

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

LPA No.1744 of 2017 (O&M)

Date of Decision : 30.11.2017

Union of India and others

....Appellants

Versus

Prabhat Kaushik and others

....Respondents

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI**

**Present : Mr.Chetan Mittal, Asstt.Solicitor General of India with
Mr. Vivek Singla, Senior Panel Counsel
for the appellants.**

MAHESH GROVER, J. (Oral)

This appeal is directed against the judgment of the learned
Single Judge dated 23.12.2016.

Respondent No.1, who was aspirant for the NDA Course, competed in the examination conducted by the Union Public Service Commission in August 2015. The medical examination of the said respondent, however, revealed a defect and his candidature was rejected leading to a petition before the Appeal Medical Board, a statutory remedy available to the respondent No.1, which met the same fate. A writ petition was then filed before this Court which was accepted by the learned Single Judge who ordered a further review from an independent body i.e. R&R Hospital, New Delhi. The opinion of this authority is on record as Annexure A-1 certifying the respondent No.1 to be fit. The learned Single Judge had mandated a further action in case the respondent No.1 was found to be medically fit.

Against this order a review petition was filed by the appellants which was declined. Both these orders are now under challenge before us by the appellant-Union of India.

It has been contended before us that a further opinion has been obtained from the Director MS who has stated that the environment in which an affected person is placed would play a crucial role in either aggravating or reducing the problem afflicting the respondent No.1. We would outrightly discard this certificate having no legal sanction after the R&R Hospital has certified him to be medically fit and thus there was no impediment in accommodating the said respondent to the course in question.

Learned counsel for the appellants then contends that they would have no authority to do so as it is purely in the domain of Union Public Service Commission, which though impleaded as a party respondent in the writ proceedings, failed to even put in appearance despite service. It has been stated before us that the course has a specifically assigned number which relates to the advertisement given out for the course in question and in such eventuality this would be a strong impediment in accommodating the respondent No.1 in any other course that may have commenced or is likely to commence. In any eventuality, it is contended that the course to which the respondent No.1 had applied has already begun.

Respondent No.1 is present in person and has apprised the court that the courses commence every six months and one is commencing on 23.12.2017. We will accept this information given to

us and on due consideration of the matter are of the opinion that respondent No.1 has proved his mettle in the examination conducted by the Union Public Service Commission. He was unjustly kept away from the course that he is so passionately desirous of (as noticed by his forceful reasoning in court). The R&R Hospital, New Delhi has declared him fit and this should have lent a quietus to the controversy by accommodating respondent no.1 to another course which was in currency or likely to commence. Since the course in question relates to the Armed Forces, it would not be feasible to put the clock back and put the respondent No.1 in the course which has already commenced, but we see no harm in the respondent No.1 being permitted to join the course which is likely to commence on 23.12.2017. We, therefore, direct the respondent No.2 or any other respondent in the writ petition to do the needful as an exceptional case resulting from the peculiarities of the case.

However, delay of 236 days in filing the instant appeal stands condoned for the reasons mentioned in the application under Section 5 of the Limitation Act.

Appeal stands disposed of.

(MAHESH GROVER)
JUDGE

30.11.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No