submit that the determining factor

² Hereinafter referred as "RME"

³ Hereinafter referred as "BMI"

for selection of any candidate in the Sports category like Boxing in CISF is the BMI, which according to them has to be between 20-25kg/m³ and certainly not more. In the present case, though the petitioner was falling in the '81kg above' category but her BMI on both occasions was found to be 31.52 kg/m³ and 29.05 kg/m³ i.e. more than the minimum level of BMI as per the standards maintained. In fact, merely being in the weight category in a sport like Boxing is not sufficient as the determining factors are the BMI ratio and that the person is in 'shape'.

7. By this petition, the petitioner is asking this court to go beyond the scope of *Article 226* of The Constitution of India as setting or adjudging the parameters for medical fitness/selection of someone in the Sports category by an Authority, especially by the Armed Forces and the Para Military Forces like CISF⁴, does not fall in the domain of a Court. We are afraid, this Court is not competent to do so, largely as such Forces require and indeed follow maintenance of different, if not high, standards.

8. This Court sitting under writ jurisdiction is not to judge the manner followed or comment upon the eligibility criteria adopted by the respondents as that would tantamount to treading upon an unfamiliar path. According to us, it is too far-fetched for this Court to try to or indeed cross the boundaries to charter into inaccessible lands without any knowledge or instructions in that regard. This Court, thus, refrains from commenting anything upon the policy adopted or the rules and regulations followed or, much less, the procedure followed by the respondents. The Forces are the best judges to set their own standards for selection as per their own discretion, which

⁴ Hereinafter referred as "Forces"

generally merits no interference by a Court of law, save and unless, in case of some grave exceptional circumstances. The present case, is not a case involving any such grave exceptional circumstances as there are no allegations of bias, malafide, non-adherence to principles of natural justice or alike levelled by the petitioner against the respondents or anyone in/ from the respondents.

9. No doubt, there was no specific mention in the above-stated Notification of the BMI being one of the reasons for rejection by respondents, but that, in our view, does not make any difference as what is required to be stated are the minimum requisites/ qualifications for determining the eligibility of a candidate and not the manner/ procedure to be followed. Also, we find nothing arbitrary in the actions taken by the respondents as they were diligently following the set-out eligibility criteria in the Notification and what was followed by the CISF for all candidates by confining themselves within the four corners of a room. The CISF did not follow any pick and choose policy or discriminated the petitioner against the other candidates. The same is evident from the fact that even today, the concerned representatives of CISF present in Court have apprised us that the post for which the petitioner had applied is still vacant and is yet to be filled.

10. Further, as rightly claimed by the petitioner that obesity is not a permanent illness which is incurable, surely the petitioner shall have many more opportunities to qualify for the said post of Head Constable (General Duty) with any of the Forces in the coming years when she will be falling within the requisite parameters.

11. Accordingly, this writ petition does not fall within the scope of *Article 226* of The Constitution of India. In view thereof, this petition, thus, does

not call for issuance of any direction/ order/ writ in favour of the petitioner and against the respondents.

12. The present writ petition is accordingly dismissed without proceeding any further.

**(SURESH KUMAR KAIT)
JUDGE**

OCTOBER 28, 2022/ab

**(SAURABH BANERJEE)
JUDGE**

