

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA NO. 613 OF 2024 (O&M)

DATE OF DECISION : MARCH 11, 2024

Sunil

...Appellant

Versus

Union of India and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA,
ACTING CHIEF JUSTICE**

HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Surinder Pal, Advocate,
For the appellant.

LAPITA BANERJI, J.

Consideration in the present letters patent appeal is to a judgment and order dated December 15, 2023 passed by the Hon'ble Single Judge in Civil Writ Petition No.8272 of 2020, whereby he rejected the prayer of the appellant/writ petitioner for quashing of the certificate dated July 09, 2019 (Annexure P-3) issued by the medical officer during Detailed Medical Examination (DME) and the certificate dated September 24, 2019 (Annexure P-6) issued by the Medical Board in Review Medical Examination (RME). Furthermore, the Hon'ble Single Judge refused to issue a writ of Mandamus directing the respondents to appoint the appellant to the post of Constable (Telecom) on the basis of Medical Fitness Certificate issued by Assistant Senior Medical Officer (ASMO), Government Civil Hospital, Hisar.

2. The brief facts leading to the present appeal are narrated

hereinafter : -

i) The appellant applied for recruitment to the post of Constable (Telecom) in the Indo Tibetan Border Police Force (“ITBPF”) and qualified in the written test, physical efficiency test (PET) and physical standard test (PST).

ii) During DME, the appellant was declared **unfit** due to “*varicose veins in lower limbs*”. Therefore, his candidature for appointment as a member of the force was not considered. The appellant got himself operated on July 16, 2019 at Mahatma Gandhi Hospital at Hisar and was certified to be **fit** by the ASMO, Civil Hospital as the presence of “*varicose veins*” in his lower limbs could not be detected any longer.

iii) After being operated in a government hospital, the appellant prayed for review medical examination and was re-examined by the Board, However, he was again declared **unfit** on account of “*varicose veins*”.

3. The Hon’ble Single Judge relied on the office memorandum dated May 20, 2015 which intimated that the revised uniform guidelines for medical examination test had been approved by the Ministry of Home Affairs. Under the revised guidelines, candidates with “*varicose veins*” even if operated were not to be appointed as members of the Force because the basic defect remained unchanged. Therefore, relying on the guidelines, the writ petition was dismissed.

4. The Hon’ble Single Judge also relied on a judgment of a co-ordinate Bench of this Court passed in LPA No.1017 of 2017 “***Roop Singh v. Union of India and others***” to hold that the Court cannot sit in appeal over the findings of the medical authorities which had rejected the candidature of the applicant on two occasions. He also relied on a judgment passed by a co-ordinate Bench in *LPA No.871 of 2022 (O&M)* “***Sumit v.***

Union of India” decided on April 24, 2023 to hold that the Courts do not

have the expertise to assess the correctness of the opinion expressed by the medical experts and once the medical experts have examined and re-examined the appellant, the Court was not required to adjudicate upon the correctness of such opinion.

5. This Court has heard the arguments made by the parties and perused the materials placed on record. It transpires that clause-6 of the revised medical guidelines enumerates the general grounds for rejection. Clause-6 (29) states in unambiguous terms that “*varicose veins*” is a ground for rejection. The same is extracted herein below :-

“6. GENERAL GROUNDS OF REJECTION :-

(29) Varicose Veins. The diagnosis of varicose vein should be made on the basis of dilatation and tortuosity of veins and after confirmation of incompetency of Sapheno-femoral junction/ Sapheno-popliteal junction or perforators by relevant clinical tests. Only prominence of veins should not be criteria for rejection. Cases of Varicose veins, even if operated, are not to be accepted because basic defect remains unchanged.”

6. Also under **Clause-5 (g)** limbs, hands and feet have to be well-formed and fully developed and perfect motion of all the joint limbs is a mandatory requirement for being declared **FIT** in the medical examination.

7. A perusal of the reply filed by the respondent authorities would show that the appellant was declared medically **unfit** as per medical guidelines. After the Medical Fitness Certificate was issued by ASMO, Civil Hospital, Hisar, the appellant was re-examined in RME and again was found to be **unfit**.

8. Reliance was placed by the respondents on a judgment dated February 02, 2020 passed by a co-ordinate Bench in ***Roop Singh’s case*** (*supra*), whereby it was held that in the case of appointment to the post of Constable in ITBPF, the fittest and most suitable person should be selected from the long queue of the candidates fighting to win a berth in the para-

military forces. High physical standards are required to be maintained due to the arduous nature of duties and ITBPF's medical authorities are best judges of their own needs for recruitment of personnel who guard the national frontiers. Since two medical authorities had rejected the candidature of the appellant, the co-ordinate Bench did not see any reason for differing with their stand.

9. Way back in 2012, before the amended 2015 guidelines stipulated "*varicose veins*" to be a ground for rejection, a co-ordinate Bench decided on November 23, 2012 in LPA No.1932 of 2012 "***Amit v. Union of India and others***", that more weightage and credibility had to be given to the assessment and opinion of the Board of Doctors dealing with the recruitment to the force than to a doctor who is not well conversant, adapted and aware of the situation for which a candidate was being recruited. Relevant extract is reproduced herein below :

"xxx

*Perusal of the opinion dated 4.6.2012 (Annexure P-11) would show that it is simply mentioned that as per the Colour Doppler study of the lower limb, it has been found to be normal study. It has not been mentioned that the petitioner does not suffer from **varicose veins**. In the light of the fact that initially petitioner was found to be unfit by a doctor and thereafter on re-medical examination by a Board of Doctors, he has also been found to be unfit, who are experts and deal with recruitment to the Force. More weightage and credibility has to be given to their assessment and opinion than to that of a doctor who is not well conversant, adapted and aware to the situations for which a candidate is being recruited. Further no mala fides or bias has been attributed which could dent the credibility of the expert medical opinion of the Board of Doctors of the disciplined force.*

Xxx"

10. In a recent judgment dated April 24, 2023 passed in ***Sumit's case (supra)***, a co-ordinate Bench of this Hon'ble Court held that where an appellant was praying for appointment in Indian Air Force once the medical experts had examined and re-examined the appellant's case thoroughly, the

Court was not required to sit over the same and adjudicate upon the correctness of such opinion as the Court does not have the expertise to decide whether such opinion of the medical experts is right or wrong. The process of medical examination cannot be converted into an endless process and therefore, finality to the opinion of the medical board has been rightly prescribed.

11. Even before the amended guidelines came into force, a co-ordinate Bench decided the issue of “*varicose veins*” rendering a candidate unsuitable to the post of Constable with ITBPF and dismissed the appeal. Even if there was an ambiguity regarding unsuitability of candidates suffering from “*varicose veins*” prior to the amended guidelines, there can be no such ambiguity post 2015 amendment. This Court finds no reason to depart from the view taken by a co-ordinate Bench in ***Roop Singh’s case*** (*supra*) and the Hon’ble Single Judge correctly relied on the same. Furthermore, this Court notes that there is no allegation of bias or mala fides against the medical experts to dent the credibility of the said opinion.

12. In the light of discussions made hereinabove and the law governing the field, this Court finds no reason to interfere with the judgment passed by the Hon’ble Single Judge and the present appeal is hereby dismissed. Connected applications, if any, are accordingly disposed of.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

MARCH 11, 2024
shalini

Whether speaking/reasoned : Yes
Whether reportable : No