

CWP No.9134 of 2012 (O&M)

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In the High Court of Punjab and Haryana at Chandigarh.

**CWP No.9134 of 2012 (O&M)
Date of Decision: 06.01.2016.**

Ram Vijay Kumar

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. G.P.S. Bal, Advocate,
for the petitioner.

Mr. Karan Bhardwaj, Advocate,
for respondent No.1.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of *certiorari* quashing the impugned order dated 10.01.2011 (Annexure P-6) and order dated 01.02.2011 (Annexure P-9).

Case of the petitioner, in brief, is that he had joined the services of respondent No.4 on 06.07.2002. In October 2010, 88 posts of Sub Inspectors were notified to be filled in by Limited Departmental Competitive Examination. For this purpose a candidate was required to undergo five stages i.e. (i) Service record verification (ii) Physical measurement (iii) Physical Efficiency Test (iv) Written Examination and lastly (v)

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Medical test. Petitioner being eligible for the post applied for the same. Petitioner qualified the first four stages. When the petitioner appeared for medical fitness before the Medical Board he was declared unfit due to 'Hydrocele'. Petitioner was informed that he was medically unfit. Petitioner immediately submitted his representation on 26.12.2010 for his re-medical examination as he was not aware of any such disease suffered by him. Final result was declared on 29.12.2010 by the respondents but the name of the petitioner did not figure therein as he had not been declared medically fit. Petitioner had remained posted in forward post for considerable time and had been declared medically fit. In routine petitioner had undergone medical examination on 05.08.2003, 08.04.2005, 27.08.2006, 15.02.2007, 25.02.2008, 30.07.2009, 22.01.2010 and lastly on 19.02.2011. Petitioner had been categorized as SHAPE-I by the respondents. Petitioner had earlier applied for the post of Constable/Radio Operator and was declared medically fit and was recommended for the appointment of Constable/Radio Operator vide letter dated 22.03.2011 (Annexure P-5). Petitioner was advised to get himself treated and he got himself admitted in Rajendra Institute of Medical Sciences, Ranchi on 05.01.2011 and was discharged on 09.01.2011 and was treated for 'Bilateral Vaginal Hydrocele'. Vide certificate dated 10.02.2011 (Annexure P-7) petitioner

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was declared medically fit.

Respondent No.3 in its reply has admitted that the petitioner had appeared in PST, PET and written examination and was declared fit. However, petitioner was found medically unfit as he was found to be a case of 'Hydrocele'. Request made by the petitioner for his re-medical examination was turned down as there was no such provision or right to appeal for medical examination.

I have heard learned counsel for the parties and have gone through the record available on the file carefully.

In the present case, admittedly petitioner had applied for the post of Sub Inspector which was to be filled in by Limited Departmental Competitive Examination. Petitioner had cleared all the stages upto written examination. However, during his medical examination it transpired that he was a case of 'Hydrocele'. Petitioner in Para 10 of the petition has specifically averred that he had got the treatment qua the said disease. In this regard Annexure P-7 is the certificate issued by Rajendra Institute of Medical Sciences, Ranchi. As per the same, petitioner was suffering from 'Bilateral Vaginal Hydrocele' and was admitted for treatment on 05.01.2011 and was discharged on 09.01.2011. As per the said certificate, petitioner was fit to resume duty on 15.01.2011. Thus, the petitioner, although, was found to be suffering from

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'Hydrocele' when his medical examination was conducted by the respondents but as per Annexure P-7, petitioner has got himself treated for said disease. Admittedly, there is no order, passed by the respondents that the petitioner was declared medically unfit on account of his suffering from the said disease. Petitioner after getting himself treated for 'Bilateral Vaginal Hydrocele' made a request to the respondents that he be got medically examined. The respondents in the circumstances of the case fell in error while rejecting the request of the petitioner for his medical examination. Petitioner has already cleared all the stages upto written examination for the post of Sub Inspector.

In view of the facts and circumstances of the present case, this petition is allowed. Impugned orders dated 10.01.2011 and 01.02.2011 are set aside. Respondents are directed to get the petitioner medically examined within two months from today.

January 06, 2016
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(SABINA)
JUDGE