

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

CWP No.20157 of 2016 (O&M)

Date of Decision:23.12.2016

Prabhat Kaushik

... Petitioner

Vs.

Union of India and others

... Respondents

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

Present : Petitioner in person.

Mr. K.K. Chahal, Advocate for respondents No.1,3,6 and 7.

Ms. Anita Balyan, Advocate for respondent No.4.

P.B. BAJANTHRI J. (ORAL)

C.M. No.16679 of 2016

Notice of the application.

Mr. K.K. Chahal, Advocate and Ms. Anita Balyan, Advocate, who are present in Court, accept notice on behalf of their respective respondents.

With the consent of the parties, the application is allowed and the petitioner is permitted to amend the prayer during the course of the day and the amended head note and prayer is taken on record at appropriate place.

Main case

The matter is relating to selection to the post of Army Officer in the National Defence Academy and Naval Academy. The petitioner is a candidate for the recruitment to the post of Army Officer in National Defence Academy (for short "NDA"). The respondents have invited application for the post on 27.12.2014. The petitioner had applied for the post and had cleared written examination. He was called for interview in

which he was also selected. Thereafter, he was subjected to medical board. In the medical examination, he was found to be unfit. Consequently, his case was considered by the appeal medical board. Before appeal medical board, it was found that he has disability of CSOM in the right ear and it was further noted therein that the candidate is also hereby informed that the Review Medical Board will be granted at the discretion of DGAFMS based on the merit of the case and that Review Medical Board is not a matter of right.

Thus, the petitioner filed a representation before the competent authority. The same was declined vide order dated 26.11.2015 (Annexure P-11). The petitioner is aggrieved by the decision of the respondents insofar as medical examination. Hence, the present petition is filed.

The petitioner in person submitted that Review Medical Board have not examined him properly with reference to the physical standards for admission to NDA/IMA/OTA. For the purpose of present case, relevant physical standard is item No.2 (e) and Note. The same reads as under:

“2(e) There is no impaired hearing, discharge from either ear, unhealed perforation of the tympanic membrane, or signs of acute or chronic suppurative otitis media or evidence of radical or modified radical mastoi operation.

Note: A soundly healed perforation-without any impairment of the mobility of the drum and without impairment of hearing should not be a bar to acceptance of a candidate.”

In view of the above physical standard, the Review Medical Board before declaring him medically unfit had not taken note as is evident from the Review/Appeal Medical Board. Therefore, it was contended that he be subjected to once again before the Review/Appeal Medical Board.

On the other hand, learned counsel for the respondents

vehemently contended that result of the medical examination and decision of the Review/Appeal Medical Board have been taken rightly after examining the petitioner that he is suffering from defects like Chronic Otitis Media effects. Therefore, there is no infirmity in the decision of the Appeal Medical Board and the petitioner has not made out a case so as to interfere with the decision of the Appeal Medical Board and claim for re-examination of the petitioner's medical fitness.

Short question for consideration in the present petition is whether the Appeal Medical Board or Review Medical Board have taken into consideration physical standards for admission to NDA/IMA/OTA in particularly item No.2 (e) and Note (supra) or not?

Note to the item No.2 of Physical Standards for Admission to NDA/IMA/OTA is very specific that competent authority i.e. medical board is required to take note of whether the candidate is soundly healed perforation-without any impairment of the mobility of the drum and without impairment of hearing should not be a bar to acceptance of a candidate. In this regard, there is no decision of the Appeal Medical Board. Therefore, the petitioner is entitled to be subjected once again before medical board for medical fitness examination. Hence, decision dated 7.10.2009 (Annexure P-9) and 26.11.2015 (Annexure P-11) are set aside. The respondents-selecting authority are directed to permit the petitioner to appear before the Review Medical Board R & R Hospital, New Delhi. The selecting authority is directed to inform the petitioner one week in advance and fixed the date of medical examination before the Review/Appeal Medical Board. Thereafter necessary action shall be taken by the respondents subject to medical fitness of the petitioner. Such exercise shall be taken within a

period of one month from today.

The petition stands disposed of in the above terms.

23.12.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No