

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

CWP No.14872 of 2015

Date of Decision:01.12.2016

Vivek Swami

... Petitioner

Vs.

Union of India and another

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Sanjay Tangri, Advocate for the petitioner.

Mr. Parminder Singh Kanwar, Advocate
for the respondents-UOI.

P.B. BAJANTHRI J.

In the instant writ petition, the petitioner has questioned the order dated 10.4.2015 passed in compliance to the earlier order dated 5.2.2015 passed by this Court in CWP No.1815 of 2014.

The petitioner is a son of deceased Shri Dharampal Swami. Shri Dharampal Swami died on 27.6.2009. The petitioner submitted an application for compassionate appointment to the post of Head Constable (Ministerial). He was subjected to medical test and other tests which he has cleared. However, in the medical test, the respondent-Selecting Authority found that the petitioner is suffering from “Unilateral Exophthalmia (Rt. Eye)”. In view of the aforesaid defect, the petitioner's claim for compassionate appointment to the post of Head Constable (Ministerial) was declined. The petitioner earlier approached this Court and this Court directed the respondents to consider the grievance of the petitioner with reference to the medical report submitted by the Board of Doctors of the PGIMER. The respondents reiterated medical fitness of the petitioner stating that the defect of “Unilateral Exophthalmia (Rt. Eye)” would be a hurdle for his selection. Therefore, the request of the petitioner to appoint

him on compassionate ground to the post of Head Constable (Ministerial) was rejected.

As per Uniform Guidelines for Medical Examination Test (MET) for combined Recruitment of constable/GD in CAPFs & Ars, grounds for rejection of candidature on medical read as under:

“Grounds for Rejection

20. Candidates presenting with following conditions will be rejected:-

- (a) General Impaired Constitution.
- (b) Abnormal Gait.
- (c) Abnormal posture and abnormal curvature of spine.
- (d) Gross physical deformity of chest, joints (knock knee, bow legs, flat feet etc.).
- (e) Defective intelligence.
- (f) Deafness
- (g) Pronounced stammering
- (h) Mental and nervous instability includes Coarse Digital Tremors, Hyperhydrosis and Tachycardia).
- (i) Sexually Transmitted Diseases.
- (j) Any degree of squint.
- (k) Low Standard of vision and visual correction by any kind of refractive surgery is not permitted even by Lasik.
- (l) Corneal Opacities.
- (m) Perforation of Tympanic membrane.
- (n) Chronic Suppurative Otitis Media.
- (o) Loss or decay of teeth to such an extent as to interfere with proper mastication.

- (p) Chronic Bronchial, Laryngeal, Lung diseases.
- (q) Endocrinal Disorder.
- (r) Indication of any chronic disease like Tuberculosis, Syphilis or other venereal disease, Rheumatoid/any type of Arthritis, hypertension and diabetes.
- (s) Valvular or other disease of the heart.
- (t) Any type of hernia or hydrocele.
- (u) Marked varicocele, Testicular swelling, Atrophic Testis & Undescended testis.
- (v) Chronic skin diseases like leucoderma, Leprosy, SLE, Eczema, Chronic Fungal dermatitis.
- (w) Anal Fistula, Haemorrhoids
- (x) Deformity of feet like Flat foot, Club Foot, Planter warts etc.
- (y) Epilepsy Nystagmus/Progressive Pterygium, generalized neurofibromatosis.
- (z) Varicose veins. The diagnosis of varicose vein should be made on the basis of dilation and tortuosity of veins. Only prominence of veins should not be criteria for rejection. Operated cases of varicose veins should not be accepted.

The petitioner was held to be medically unfit with reference to “Unilateral Exophthalmia (Rt. Eye)” which is not one of the item mentioned in the grounds of rejection.

Uniform guidelines provided for Main points in medical examination for recruitment in which item (j) prescribes that he has no congenital malformation or defects.

Uniform guidelines also provided for Minor Acceptable

Defects in which item (j) prescribes that any other slight defects which in the opinion of the Recruiting Medical Officer will not interfere with efficiency of candidate as a soldier in future provided candidate conforms to the prescribed standards in other respect. The present case falls under this clause for the reasons that rejection of the petitioner's candidature with reference to "Unilateral Exophthalmia (Rt. Eye)" is not one of the grounds mentioned in the grounds of rejection.

Therefore, the respondents are directed to invoke item No.21(j) of Minor Acceptable Defects and re-consider the petitioner's candidature for the recruitment to the post of Head Constable (Ministerial). While reconsidering the matter, the competent authority is directed to take note of the fact that they are not recruiting the petitioner on par with the general recruitment. They are recruiting with reference to the compassionate appointment. Therefore, necessary relaxation is required. They should not take decision purely on technicality.

With the above observations, Annexure P-12 is set aside. The respondent-competent authority is directed to re-examine the petitioner's case with reference to the uniform guidelines in particularly item no.21(j) of minor acceptable defects read with policy of compassionate appointment and take a decision within a period of two months from today and reconsider his case for appointment and to appoint him if he is otherwise eligible.

Petition stands allowed in above terms.

01.12.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No