

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

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**CWP-6772-2016 (O&M)
Date of decision: 26.05.2016**

Rohit

....Petitioner

Versus

Union of India and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. R.A.Sheoran, Advocate for the petitioner.

Mr. Vivek Singla, Advocate for the respondents.

P.B. Bajanthri, J. (Oral)

In the instant petition, the petitioner has questioned the order dated 20.02.2016 vide Annexure P-2 by which enrolment medical examination result has been shown as “operative scar back”. With reference to the medical report, petitioner's candidature for enrolment in the Indian Navy has been rejected. The petitioner is one of the candidate for enrolment in the Indian Army pursuant to the advertisement in the month of

May/June, 2015. In the month of September, 2015 petitioner is stated to have appeared for written examination as well as physical and medical examination. He has cleared in the written examination. In so far as physical and medical examination is concerned, his candidature has been rejected with reference to enrolment medical examination held on 20.02.2016, it is held that “Operative Scar Back” would be disqualification. The petitioner has questioned non-consideration of his candidature for enrolment in the Indian Navy with reference to medical examination. Learned counsel for the petitioner submitted that “operative scar back” is not one of the item for disqualification for enrolment in the Indian Navy. The scar in the back would not be a hurdle in discharging the duties of the post of Sailor in the Indian Navy. The respondents have not disclosed in respect of various disabilities before commencement of selection process. “Operative Scar back” is not one of the disease or defect for physically disqualifying a candidate. Therefore, as per enrolment medical examination “Operative Scar Back” would not be hurdle for petitioner's candidature for enrolment in the Indian Navy.

2. On the other hand, learned counsel for the respondents furnished brochure relating to service personnel No. (SPL)01/2008 Medical Standards-Officers and Sailors). In the beginning, for the purpose of recruiting to the post of Sailors, the respondents would hold training called Senior Secondary Recruitment. Thereafter, they would be posted as Sailors and Medical Standard Officers (Navy order). The petitioner's candidature has been rejected on the score that he had operative scar back. Whereas, in

the Navy order item No. 9 relates to neck, Item No. 10 relates to Skin and STD, Item No. 11 relates to Respiratory System, Item No. 12 relates to Cardio-vascular System, Item No. 13 relates to Abdomen, Item No. 14 relates to Genito-urinary System, Item No. 15 relates to Central Nervous System and Item No. 16 relates to Psychiatric disorders. Aforesaid items would fall under disqualification categories.

3. Learned counsel for the respondent vehemently contended that Item No. 10. Skin and STD has been taken into consideration for rejection of petitioner's candidature, since operative scar back would fall under above category. Item No. 10, reads as under:-

“10. Skin and STD.

- (a) Skin disease unless temporary or trivial.*
- (b) Scars which by their extent or position cause or are likely to cause disability/or marked disfigurement.*
- (c) Hyperhidrosis palmar, plantar or axillary.*
- (d) Congenital, active or latent sexually transmitted diseases.*

Note: *In cases with old healed scar over the groin or penis/vagina suggestive of past STD, Blood will be tested for STD (Including HIV) to exclude latent Sexually Transmitted Disease.”*

Thus, the petitioner's candidature has been rightly rejected.

4. Heard learned counsel for the parties.

5. Reading of item No. 10-Skin and STD is concerned, nowhere it is stated that for the entire body. It is specifically stated which are the Item of the body. Operative scar back would not be hurdle for selection of the petitioner. Unless and until Navy order indicates that scar in human

body would be one of the disqualification. Disqualification of the petitioner is incorrect. In the absence of amendment to the Navy Order to the extent that scar in the body of a human being would be a hurdle for selection of appointment, the petitioners candidature cannot be discarded.

6. Learned counsel for the respondent cited decision of this Court in CWP No. 22492 of 2012 dated 05.02.2013 titled as ***Sombir Versus Union of India and another***. This court in the aforesaid case is of the view that once the medical board opinion is given the same cannot be discarded or direction for fresh medical examination is permissible. Cited one more decision of the Delhi High Court viz; WP(C)8990 of 2015 titled as ***Saurabh Kumar Versus Union of India and another***, Delhi High Court considered issue of interference with the medical examination. It is very true that courts cannot sit over the opinion of the Medical Board or give opinion. This court is not sitting over the Medical opinion or substituting any Medical opinion. It is only interpretation of the Navy order (supra). Under the Navy order “operative Scar back” is not one of the item for disqualification of a candidature.

“10(b). Scars which by their extent or position cause or are likely to cause disability/or marked disfigurement.”

Note: *In cases with old healed scar over the groin or penis/vagina suggestive of past STD, Blood will be tested for STD (Including HIV) to exclude latent Sexually Transmitted Disease.*

7. Therefore, the cited decision is distinguishable having regard

to the facts and circumstances of the present case. In the present case 'operative scar back' is not one of the defect item identified in the Navy order. Therefore, decision to disqualify petitioner is arbitrary and illegal. Annexure P2 dated 20.02.2016 is set aside.

8. In view of these facts and circumstances, the respondents are directed to consider the candidature of the petitioner for enrolment in the Indian Navy within a period of one month.

9. CWP is allowed.

10. No order as to costs.

26.05.2016

pooja saini

(P.B. BAJANTHRI)
JUDGE