

**A.F.R.**  
**Reserved**

**Case :-** WRIT - A No. - 5049 of 2020

**Petitioner :-** Rupesh Kumar

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Avneesh Tripathi, Kranti Kiran Pandey

**Counsel for Respondent :-** A.S.G.I.

Connected With

**Case :-** WRIT - A No. - 5181 of 2020

**Petitioner :-** Chandan Kumar

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Avneesh Tripathi, Kranti Kiran Pandey

**Counsel for Respondent :-** A.S.G.I., Amrish Sahai

Connected With

**Case :-** WRIT - A No. - 5558 of 2020

**Petitioner :-** Varun Kumar

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Kranti Kiran Pandey, Avneesh Tripathi

**Counsel for Respondent :-** A.S.G.I., Om Prakash Srivastava

Connected With

**Case :-** WRIT - A No. - 5654 of 2020

**Petitioner :-** Bikas Kumar Sah

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Kranti Kiran Pandey, Avneesh Tripathi

**Counsel for Respondent :-** A.S.G.I., N. K. Chatterjee, Narendra Kumar Chatterjee

**Hon'ble Manoj Kumar Gupta, J.**

This batch of writ petitions raises common questions of facts and law and with consent of learned counsel for the parties, the petitions were heard together and are being decided by this common judgement.

The petitioners had appeared in the recruitment for the post of Constables (GD) in CAPFs, NIA, SSF and Rifleman (GD) in Assam Rifles Examination, 2018. Under the recruitment scheme, the candidates were to apply online. It was mandatory to indicate in the online application form Centre from where the candidate desires to

take examination. The petitioners accordingly applied online and in their application form, they preferred to appear from Centres located in the State of Bihar. This was apparently for the reason that all the petitioners are domicile of the State of Bihar. The job of holding a computer based examination for shortlisting the candidates was assigned to the Staff Selection Commission. Under Clause 8 of the Recruitment Scheme, the entire State of Bihar and Uttar Pradesh fell under the jurisdiction of the Central Region of the Staff Selection Commission. It is clear from the document filed as Annexure RA-1 to Writ Petition No.5049 of 2020 that the Central Region fell under the jurisdiction of the Regional Office of the Staff Selection Commission, Allahabad (Prayagraj). The petitioners appeared in the computer based examination from different centres located in the State of Bihar. The respondents shortlisted the candidates for next stage of recruitment based on the scores in the computer based examination. The petitioners were successful in proceeding to the next stage i.e. physical efficiency test/physical standard test. Those candidates who were successful in clearing these stages were shortlisted for detailed medical examination. The petitioners being successful therein were called for detailed medical examination by a medical board. The petitioners duly got themselves medically examined by the medical board. However, all of them were informed by the Chief Medical Officer (SG)/Commandant that they were found unfit due to various reasons and if they wish to challenge the findings of medical examination, it was open to them to apply for review medical examination in enclosed Form No.2 alongwith demand draft of Rs.25. The application should be accompanied by medical certificate from medical practitioner (specialist medical officer of Government

District Hospital and above) as per Form No.3. All the petitioners applied for review medical examination alongwith fitness certificate of medical practitioners from Government hospitals. All the appeals have been rejected on identical ground “medical fitness certificate of concerned field specialist not attached”. Aggrieved by the stand taken by the respondents in declining to entertain their appeal for review medical examination, the present batch of petitions has been filed. The petitioners have sought quashing of the communication informing them that their appeal for review medical examination could not be entertained for the above reason and have also prayed for a mandamus commanding the respondents to conduct their review medical examination.

Learned counsel for Union of India raised a preliminary objection to the effect that this Court lacks territorial jurisdiction to entertain these petitions. It was urged that no part of cause of action has arisen within the territorial limits of this Court. The petitioners are residents of the State of Bihar; they appeared in the computer based examination from centres located in the State of Bihar; their physical standard test and physical efficiency test were also held at various centres situated in the State of Bihar; their detailed medical examination was held at CRPF Mokama Ghat, Group Centre, CRPF, Mokama Ghat, District Patna, Bihar and consequently, the Patna High Court alone will have jurisdiction in the matter.

On the other hand, Shri Avneesh Tripathi, learned counsel for the petitioners submitted that since the petitioners had participated in the recruitment exercise held at various centres in the State of Bihar and consequently, the courts/tribunals having jurisdiction over the place of concerned Regional Office of the Commission i.e. the office of the Staff Selection Commission at Allahabad

(Prayagraj) alone will have jurisdiction in the matter as contemplated by Clause 15 of the Recruitment Scheme. Clause 15 is extracted below:-

*“15. COURTS JURISDICTION*

*Any dispute in regard to this recruitment will be subject to courts/tribunals having jurisdiction over the place of concerned Regional/Sub-Regional Office of the Commission where the candidate has appeared for the Computer Based Examination.”*

In rejoinder, learned counsel for the Union of India placed reliance on salient feature number nine of the Recruitment Scheme, which reads as follows:-

*“(ix) Court cases/RTI/Public Grievances relating to Notice of Examination, conduct of Computer Based Examination, preparation of merit list and force allocation of selected candidates will be handled by SCC and those relating to all other issues i.e. Scheme of examination, vacancies, conduct of PET/PST, DME/RME, Document Verification etc. will be handled by coordinating CAPFs/MHA.”*

He submitted that since the Staff Selection Commission was entrusted with the work of conducting computer based examination, preparation of merit list and force allocation of selected candidates, while all other issues were handled by coordinating CAPFs/MHA, therefore, it was the State of Bihar where other stages of recruitment were held, with which the petitioners feel aggrieved, which would determine the jurisdiction in the matter.

A plain reading of Clause 15 of the Recruitment Scheme, which defines courts jurisdiction, reveals that any dispute in regard to the recruitment is subject to Courts/Tribunals having jurisdiction over the place of concerned Regional/Sub-regional office of the

Commission from where the candidate had appeared for the computer based examination. Indisputably, the petitioners appeared in the computer based examination from different centres located in the State of Bihar. The Regional Office of the Staff Selection Commission situated at Allahabad (Prayagraj) exercised jurisdiction over these centres located in the State of Bihar. In this regard, it is worthwhile to extract the relevant part of Clause 8 of the Recruitment Scheme:-

*“8. Centres of Examination:*

*A candidate must indicate the Centre(s) in the online Application Form in which he/she desires to take the examination. Details about the Examination Centres and Regional Offices under whose jurisdiction these Examination Centres are located are as follows:*

<i>S.No.</i>	<i>Examination Centres &amp; Centre Code</i>	<i>SCC Region and States/UTs under the jurisdiction of the Region</i>	<i>Address of the Regional Offices/Website</i>
<i>1.</i>	<i>Agra (3001), Allahabad (3003), Bareilly (3005), Gorakhpur (3007), Kanpur (3009), Lucknow (3010), Meerut (3011), Varanasi (3013), Bhagalpur (3201), Muzaffarpur (3205), Patna (3206)</i>	<i>Central Region (CR)/ Bihar and Uttar Pradesh</i>	<i>Regional Director (CR), Staff Selection Commission, 21-23 Lowther Road, Allahabad, Uttar Pradesh-211002. (<a href="https://www.ssc-cr.org">https://www.ssc-cr.org</a>)</i>

No doubt, under the scheme of recruitment, the conduct of computer based examination, preparation of merit list and force allocation of selected candidates was handled by the Staff Selection Commission, while other functions were performed by CAPFS/

MHA but Clause 15 of the advertisement which defines courts jurisdiction does not make any distinction based on the stages of recruitment or allocation of different functions to different bodies. The phrase “any dispute in regard to this recruitment” is wide enough to take within its purview disputes pertaining to all stages of recruitment irrespective of the body entrusted with conducting or holding any particular stage of recruitment. Resultantly, the submission based on division of functions amongst different bodies in conducting different stages of recruitment has no force nor the submission based on it relating to ouster of this Court's jurisdiction.

Reverting to the merits of the case, the short question which arises for consideration is whether the stand taken by the respondents in refusing to accept the appeal for holding review medical examination is legally sustainable or not. As noted above, the refusal to entertain appeals in all the cases was on analogous ground that the medical fitness certificate enclosed with the appeal was not by the concerned field specialist.

It is not in dispute that all the petitioners had alongwith their appeal annexed medical certificates issued in prescribed Form 3 by the doctors of the government hospitals. The certificate specifically states that the issuing authority (Doctor) was aware of the fact that the candidate had been rejected by the Medical Board of the respondent. The certificate also mentions that in the opinion of the issuing authority (Doctor) there was possibility of an error of judgment on part of the Medical Board which examined the candidate in the first instance. The details of the certificates furnished by the petitioner are as follows: -

**Writ Petition No.5049 of 2020 Rupesh Kumar Vs. Union of India and others:**

The petitioner was declared medically unfit on the ground that he was suffering from hypertension and overweight. The petitioner filed certificate issued by Dr. Syed Naushad Ahmad, MBBS, MS certifying that he examined the petitioner and did not find him suffering from any such disease. He held the post of Deputy Superintendent, Sadar Hospital, Jamui and issued the certificate being the medical officer of the concerned government Hospital.

**Writ Petition No.5558 of 2020 Varun Kumar Vs. Union of India and others:**

The petitioner was declared suffering from defective distant vision, bow legs, B/L tecticular swelling and hemorrhoids. The petitioner got his eyes tested by Dr. Thanish Kumar of Sadar Hospital, Jamui. He issued a certificate to the effect that his distant vision is 6/6. He also got himself examined by Dr. Rajiv Anand, MS Orthopaedics, Associate Professor, Department of Orthopaedics, Patna Medical College, who certified that the petitioner was not suffering from bowlegs and the error of judgement was due to X-ray values. The petitioner also annexed X-ray report of knee joint B/L.. The Radiologist certified that the study of knee joint reveals that it is normal in density and alignment. He also annexed medical certificate in Form 3 issued by Syed Naushad Ahmad, Deputy Superintendent, Sadar Hospital, Jamui mentioning that the petitioner does not suffer from any of the ailments/defects on account of which he was declared medically unfit. The qualification of Dr. Syed Naushad Ahmad, Deputy Superintendent is MBBS, MS.



**Writ Petition No.5181 of 2020 Chandan Kumar Vs. Union of India:**

The petitioner was declared medically unfit for the reason that he was suffering from chronic skin infection of the gluteal region. The petitioner got himself examined at Patna Medical College by Dr. Pankaj Kumar Tiwari, Associate Professor in the Department of Skin, Venereal and Leprosy. He did not find him suffering from any such infection. Based on his report, Dr. Syed Naushad, Deputy Superintendent, Sadar Hospital, Jamui issued medical certificate in Form 3 certifying that the petitioner does not suffer from any such infection.

**Writ Petition No.5654 of 2020 Bikas Kumar Sah Vs. Union of India and others:**

The petitioner was declared medically unfit on the ground that he was suffering from BN nasal polyp and High BP Tachycardia. The petitioner got himself examined by Dr. Dharendra Prasad Singh, MBBS, MS, ENT Specialist in Sadar Hospital, Jamui. The petitioner also got himself examined by Dr. Syed Naushad Ahmad, MBBS, MS. He certified that the petitioner does not suffer from High BP Tachycardia and that there was an error of judgement.

The provision of review medical examination is contained in Clause 9E of the Recruitment Scheme, which is reproduced below for ready reference:-

*“Review Medical Examination (RME): Ordinarily there is no right of appeal against the findings of the Recruiting Medical Officer or Initial Medical Examination. If any Medical Certificate is produced by a candidate as a piece of evidence about the possibility of an error or judgment in the decision of Initial Medical Board/ Recruiting Medical Officer, who had examined him/her in the first instance i.e. DME, an appeal can be accepted. Such Medical Certificate will not be taken*



*into consideration unless it contains a note by the Medical Officer from Government District Hospital or above along with registration no. given by MCI/State Medical Council, to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected and declared unfit for service by CAPF Medical Board, or the recruiting medical officer. If the appeal of a candidate is accepted by CAPF Appellate Authority, his/her Review Medical Examination will be conducted by CAPF RME Board. The decision of the CAPF's Review Medical Boards will be final. No appeal will be entertained against the finding of the second medical i.e. Review Medical Examination.”*

The essential ingredients of Clause 9E can be summarised thus:-

- A- Candidate preferring appeal had to produce Medical Certificate as a piece of evidence about the possibility of an error of judgment in the decision of Initial Medical Board/Recruiting Medical Officer, who had examined the candidate in the first instance.
- B- Such medical certificate would be taken into consideration only if it contains a note by the medical officer from Government District Hospital or above along with registration number given by MCI/State Medical Council, to the effect that it has been given in full knowledge of the fact that the candidate had already been rejected and declared unfit for service by CAPF Medical Board, or the recruiting medical officer.
- C- If the appeal of a candidate is accepted by CAPF Appellate Authority, the candidate's review medical examination will be conducted by CAPF RME Board.
- D- The decision of the review medical board would be final.

The above provision only contemplates that the medical certificate to be annexed with the appeal should be by the medical officer from Government District Hospital or above. It does not mention that the medical officer issuing the certificate should be a specialist in the field. However, in the communication sent to the petitioners informing them that they had been declared medically unfit, it was mentioned that in the event they apply for a review medical examination, they were required to submit medical certificate from a medical practitioner who should be specialist medical officer of Government District Hospital and above as per Form No.3. A sample Form 3 which is part of Writ Petition No.5049 of 2020 is reproduced below:-

**“FORM No.3 OF CONSTABLE (GD) EXAM-2018**  
**MEDICAL FITNESS CERTIFICATE**

*Certified that Mrs/Ms. .... Rupesh Kumar ... S/o Shri Chandra Dev Sah .. Age..22.. years, a candidate of Constable (GD) Exam-2018 in CAPFs whose photo and thumb impression are appended above duly attested by me was examined by me at Hospital .... Sadar Hospital, Jamui.... on date ...4.2.2020.*

2. *I the undersigned, have the knowledge that Mr./Ms.... Rupesh Kumar.... S/o Sri Chandra Dev Sah... has been declared Medically Unfit by the Medical Officer for Constable (GD) Exam 2018 om CAPFs due to \_\_\_HTN over weight\_\_\_.*

3. *In my opinion this is an error of judgment due to following reasons :-\_\_\_\_\_Normal B.P.\_\_\_\_\_ Normal weight.*

*After due examination, I declare him/her medically fit for the said post.*

*Dated: 4.2.2020*

*Sd/- illegible  
Signature & Name with seal of Specialist  
Medical Officer of concerned field  
Registration NO. 233379  
(MCI/State Medical Council)  
Designation DS.....  
Name & Address of Govt. Hospital  
(District Hospital and above)  
Sadar Hospital Jamui*

*Sd/ Rupesh Kumar*  
*Signature and name of candidate*  
*(in presence of Medical practitioner)*

*Sd/- Upadhikshak, Sadar Aspatal, Jamui*  
*4.2.2020*

*Attested by*  
*Sd/- Upadhikshak, Sadar Aspatal, Jamui*  
*4.2.2020*  
*Signature & Name with seal of Specialist*  
*Medical Officer of concerned field*

- Note: (1) The findings of the Medical should be supported by Medical reports/ documents wherever applicable.*
- 2) The Photograph thumb impression and signature of the candidates should be attested by Medical practitioner giving this Medical fitness Certificate. Un-attested forms shall be summarily rejected.*
- 3) CAPFs shall not be responsible for postal delay.”*

As noted, the main provision in the Recruitment Scheme providing for the remedy of review medical examination only speaks of medical certificate from Government District Hospital or above, to be annexed with the appeal. The medical certificate annexed with the appeal shall be evidence of possibility of an error of judgment in the decision of initial medical board/recruiting medical officer, who had examined the candidate in the first instance. The doctor issuing the certificate is required to certify that it is being issued in full knowledge of the fact that the candidate had already been rejected and declared unfit for service by CAPF medical board, or the recruiting medical officer. He has to owe full responsibility of the facts certified by him. The object unambiguously was to prevent frivolous appeals being filed. If the documents were found in order, the appeal could be accepted. The acceptance of the appeal would not mean that the candidate has been declared or accepted to be medically fit. It would only pave way for constitution of a Review Medical Board by the respondents. The candidates would thereafter be subjected to medical

examination once again by the Review Medical Board and only if he is found fit that he would be moving to the next stage of recruitment. The requirement that certificate should be by specialist medical officer of concerned field came to be incorporated for the first time in Form No.3 at the place where the doctor issuing the certificate has to sign, mention his name, and put his seal. In my considered opinion, the requirement of filing medical certificate alongwith the memo of appeal should be interpreted keeping in mind the object with which the said provision has been incorporated. It should not be overstretched, lest the very purpose of providing remedy of review medical examination may stand defeated. So interpreted, I am of the considered view that the Certificates annexed by the petitioners alongwith their appeal were sufficient to entertain the appeals.

The submission of learned counsel for the Union of India that Dr. Syed Naushad Ahmad, Deputy Superintendent, Government Hospital, Jamui who certified that two of the petitioners were not suffering from High BP/Hypertension was not competent to issue the same as he is not a cardiologist, has also no force. The qualifications of Dr. Syed Naushad Ahmad are not in dispute. He has done Masters in Surgery and being a general surgeon in a government hospital, he was competent enough to examine the petitioners and certify that they were not suffering from hypertension. Under the recruitment scheme, as noted above, the only evidentiary value of his certificate is in formation of prima facie opinion that there could be an error of judgment on part of the medical officer who examined the candidate in the first instance to warrant acceptance of the appeal for review medical examination of the petitioners. In the review medical examination, the petitioners

will be subjected to medical examination by expert doctors. In case the petitioners were really not suffering from the ailments/shortcomings pointed out during the initial medical examination, they would succeed. On the other hand, if they do suffer from the ailments/shortcomings, they would be discarded. There is no right of further appeal against the decision of the review medical board. In case the certificates furnished by the petitioners are relied upon at this stage, the respondents would not suffer except that they shall have to hold a review medical examination. On the other hand, if the petitioners really do not suffer from any ailment/shortcoming, as alleged, but their appeal for review medical examination is rejected at the very threshold on the above ground, they would suffer irreparable loss and injury. In all events, therefore, the appeals preferred by the petitioners for a review medical examination should not be dismissed in the manner as has been done by the respondents.

In consequence and as a result of above discussion, the writ petitions succeed and are allowed. The respondents are directed to constitute Review Medical Board for re-examination of the petitioners within a period of one week from the date of production of true attested copy of the instant order before them.

No order as to costs.

(Manoj Kumar Gupta, J)

**Order Date :- 17.9.2020**  
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