

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.9951 of 2014
Date of decision:04.02.2015**

Satish

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Sumit Sangwan, Advocate for the petitioner.

Mr.D.S.Jandiala, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the review medical report (Annexure P-1), petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the impugned action of the respondent authorities, whereby he was not considered medically fit for appointment in question.

To resolve this short controversy involved, the matter was referred to the Director, PGIMER, Chandigarh, vide order dated 18.11.2014 and in compliance thereof, Director, PGIMER, constituted a Board of Doctors, who conducted the medical examination of the petitioner and accordingly report dated 16.12.2014 of the Medical Board was furnished to this Court.

Learned counsel for the parties are ad idem that there were only

three deficiencies pointed out against the petitioner, vide impugned communication (Annexure P-1) and the same are as under:-

- “1. He is temporary unfit/unfit for service in the Navy due to
(a) Impacted wax (Lt) Ear (b) Anal Tag
(c) Varicocele (Rt)”*

Relevant part of the medical report dated 16.12.2014 submitted by the Medical Board of the PGIMER, Chandigarh, reads as under:-

“A medical board of the following undersigned members was constituted vide order No. EV(9) PGI-MS/MA-63/2014 dated 08.12.14 for medical examination of Sh. Satish S/o Sh. Bul Singh in the CWP No.9951 of 2014 titled as Satish Vs. Union of India and others. The medical board held its meeting on 13th December 2014 at 11.30 AM under the chairmanship of Dr. Vikas Gupta, Additional Professor, Department of General Surgery, PGIMER, Chandigarh in VIP room of New OPD Block.

Satish/19 years/Male was asked about the history and examined clinically. His examination findings are as under:-

On examination, the medical board was of the opinion that there was no impacted wax in both the ears. Both the tympanic membranes were intact. There was no evidence of anal tag and digital examination was within normal limit. There was left side surgical scar in the left inguinal region. There was no clinical evidence of varicocele on either side. Bilateral testicular size was normal. However, on USG scrotum (Coloured Doppler) done in New OPD of PGIMER, Chandigarh on 15/12/14, there was Left sided minimal

*hydrocele with grade II varicocele. Right testis and epididymis
was normal.*

*Sd/-
Dr.Girdhar Singh Bora
Member*

*Sd/-
Dr.Sandeep Bansal
Member*

*Sd/-
Dr.Jitender Sodhi
Member*

*Sd/-
Dr.Vikas Gupta*

Chairman”

Learned counsel for the petitioner refers to all the three medical deficiencies pointed out against the petitioner vide Annexure P-1 and submitted that when these medical deficiencies were considered by the Board of Doctors of the PGIMER, Chandigarh, none of them was found existing against the petitioner, which is clear from the above-said medical report. He prays for allowing the present writ petition, by setting aside the impugned action of the respondents.

On the other hand, learned counsel for the respondents refers to the written reply by way of affidavit dated 2.2.2015, to contend that the report of Medical Board of the PGIMER, Chandigarh, was also against the petitioner. This sole argument raised by the learned counsel for the respondents has been duly considered and the same has been found to be factually incorrect.

A bare reading of the above-said medical report, submitted by the Board of the Doctors of the PGIMER, Chandigarh, would make it crystal clear that on all the three deficiencies, petitioner has been declared medically fit and no medical deficiency was found against the petitioner. Thus, action of the respondents, declaring the petitioner medically unfit, has been found to be an arbitrary action on their part, particularly after their reconsideration of the matter, in view of the above-said medical report

dated 16.12.2014, submitted by the Medical Board of PGIMER, Chandigarh.

Learned counsel for the respondents places heavy reliance on the contents of paras 8 and 9 of the affidavit dated 2.2.2015 and the same read as under:-

“It is pertinent to mention that the report of Medical Board conducted at PGIMER, Chandigarh, also shows there is a Surgical scar in the left inguinal region and on USG Scrotum (Coloured Doppler) hydrocele with grade II varicocele.

Hence the petitioner declared UNFIT at the time of review medical board held at MH Ambala for the Senior Secondary Recruits (SSR) 02/2014 batch and Artificer Apprentice (AA)-136 is valid. However, consideration of the petitioner sympathetically at this stage will adversely affect the recruitment procedure of the armed forces. And give chance to those candidates who were made UNFIT in similar kind of cases earlier to approach the Hon'ble Court.”

When the above-said averments taken in paras 8 and 9 of the affidavit dated 2.2.2015 are compared with earlier medical report in Annexure P-1 and with the above-said report dated 16.12.2014 of the Medical Board of PGIMER, Chandigarh, no scope even for any remotest doubt is left that the petitioner has been found medically fit by the Medical Board of the PGIMER. It is so said, because it is neither pleaded nor argued case on behalf of the respondents that except the above-said three medical deficiencies pointed out in the petitioner vide Annexure P-1, there was any fourth deficiency as well.

Once it is not the case of the respondents that petitioner was suffering from any fourth medical deficiency, the competent authority was bound to re-consider the case of the petitioner on the basis of the above-said

medical report dated 16.12.2014, submitted by the Medical Board of Doctors, by proceeding on a dispassionate approach. However, it has not been done so by the respondents without disclosing any reason, much less cogent reasons. Having said that, this Court feels no hesitation to conclude that the impugned action of the respondent authorities cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the petitioner has been found medically fit on all the three counts pointed out in Annexure P-1, the impugned action of the respondent authorities cannot be sustained and the same is hereby set aside.

Consequently, the competent authority, whosoever it might be out of the respondents, is directed to re-consider the claim of the petitioner for appointment to the post in question by passing an appropriate order, strictly in accordance with law and keeping in view the above-said medical report dated 16.12.2014 of the Medical Board of PGIMER, Chandigarh. Let the needful be done within a period of six weeks from the date of receipt of a certified copy of this order.

This court hope and trust that the respondent authorities shall proceed on an independent and positive approach, while considering the claim of the petitioner, which is prima facie genuine.

Resultantly, with the above-said observations made and directions issued, the present writ petition stands disposed of.

04.02.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE