

In the High Court of Punjab and Haryana at Chandigarh

**Civil Writ Petition No. 1686 of 2014
Date of Decision: 25.2.2016.**

Hans Raj

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jagdeep Jaswal, Advocate
for the petitioner.

Mr. O.P.Dabla, Advocate
for the respondents.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing the termination order dated 26.6.2013 (Annexure P-7) and appellate order dated 27.8.2013 (Annexure P-8).

Case of the petitioner, in brief, is that he was selected as Constable and appointment letter dated 26.11.2009 (Annexure P-1) was issued to him. Petitioner jointed the Base Training Centre, Kharkan Camp on 21.12.2009. On 31.12.2009, it was noticed that petitioner had suffered an injury on his right foot and remained admitted in that hospital at BTC, Kharkan Camp from 25.1.2010 to 8.5.2010. During the said period, petitioner also remained under treatment at Civil Hospital, Hoshiarpur. Petitioner remained under treatment at Hoshiarpur and Jalandhar and was referred to Medical Board at Composite Hospital, BSF, Jalandhar. On

10.1.2012, petitioner appeared before the Review Medical Board and was declared unfit to undergo basic recruit training. Petitioner was asked to get his treatment at his own cost from PGI, Chandigarh and remained admitted in the said hospital from 30.1.2012 to 6.2.2012. After discharge, petitioner took treatment as an outdoor patient and on 7.5.2012, he was declared fit to resume his duty. Petitioner continued to take medication from PGI, Chandigarh and on 3.7.2012, he was again declared fit to resume duty. Petitioner reported for duty and he was referred to Government Medical College, Amritsar for opinion. Petitioner was declared fit to join the training vide Annexure P-6. Despite the fact that PGI, Chandigarh and Government Medical College, Amritsar had declared the petitioner fit to resume duty, the Review Medical Board by retreating their earlier opinion, had finally recommended that petitioner was unfit to undergo the basic recruitment training and termination order dated 26.6.2013 (Annexure P-7) was passed. Appeal filed by the petitioner was declined in a mechanical manner.

Learned counsel for the petitioner has submitted that the impugned orders were liable to be set aside as the petitioner had been declared fit to resume his duty by PGI, Chandigarh and Government Medical College, Amritsar.

Learned counsel for the respondents, on the other hand, has submitted that, although, as per Annexures P-2 and P-2 issued by PGI, Chandigarh and Annexure P-5 issued by Government Medical College, Amritsar, petitioner was declared fit to join his duty but the duties required to be performed by the petitioner as a Constable with Border Security Force were arduous in nature. On account of the nature of injury suffered by the petitioner, he was

unable to undergo the training in question.

In the present case, admittedly, petitioner was recruited as Constable by the respondents. Unfortunately, petitioner suffered a fracture of lateral condyle of femur (right) and underwent operation. Petitioner remained under treatment for a long time. Petitioner was referred to Civil Hospital, Hoshiarpur and the specialists opined that he could run and jump but could not squat and sit and was unable to perform basic duties primarily due to severe restriction of right knee joint.

Annexure R-12 is the opinion qua clinical examination and x-ray examination and the same reads as under:-

“4. Regional Clinical Examination (11/01/2012)

Rt lower limb - Gait Normal

*- quadriceps Wasting approximately
05 cm.*

*- Healed surgical scar over patella
and lateral condyle.*

*- small body swelling over medial
aspect of knee (at level of femoral
condyle)*

Range of motion - Restricted, Flexion only up to 60°.

- No extension lag.

*Ipsilateral hip and ankle and contra lateral
hip/knee/ankle--Unremarkable.*

Function loss- unable to squatt and kneel.

5. X-Ray Examination

X-ray of right Knee AP & Lateral views

(09/01/2012) show:-

- E/O malunited fracture of lateral femoral condyle, on lateral view femur.*
- Radio-opaque shadow adjoining medial femoral condyle on AP view.*
- Knee joint space is preserved.”*

In view of the above examination, the Review Medical Board recommended that the petitioner was not fit to undergo basic recruitment training.

Annexure R-17 is the opinion of Review Medical Board which was constituted on 18.9.2012. The board opined that the petitioner was a case of Old Fracture Lateral Condyle of Femur (Right) which was not united fully with degenerative changes/arthritis changes right knee and the petitioner was declared unfit for basic training. In view of the opinion of the Review Medical Board, impugned order dated 26.6.2013 (Annexure P-7) was passed. Appeal filed by the petitioner was duly considered by the Appellate Authority and was dismissed vide order dated 27.8.2013 (Annexure P-8).

Although, petitioner was declared fit to join duty by PGI, Chandigarh vide Annexures P-2 and P-3 and by Government Medical College, Amritsar vide Annexure P-5, but the Review Medical Board opined that the petitioner was unable to join the training on account of injury suffered by him. The Review Medical Board was to consider the medical fitness of the petitioner *vis-a-vis* duties liable to be performed by him as a Constable. From the clinical and x-ray investigations, it transpired that petitioner was unable to undergo the basic recruitment training. Since the Review

Medical Board had declared the petitioner unfit to undergo basic recruitment training, the competent authority passed the termination order Annexure P-7. The said order has been passed in pursuance to the report of the Review Medical Board and, therefore, calls for no interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India.

Dismissed.

**(SABINA)
JUDGE**

February 25, 2016
Gurpreet