

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

Date of decision: 29.03.2017

CWP No.16209 of 2015 (O&M)

Vishu Jain

...Petitioner

Vs.

Union of India & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Harsh Garg, Advocate, for the petitioner.

Mr. Parminder Singh Kanwar, Advocate, for the respondents.

RAJIV NARAIN RAINA, J.

CM No.4720 of 2017

Application is allowed. Replication along with Annex P-11 is taken on record.

CWP No.16209 of 2015

The petitioner was declared successful in 10+2 Cadet B (Technical Entry Scheme Course) for induction the Indian Navy. However, he could not be appointed since he did not fulfill the standards required of eye sight. The course commenced on June, 2015. Advertisement invited applications from unmarried male candidates were called to join the prestigious Indian Naval Academy, Ezhimala. The criteria demanded distant vision of 6/6, 6/9 correctable to 6/6 or 6/6 with glasses and the candidate should not have colour or night blindness. It was stipulated that physical standards could not be relaxed. The petitioner participated in the interview on 23.05.2015 appearing before the Services Selection Board. The examination was conducted in two stages, which tests the different aspects

of intelligence of a candidate and once the candidate clears the SSB Stage-II interview, then he has to undergo a medical examination. Only if the medical fitness is certified, then the candidate becomes eligible for being appointed for training as per All India Merit List depending on the number of vacancies. The petitioner cleared the interview. The medical examination was held between dates 30.05.2015 to 05.06.2015. He was called to undergo medical examination at Base Hospital, Delhi Cantt. on 09.07.2015 and was found medically unfit due to shortcoming in vision. Against the negative medical opinion, an appeal was provided, which right was availed on 05.06.2015. The petitioner appeared on 06.07.2015 and underwent medical examination called again and again till 09.07.2015. The petitioner asserts that the attending doctor verbally told him that he was medically fit, but nothing was given in writing. To the surprise of the petitioner, he was called again for re-medical examination of the visual standards at Base Hospital, Delhi Cantt. at 8.30 AM on 20.07.2015 vide communication dated 16.07.2015. He was called again for further re-medical examination on 22.07.2015. Thereafter, the petitioner was declared unfit for appointment in the Indian Navy as Permanent Commissioned Officer under the 10+2 Cadet Entry Scheme.

In the case of the petitioner, both eyes were found to be 6/9 and there is no doubt that he is unfit to serve in the Indian Navy. The petitioner accepts the position in this petition and does not dispute the decision taken any further, but diverts his claim to the Indian Army pressing that his vision as determined by the medical authorities in the Indian Navy is sufficient for entry into the Indian Army where the standards for vision are lower. This is where the case of the petitioner begins to materialize. He relies on administrative precedents where candidates were declared unfit for the

Indian Navy for the same shortcoming, but were inducted in the Indian Army for appointment under the 10+2 Technical Entry Scheme Course 33. He identified those candidates as Abhishek Singh resident of Jhansi, Madhya Pradesh and Rishab Mathur resident of Ghaziabad, Uttar Pradesh. These candidates were co-aspirants with the petitioner for appointment in the Indian Navy. The petitioner claims appointment in the Indian Army on the same footing as the other two candidates and presses his case on discrimination. It is not disputed before me that the standards of medical fitness, that the petitioner and the other two candidates were found wanting of standards of eye sight required for Indian Navy. The petitioner claims parity of treatment as a fundamental right guaranteed by Article 14 and 16 of the Constitution.

The petitioner approached this Court in August, 2015 by way of the present petition and notice of motion was issued on 14.08.2015 and the counsel for the Union of India present in Court accepted notice on behalf of the respondents and took time to present the written statement. During the pendency of this petition, the petitioner received a letter dated 03.09.2015 (Annex P-10) from the Indian Army rejecting his claim, which reads as follows:

- “1. Ref. your letter No.1179/8048/LC dated 22 Aug 2015.
2. It is intimated that Sh. Vishu Jain, a candidate of 10+2 Navy Tech was found medically unfit as per Naval medical stds. Thereafter, the candidate approached this Dte to consider his candidature for 10+2 (TES)-33 Course vide his Application dt.22 Jul 2015. Copy enclosed at Appx ‘A’.
3. It is pertinent to mention here that there has been precedence in the past, wherein candidates of 10+2 Navy Tech if found med unfit as per Naval Stds., but found fit for Army have been considered and inducted into OTA Gaya subject to meeting all other eligibility criterion.

4. Considering the above, Rtg Dte approached DMPR, Naval HQ to fwd dossiers of all such affected candidates vide our Note No.B/51723/10+2/TES/Rtg/SE dt 15 Jun 2015. Copy enclosed at Appx 'B'. Accordingly, DMPR, Naval HQ forwarded only three dossiers of the affected candidates for further action at our end vide their letter No.OF/0043 dated 03 Jul 2015. Copy enclosed at Appx 'C'. Dossiers which have been recd in time and found fit in all respects by this Dte were forwarded to DGMS-5A for endorsement of medical fitness for Army. Since only three dossiers duly completed in all respects were recd from DMPR, Naval HQ and only two candidates were found fit in all respects (namely, Mr. Rishabh Mathur and Mr. Abhishek Singh). Therefore, only these two candidates were inducted into 10+2 (TES)-33 Course which has commenced w.e.f. 06 Jul 2015 and last date of induction including delayed induction was 27 Jul 2015.

5. Moreover, this Dte had recd an application from Sh. Vishu Jain on 22 Jul 2015 and no dossier incl medical docus in respect of the applicant have been recd from Naval HQ till date. Therefore, this Dte was not in a posn to process the case in absence of medical docus in respect of the above mentioned candidate, wherein he has claimed to be medically fit for Army. Therefore, his candidature could not be considered for induction into 10+2 (TES)-33 Course.

6. This is for your info and further necessary action pl.”

The factual position is that on 22.07.2015, the petitioner applied for migration to the Indian Army on the basis of same selection. The petitioner has placed letter (Annex P-10) on record vide CM No.12452 of 2015.

The admitted position is that the last date of induction in the Indian Army on rejection by Indian Navy was 27.07.2015, which is three weeks after the commencement of the course. The petitioner had made a request for remitting his case to the quarters concerned in the Indian Army for induction being medically fit to join the Indian Army on 22.07.2015 i.e.

the day when he was finally declared unfit on account of shortcoming in the vision by way of last word. It was for the Naval authorities to send the application further to the Army authorities. This was an intra-departmental exercise to be initiated and responded to by the two authorities for considering the candidature of the petitioner in case the candidate was found medically unfit for one appointment, but fit for the other. The delay in processing the claim made before the cut-off date was not in the hands of the petitioner. The last date for induction in the Indian Army in 10+2 (TES)-33 Course was 28.07.2015. The third and last re-medical examination was completed on 22.07.2015, the day when he made a formal application for transferring his medical case file to the Indian Army for its consideration. The petitioner also asserts with passing time and delay in proceedings that he was eligible for the next entry scheme i.e. 10+2 Technical Entry Scheme Course-34, which commenced in the month of January, 2016. The brochure for 10+2 Technical Entry Scheme Course-34 has been placed on record at Annex P-11. In the cases of Abhishek Singh and Rishab Mathur, the applications were forwarded by the Indian Navy though prior in time to the petitioner, but for the fault of the Indian Navy, the petitioner cannot be penalized keeping the security of a career in the Army which was at arm's length.

On notice, the respondents have put in their written statement and have contested the case. There is no dispute that the petitioner qualified SSB interview, but was found unfit to be inducted in the Naval Academy. The petitioner had not applied for 10+2 Technical Entry Scheme Course-33 of Indian Army and, therefore, was not entitled to be considered for TES-33 Course as a general contender. His induction to TES was subject to receipt of his dossier along with medical documents from Naval Headquarters and

DGMS-5A endorsement of his medical fitness for Army. It is averred that documents were not received in the office of the 5th respondent i.e. Recruitment Officer c/o Directorate of Recruiting, IHQ, MOD, Army, West Block 3, R.K.Puram, New Delhi and therefore could not be processed before the cut-off date. It is admitted that SSB qualified candidates of 10+2 Cadet-B (Tech) Entry Scheme of the Indian Navy, who are found to be medically unfit for Navy may apply for transfer to parallel Technical Entry Scheme of Indian Army and he declared to be medically fit for Army by DGMS-5A and could be inducted into Technical Entry Scheme of Indian Army subject to availability of vacancies. It is not disputed that the petitioner made an application on 22.07.2015 and the last date was 27.07.2015. The petitioner was declared medically unfit by Appeal Medical Board on 27.07.2015 and the docket was received in Naval Headquarter on 28.07.2015 i.e. after the last date of induction for TES-33 Course.

The only reason denying consideration is the barrier of the cut-off date. The cases of the two candidates, namely, Rishab Mathur and Abhishek Singh as the written statement speaks cannot be compared with the case of the petitioner for the reason that those two candidates applied for the transfer of their candidatures on 04.07.2015 and 08.07.2015 respectively. Their dossiers along with medical documents were received in Recruiting Directorate on 05.07.2015 and 16.07.2015 respectively and their medical fitness for Army was endorsed by DGMS-5A on 10.07.2015 and 22.07.2015 respectively, the last being the date when the petitioner appeared on the call of the Indian Navy for medical check-up. It is admitted in the written statement that the medical examination of the petitioner was concluded on 24.07.2015, which was before the cut-off date.

If Rishab Mathur's dossier was transferred by the Indian Navy on 04.07.2015, then it was received in Army Headquarters on 05.07.2015 i.e. the next date and, therefore, there was sufficient time between 24.07.2015 and 27.07.2015 for the Naval Authorities to have acted in time and in accordance with law. In my considered view, the delay in sending the dossier from Navy to Army cannot be at the cost of petitioner.

I have heard the learned counsel for the parties at considerable length on the case set up regarding hostile and invidious discrimination. If there was no administrative precedent this order may not have been born.

The sole question which falls for consideration is; whether the petitioner has an actionable and subsisting right of consideration for induction into preparatory course for commission in the Indian Army for which job the petitioner was arguably medically fit as the Indian Navy required higher standards of vision than the Indian Army. The Appeal to Medical Board is a right conferred by the recitals in the advertisement as against declaration of medical unfitness in the first medical examination. Dissatisfied with his rejection, that right the petitioner exercised on 05.07.2015 by preferring an appeal. He appeared for the first time before the Appeal Medical Board on 06.07.2015 and underwent medical examination up to 09.07.2015 on such a small medical issue. Thereafter, vide communication dated 16.07.2015, he was called again for re-medical examination on 20.07.2015 at Base Hospital, Delhi Cantt but no final decision was taken. He appeared on 20.07.2015, but was called yet again on 22.07.2015 to appear before the Medical Board for examination of visual standards. However, the Naval Authorities delayed the final decision in writing and this delay to my mind is crucial to this case upon which rests the foundation of unfair discrimination as against the other two candidates

namely Rishab Mathur and Abhishek Singh, who received favourable treatment between the Navy and the Army. The only difference is that Rishab Mathur and Abhishek Singh succumbed to the findings in the first medical examination and applied for transfer of their candidatures from the Indian Navy to the Indian Army, while the petitioner exercised his right of appeal. In any case, the respondents admit that the final decision was taken on 24.07.2015 i.e. three days before the cut-off date, which was sufficient time for the Naval Authorities to have acted as they did in the cases of Rishab Mathur and Abhishek Singh acting within 24 hours of one of the requests for migration to the Indian Army for onward declaration of fitness by DGMS-5A in the Army. When the facts of the cases of Rishab Mathur and Abhishek Singh are compared to the case of the petitioner, there is hardly any rational difference and all of them should have been treated alike and on par, especially when there was a single application for consideration of the application for placement in the Naval Academy. Hence, there has been clear violation of Articles 14 & 16 of our Constitution in the case of the petitioner by denying equal opportunity on non discriminatory principles, there being no intelligible differentia setting apart the two set of cases. The action of the Indian Navy in not transmitting dossier of the petitioner and lazing over the matter and prolonging the medical examination till final conclusion is declared unfair, arbitrary and unconstitutional when juxtaposed with the precious right preserved by them and conferred in the case of the other two candidates and for all to be dealt with similarly.

The petitioner had a fundamental right of consideration having qualified the SSB interview after proving his merit in a competitive examination conducted on All India basis. It must be remembered that candidates for 10+2 Technical Entry Scheme Course were fresh out of

school and would not be expected to guard their rights as adults would do with experience of life. The defence of the respondents is declared facile and improper. The authorities could not express their helplessness in not concluding the case and transmitting the docket with necessary certification before the cut-off date and offering reasonable opportunity to the petitioner for consideration of induction into the Indian Army. The petitioner was not only wronged for 10+2 (TES)-33 Course, but also in the next 10+2 (TES)-34 Course. For 10+2 (TES)-34 Course, the authorities should themselves have taken up amendatory measures in the case of the petitioner and done justice to him without the petitioner having to come to knock the door of this Court.

For the reasons recorded above, the instant petition is allowed on plea of discrimination. The impugned letter dated 03.09.2015 (Annex P-10) is declared legally untenable and is accordingly set aside. The Indian Army is directed to consider the candidature of the petitioner for induction into the Indian Army either for 10+2 (TES)-33 Course/10+2 (TES)-34 Course or for the next Course whichever is found workable and practically possible in the circumstances, but in the event of the petitioner being offered appointment and joining, his seniority in the Indian Army will relate back to the merit position secured in 10+2 (TES)-33 Course to bring him on par with Rishab Mathur and Abhishek Singh. This will be subject to medical endorsement by DGMS-5A. The entire exercise shall be completed before three weeks expire from the date of receipt of the certified copy of this order, either from this Court or from the petitioner, whichever is earlier.

It is made clear that it is not the alternative defence in the written statement that vacancies were not available for 10+2 (TES)-33 Course, which makes it easier to implement this order and adjust the petitioner's name against one of the unfilled vacancy. If a vacancy is not

available, even then the Indian Army would consider appointment by deduction from feature vacancies or by creation of a supernumerary post. Only such measures can serve the ends of substantial justice which this order is meant to do.

29.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*