

\$~15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18th October, 2016

+ W.P.(C) 8338/2016

AKASH TYAGI

..... Petitioner

Through: Mr. Satya Saharawat, Advocate
versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Monika Arora, CGSC along with
Mr. Brajesh Kumar, G.P for
respondent Nos. 1 to 3.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

JUDGMENT

INDIRA BANERJEE, J (ORAL)

1. In this writ petition, the petitioner has challenged the findings of the Appeal Medical Board and Review Medical Board declaring the petitioner medically unfit for appointment in the Indian Army on Short Service Commission. The petitioner has also sought orders directing the respondents to constitute a Review Medical Board comprising specialist dermatologist from All India Institute of Medical Sciences or Vardhman Mahavir Medical College and Safdarjung Hospital, to review the medical fitness of the petitioner.

2. The petitioner applied pursuant to an advertisement posted by the

Indian Army inviting applications from Male Engineering Graduates for grant of Short Service Commission in the Indian Army in all Arms/Services, for which the pre-commission training course was to commence in October 2016 at the Officers' Training Academy, Chennai, Tamil Nadu.

3. The petitioner's application was shortlisted and a letter dated 20.04.2016 was sent to the petitioner through his email on 20.04.2016 itself, asking him to appear for an interview before the Service Selection Board (SSB) at Jalandhar, Punjab.

4. According to the petitioner, tests were conducted in two stages and the petitioner successfully cleared both the stages, after which, the petitioner was asked to report before the Special Medical Board (SMB) for medical examination. The first medical examination before the Special Medical Board took place in Jalandhar between 23.05.2016 and 28.05.2016. The petitioner was declared medically unfit as the petitioner was found by the Special Medical Board, to be suffering from Vitiligo.

5. The petitioner appealed, against the disqualification, after which, an Appeal Medical Board was constituted at the Base Hospital in Delhi on 05.07.2016.

6. The petitioner was examined. On examination, the petitioner was

again found unfit for the same ailment. Thereafter, at the request of the petitioner, a Review Medical Board was constituted in Pune at the Armed Forces Medical College. The petitioner was again declared unfit.

7. Relying on medical reports and/or prescriptions of the All India Institute of Medical Sciences, the VMMC and Safdarjung Hospital and BPS Government Medical College for Women at Sonipat, Haryana, the petitioner contends that the petitioner has wrongfully been disqualified.

8. Learned counsel appearing on behalf of the petitioner argues that the petitioner has been disqualified medically only on the basis of visual examination and that no diagnostic tests were conducted as has been done in the hospitals referred to above, reports whereof have been relied upon by the petitioner.

9. On behalf of the respondents, the qualified dermatologist submits that a wood slump test was conducted and the petitioner was clinically examined and found to suffer from Vitiligo. Learned counsel appearing for the petitioner disputes that wood slump test was conducted.

10. Unfortunately, in proceedings under Article 226 of the Constitution of India, this Court does not adjudicate disputed questions of fact as to whether wood slump test was conducted or not. This Court has to proceed on the

basis of available records.

11. The records of the medical examinations of the petitioner have been produced before this Court. As observed above, the petitioner was examined by qualified specialist in Medicine at Jalandhar and he diagnosed the petitioner to be suffering from Vitiligo and declared him unfit. Thereafter, an Appeal Medical Board was constituted at the Base Hospital in Delhi.

12. Before the Appeal Medical Board, the petitioner was examined by a dermatologist who also found him to suffer from Vitiligo. The findings of the dermatologist were confirmed by the Medical Board of three doctors. After the examination before the Appeal Medical Board, a Review Medical Board was held at the Armed Forces Medical College at Pune. The petitioner was examined by an associated supervisor of dermatology who also found the petitioner to be suffering from Vitiligo and declared him unfit for appointment. The findings were confirmed by the Medical Board comprising three doctors of the Armed Forces Medical College at Pune. The Approving Authority being the Director General of the Armed Forces Medical Colleges approved the aforesaid findings of the Review Medical Board.

13. The respondents have produced before us medical literature to

substantiate their contention that Vitiligo would render a candidate unfit for service in the Armed Forces and also to substantiate their contention that Vitiligo can be diagnosed by clinical examination.

14. From the medical literature produced before us, it appears that Vitiligo is characterised by progressive autoimmune-mediated destruction of epidermal melanocytes which *inter alia* increases the risk of other autoimmune diseases with unpredictable evolution and unsatisfactory therapeutic outcomes.

15. It is not for this Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, to examine the correctness of medical literature or the medical reports of specialists.

16. Considering that different doctors at different places have diagnosed the petitioner with Vitiligo and having regard to the symptoms of Vitiligo explained to us, with reference to medical literature, we are of the view that our interference with the disqualification is not called for.

17. The three prescriptions/reports of the All India Institute of Medical Sciences, VMMC & Safdarjung Hospital and BPS Government Medical College for Women, Sonipat, Haryana, relied upon by the petitioner do not conclusively rule out the finding of the Medical Boards that the petitioner is

afflicted with Vitiligo. On the other hand, the medical prescriptions/reports of AIIMS suggests the possibility that the petitioner may be suffering from Vitiligo. The medical prescription/report of Safdarjung Hospital indicates that the petitioner had been undergoing treatment. The concerned doctors of the two hospitals only opined that the disease was non-contagious and non-progressive. Similarly, the BPS Government Medical College for Women also opined that the disease was non-contagious and not a progressive disease.

18. The fact remains that the correctness of the diagnosis of Vitiligo has not conclusively been ruled out by any of the medical reports. It is also not in dispute that the petitioner's father and grand father had the same condition.

19. The petitioner has contended that he has not been diagnosed of Vitiligo by any of the reputed hospitals named above. On behalf of the respondents, it is asserted that the condition is Vitiligo. As observed above, the three prescriptions or at least the prescription of All India Institute of Medical Sciences does not rule out Vitiligo.

20. It is not possible for this Court to decide whether the petitioner is actually suffering from Vitiligo or not. May be, he is not suffering from

Vitiligo as contended by him. However, in proceedings under Article 226 of the Constitution of India, we cannot interfere having regard to three different reports of doctors of Jalandhar, Delhi and Armed Forces Medical College, Pune declaring the petitioner unfit and more so, when there is no specific certification by any doctor certifying that the petitioner is not suffering from Vitiligo. There is no reason to refer to the petitioner to any other Medical Board and more so, in the absence of any materials to show that the opinion of three Medical Boards was not correct. It is not for this Court to make a comparative analysis of the medical opinion of different doctors and determine which is correct. In any case, the petitioner cannot insist on constitution of a Medical Board of his choice. As observed above, the Review Medical Board constituted on the request of the petitioner, comprising well qualified doctors of the reputed Armed Forces Medical College, Pune declared the petitioner medically unfit.

21. Writ petition is, therefore, not entertained and the same is rejected.

CM No. 34606/2016 (stay)

Dismissed as infructuous.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

OCTOBER 18, 2016/rs