

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23528-2014

Date of decision: December 19, 2015

Rahul

...Petitioner

Versus

Union of India and Ors.

....Respondents

CORAM:HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

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Present:- Mr. Gobind Sharma, Advocate,
for the petitioner.

Mr. Vivek Singla, Senior Panel Counsel,
for the respondents-UOI.

HARINDER SINGH SIDHU, J.

The petitioner applied for selection in the Air Force as Airmen in Group Y. He qualified the selection test held on 15.05.2014. However, he was declared medically unfit at the time of medical examination held on 09.07.2014. The medical unfitness was on two accounts (i) Pilonidal Sinus and (ii) X-Ray Abnormality. The petitioner preferred an appeal before the Medical Board on the same day i.e. 10.07.2014. Thereupon, vide communication dated 10.07.2014 (Annexure P-4), he was directed to appear before the Appeal Medical Board on 19.08.2014. As per para 2(e) of the said letter, the petitioner was to make himself available for AMB from the date of appointment till final disposal is declared, failing which, he may be declared unfit in absentia.

It is the case of the petitioner that he appeared before the Appeal Medical Board on 19.08.2014 till 01.09.2014. The petitioner

was examined for X-Ray abnormalities on 20.08.2014 by Board comprising Col. D. Singh and Major Sunil Kumar. In this regard, the OPD slip dated 28.10.2014 (Annexure P-6) is being relied upon. The result of the Appeal Medical Board was made known on 29.10.2014 wherein it was indicated that the petitioner was "unfit in AMB" on 01.09.2014 on account of Pilonidal Sinus.

The petitioner got himself examined from the Command Hospital, Western Command, Chandi Mandir wherein as per report (Annexure P-8) there is no E/o Pilonidal Sinus. It was also mentioned that 'He shall not be not unfit for any recruitment'.

Armed with the aforesaid report, the petitioner submitted a representation and legal notice calling upon the respondents to reconsider his case in view of the fitness certificate received from Command Hospital, Western Command, Chandimandir and to give him one more chance for his medical examination. He received a reply (Annexure P-11) to the said legal notice wherein it was stated that the petitioner had appeared for test on 19.08.2014. He was referred to Command Hospital, Western Command, Chandimandir for opinion of the concerned specialists for disabilities (i) Pilonidal Sinus and (ii) X-Ray Chest abnormality. The petitioner was evaluated for the disability 'Pilonidal Sinus' and declared 'unfit' by the Classified Specialist (Surg) of Command Hospital (Western Command), Chandimandir on 01.09.2014. However, the petitioner absented himself and did not obtain opinion of the Medical Specialist for the other disability i.e. 'X-Ray Chest abnormality'. It was stated that despite being aware of the fact that petitioner had to make

himself available for Appeal Medical Board from the date of appointment till final disposal is declared, failing which he would be declared 'unfit in absentia', the petitioner chose to remain absent and did not obtain the opinion of the Medical Specialist for disability of 'X-Ray Chest abnormality'.

Aggrieved, the petitioner has filed this writ petition praying for direction to set aside the medical unfitness certificate granted by the Appeal Medical Board and for further direction to respondents to consider him for selection in the Air Force as Airman Group Y.

In the written statement filed on behalf of respondents, the grounds taken in the reply to the legal notice have been reiterated. It has been asserted that as the petitioner did not present himself for medical examination before the medical specialist in regard to the 'X-Ray Chest abnormality', he was rightly declared unfit in absentia.

In view of the conflicting medical reports and with a view to resolve the issue, vide order dated 12.02.2015, the Director General, PGI, Chandigarh was requested to constitute a Board of Doctors to conduct the medical examination of the petitioner and submit medical report.

Pursuant to the order, the petitioner was examined by the Medical Board constituted by the Medical Superintendent, PGI, Chandigarh which has submitted its report dated 19.03.2015 wherein it is mentioned that general physical examination, chest examination, abdominal examination and cardiovascular examination

of the petitioner were performed and found to be normal. Local examination for Pilonidal Sinus was performed and no evidence of presence of Pilonidal Sinus could be found. His chest x-ray was also done on 19.03.2015 and Medical Board could not find any abnormality.

Learned counsel for the petitioner states that in view of the report of the Medical Board of PGI as also the report of the Command Hospital, Western Command, Chandimandir, that the petitioner is not unfit for any recruitment, the report of the Appeal Medical Board declaring him unfit cannot sustain and the respondents are liable to consider him for appointment.

Mr. Singla, Learned counsel for the respondents, on the other hand, states that the petitioner knowingly chose not to present himself for examination by the medical specialist in respect of the 'X-Ray chest abnormality' and hence the Appeal Medical Board rightly held him to be unfit. This was strictly as per the conditions communicated to him in the letter (Annexure P-4) whereby he had been asked to appear before the Appeal Medical Board .

In response to this Learned counsel for the petitioner has contended that as required vide the letter Annexure P-4, the petitioner remained present for his examination from 19.08.2014 to 01.09.2014 and he was examined on 19.08.2014 for 'X-Ray Abnormality' (Annexure P-6) and he appeared before Appeal Medical Board on 01.09.2014. He states that if the petitioner has failed to appear before the Medical Specialist in respect of the 'X- Ray Abnormality' during the intervening period though he remained

present, it was only because he was not aware of such requirement and if there is such a lapse, he could be again examined by the concerned Medical Specialist. He further argues that now that his medical fitness has been certified by the Medical Board of PGI, Chandigarh, there is no ground to consider him unfit for service. In this regard Ld. Counsel has placed reliance on an order of this Court in LPA No.654 of 2015, titled 'Raju vs. Union of India and ors' wherein, in similar circumstances, a Division Bench of this Court had directed the authorities to either constitute a review medical board to reconsider the medical fitness of the petitioner or verify the original medical certificate relied upon by the petitioners.

Having heard the learned counsel for the parties, in my view, the lapse of the petitioner in not getting himself examined by the Medical Specialist for the X-Ray abnormality, especially when he had appeared for special investigation on 20th August, 2014, can legitimately be attributed to his ignorance as pleaded by him. This is especially so, as he remained present there and was assessed by the Appeal Medical Board in respect of the other disability of 'pilodinal sinus' on 1.9.2014.

After the filing of this petition, pursuant to the directions of this Court, the petitioner has been examined by the Medical Board of PGI, Chandigarh which has found no abnormality.

In these circumstances I deem it appropriate to dispose of this case by issuing similar directions as were issued in LPA No. 654 of 2015.

Thus this petition is disposed of with a direction to the respondents to either constitute a review medical board to reconsider the medical fitness of the petitioner or verify the original medical certificates relied upon by the petitioner. Let a decision in this regard be taken within four weeks and if the petitioner is found medically fit, the desirability of offering him appointment shall be considered within one month thereafter.

Disposed of.

(Harinder Singh Sidhu)
Judge

19.12.2015
dkw