

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.556 of 2016
IN
Civil Writ Jurisdiction Case No. 16212 of 2015**

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1. Basant Raj son of Aditya Kumar, Resident of Mohalla- Jay Prakash Nagar,
Ward No.21, P.O.+P.S. & District- Khagaria.

.... Appellant/s

Versus

1. The Union of India through the Secretary, Defence at New Delhi
2. The Chairman, Union Public Service Commission, New Delhi.
3. The Director General of Arm Force Medical Service, New Delhi.
4. The Commandant Military Hospital Allahabad.
5. The Commandant Military Base Hospital New Delhi
6. The Director General of Rtg.(NDA Entry) AG's Branch, West Block-III R.K.
Puram, New Delhi.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukesh Kumar, Advocate
Mr. Bijay Kr. Pandey, Advocate
For the Respondent/s : Mr. S.D Sanjay (Addl. Soc. Gen.)
Mr. Arvind Kumar Tiwary, CGC

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 19-06-2017

Seeking exception to an order dated 8.2.2016 passed
by the learned Writ Court in C.W.J.C. No.16212 of 2015 this appeal
has been filed under Clause 10 of the Letters Patent.



Petitioner was a candidate who, after successfully clearing the written examination, the physical test and the interview conducted by the Union Public Service Commission to undertake a course in the National Defence Academy was held medically unfit for undertaking the course in the academy on account of the fact that he was suffering from white coat hypertension. The statutory Medical Board having found him unfit, on appeal being filed, the Appeal Medical Board confirmed the finding of the statutory Medical Board and challenging the same and claiming review of the decision of the Appeal Medical Board the writ petition was filed.

The learned Writ Court found that there is no provision for review and once the Medical Board and the Appeal Medical Board have given concurrent finding holding the appellant unfit for admission into the course, the learned Writ Court cannot interfere into the matter.

While hearing the matter, this Court had directed the counsel representing the Union of India to produce the procedure for constitution of the Medical Board and examination of the candidate by the Medical Board and today learned Counsel representing the Union of India has produced the guidelines dated 3rd of June, 2008 issued by the Government in the Ministry of Defence and under



Clause 20 and 21 of the said guidelines, there is a provision for review.

Learned counsel for the appellant argues that the finding recorded by the learned Writ Court to say that there is no provision for review is incorrect and the matter should be referred to the Review Board for re-consideration. That apart, learned counsel submits that the appellant has been examined by the doctors of the A.I.I.M.S., New Delhi and they have also observed that the appellant's medical disability will not come in the way of performing duties in the armed forces and accordingly submits that it is a fit case where the matter should be referred back to the Review Board for re-consideration.

However, Shri S.D. Sanjay, learned Additional Solicitor General, invites our attention to the guidelines contained in the memorandum dated 3rd of June, 2008 and points out that once the Appeal Medical Board has taken a decision than the review is permissible only subject to the President of the Appeal Medical Board holding and recommending for constitution of a Review Medical Board based on the merits of the case. He refers to Clause 21 contemplating the procedure for constitution of Review Medical Board and argues that in this case the President having refused



constitution of the Review Medical Board, no indulgence can be made by this Court exercising its limited jurisdiction in a proceeding under Article 226 of the Constitution and if the learned Writ Court has dismissed the writ petition on such consideration, there is no error in the matter.

We have heard learned counsel for the parties at length and have gone through various aspects of the matter, particularly the guidelines contained in the communication dated 3rd of June, 2008.

Clause 21 of the aforesaid Circular reads as under:

“When a candidate is declared unfit by the Appeal Medical Board, the result would be communicated to him/her by the President of Appeal Medical Board in the prescribed form as per Appendix ‘D’. He/She may simultaneously be informed that if he/she desires to challenge the findings of the Appeal Medical Board, he/she may do so within one working day. The candidate shall also be informed by the President Appeal Medical Board that holding of the review medical board will be granted at the discretion of DGAFMS, based on the merits of the case, and that Review Medical Board is not a matter of right.”

From a perusal of the aforesaid, it is clear that when a candidate is declared unfit by the Appeal Medical Board, the result should be communicated to the candidate by the President of the Appeal Medical Board in the prescribed form and from the counter affidavit filed by the respondents in the writ petition, it is seen that



the decision was communicated to the petitioner by the concerned competent authority as contemplated under the Rule vide Annexure-C. Thereafter the question of review has also been considered and in para Nos.13 and 14 of the counter affidavit it has been found that the prayer for Review Medical Board was not acceded to and the request for this was rejected vide Annexure-4 filed in the writ petition. From the aforesaid, it is clear that the prayer of the petitioner for review Medical Board was considered under Clause 21 and the same has been rejected. Once the competent authority has considered the request for Review Medical Board and declined to the same, in accordance with the requirement of Clause 21 reproduced hereinabove, now this Court, in the absence of any *mala fides*, illegality or statutory violation being pointed out, cannot sit in appeal and direct for a Review Medical Board when the expert Appeal Medical Board does not find any merit for referring the matter to the Review Medical Board, as is evident from Clause 21 as reproduced hereinabove, Review Medical Board is not a matter of right. It is the discretion of the President of the Appeal Medical Board to hold a Review Medical Board and once the President has exercised his discretion in accordance with the Rules, we see no reason to make indulgence into the matter. As far as the contention of the petitioner



that the doctors of A.I.I.M.S., New Delhi, have found the petitioner fit for duty and, therefore, the issuance of mandamus should be considered is concerned, we are of the considered view that this contention is completely misconceived. Once for recruitment or induction into a service or course in the specialized Armed Forces, a statutory Medical Board is constituted, the entire power to consider a person to be fit is conferred on such Medical Board and when the Medical Board in the present case has found the petitioner unfit based on the reports given by institutions which are not authorized under the Statute to give such a recommendation, a Writ Court cannot interfere into the matter and issue a *mandamus*. Recruitment to the Armed Forces and various other specialized services in the Armed Forces are governed by the rules and regulations applicable to such establishments and the physical fitness and standard required for working in such specialized Forces are determined by the expert medical authorities constituted specifically for the purpose and once these specialized medical authorities have given an expert opinion, a Writ Court cannot sit in Appeal over the said decision and issue any *mandamus*. The recommendation of the A.I.I.M.S. cannot be made applicable, much less binding on the establishments of the Armed Forces which are governed by their own rules and procedures



for medically examining a candidate by specialized Medical Board and empowered under law to take a decision on the basis of the recommendation of such a Board.

Accordingly, in the facts and circumstances of the case, we see no reason to make any indulgence into the matter. The Appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.6.2017
Transmission Date	N/A

