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

+ **W.P.(C) 5783/2017**

SUBODH KUMAR

..... Petitioner

Through: Mr. Shekhar Gahlot, Advocate

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. G. Tushar Rao with Mr. Mayank
Sharma, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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20.12.2017

1. The petitioner had applied to the respondent No.2/Director General of Recruitment, Indian Army, IHQ, Ministry of Defence, for recruitment to the post of Soldier Clerk on 13.9.2016. Upon successfully clearing the physical test on 16.11.2016, he was found medically unfit during his medical examination held on 17.11.2016, on three grounds namely, "*Knock Knee, Flat Feet and Tongue Tie*".

2. The petitioner then requested for a Review Medical Board, which prayer was acceded to. During his review medical conducted at the Military Hospital, Agra on 13.12.2016, the petitioner was cleared on two counts i.e., Flat Feet and Knock Knee. It is the version of the petitioner that for the third disability of "*Tongue Tie*", he was referred to the Chief Warden of the Military Hospital, Agra, who did not examine him and instead, asked the

petitioner to report after two days i.e, on 15.12.2016, by making an endorsement to this effect on his medical review slip.

3. On 15.12.2016, when the petitioner reported at the Medical Hospital at Agra, he was informed that the third disability was to be examined by an 'ENT' Specialist and not by a 'Dentist'. Since the ENT Specialist was on leave on that date and was to join duty in January, 2017, the petitioner was called upon by the Chief Warden to report after 02.1.2017. It has been averred in the petition that no specific date for appearing before the ENT Specialist had been provided to the petitioner and he was only told to appear on 02.01.2017.

4. The petitioner claims to have fallen ill on 01.1.2017 due to which he could not travel to Agra on 02.01.2017. Therefore, he reported at the Military Hospital, Agra, on 07.1.2017, when he was informed that he could not be reviewed for "*Tongue Tie*" since his medical record had already been dispatched to ARO, Agra for further proceedings. The petitioner wrote a letter on 07.1.2017 itself to the respondent No.2 narrating the events that had transpired and requested that he may be examined for "*Tongue Tie*" by the 'ENT' Specialist. His request was however declined by the respondents vide letter dated 14.2.2017 on the ground that as per the policy, there does not exist any provision for re-medical examination.

5. Disheartened by the rejection of his request for being examined by a Review Medical Board for the disability of "*Tongue Tie*", the petitioner addressed yet another representation in the month of February, 2017, requesting that his case may be reconsidered for a Review Medical Board. The said representation appears to have been forwarded to the respondent

No.2, who vide letter dated 12.04.2017, informed the petitioner that he had been reviewed for “*flat feet*” and “*knock knees*” on 13.12.2016 at the Medical Hospital, Agra, and declared fit by the Orthopaedic surgeon in respect of both the conditions but since despite instructions to report for review by the ENT Surgeon on 02.01.2016, he had reported only on 07.01.2017, by which time, all the relevant documents had been dispatched to ARO, Agra, he was declared “*unfit in absentia*”, as per the policy in vogue.

6. Aggrieved by the aforesaid intimation, turning down his case for a Review Medical Board, the petitioner filed the present petition in July, 2017. Notice was issued on the present petition on 12.07.2017 and a counter affidavit has been filed by the respondents, repeating therein what was stated by the respondent No.2 in the rejection letter dated 12.04.2017.

7. On 13.09.2017, the averments made by the respondents in the counter affidavit were noted, wherein the contention of the petitioner was sought to be contravened by placing reliance on a photocopy of his review medical slip, to substantiate their submissions that on 27.12.2016, the petitioner had been specifically directed to report for his ENT examination on 02.01.2017 which date had also been mentioned in the noting on the left side. Upon comparing the original review medical slip produced by the petitioner with the original record of the respondents, relating to the petitioner, which comprised of a photocopy of the petitioner’s review medical slip, the predecessor Bench expressed a prima facie view, that there seemed to be some interpolation in the review medical slip filed by the respondents as Annexure R-3, with the counter affidavit.

8. We find that though the learned counsel for the respondents had also contended that the petitioner had deliberately failed to get himself examined from a Dental specialist for the condition of “*Tongue Tie*” and had taken a false plea that the ENT Specialist was not available due to which, he could not be examined on the said date, the Court had expressed its reservations with regard to the aforesaid submission because of the notings seen in the review medical slip and the stand taken that the petitioner had been asked to report for his medical examination by the ENT. The Court had further observed that the visit by the petitioner to the Army Hospital at Agra on 27.12.2016, affirmed his version that he had been asked to report for an ENT examination.

9. To resolve the aforesaid issue, directions were issued to the Director General, Armed Forces Medical Services to ascertain the correct facts and file an affidavit explaining the position. At that stage, counsel for the respondents had pointed out that the written examination for the subject post was held on 29.01.2017 and the results had been declared in March, 2017. Therefore, the petitioner may not be entitled to any relief at this stage. But we find that the aforesaid submission of the respondents had not weighed with the Court and it was observed that by now, the petitioner had become overage and would not get another opportunity to apply to the respondent for recruitment. It was also observed that if the petitioner’s medical examination had been conducted at the right time, then he could have competed with the others for selection and keeping in mind the fact that the petitioner would have become overage by now, the Director General, Armed Forces Medical Services was also directed to examine as to whether and in

what manner the rules could be relaxed in his case.

10. Pursuant to the aforesaid order, an affidavit of Lt. General Bipin Puri, DGAFMS is handed over to us by learned counsel for the respondents that states *inter alia* that a Court of Inquiry has been ordered to be conducted to ascertain the true and correct facts arising in the present petition regarding the review medical slip and appropriate action in this regard would be taken only thereafter.

11. We are of the opinion that the petitioner cannot be made to wait unendingly merely because a Court of Inquiry has been directed to be conducted by the respondents, as he has already become overage. It is therefore deemed appropriate to direct the petitioner to appear before the ENT Specialist, Medical Hospital, Agra on a date and time to be notified by the respondents to him in writing, within one week from today. If the petitioner is cleared of the medical disability referred to above, then he shall be entitled to sit in the written examination that shall be held immediately thereafter. If the petitioner succeeds in the written examination, he shall be recruited by the respondents at the earliest and his seniority shall relate back to the batch for which he had applied.

12. We may clarify that the respondents will not be entitled to take any objection about the petitioner becoming overage during the pendency of the present petition. The petitioner shall render all necessary cooperation in the Court of Inquiry proceedings and on conclusion thereof, if it transpires that the fault lies at the door of the petitioner, then the respondents shall be entitled to take appropriate action in accordance with law.

13. The petition is disposed of in the above terms. We may add that the aforesaid order has been passed in the peculiar facts and circumstances of the present case and shall not be treated as precedent in any other case.

DASTI to the parties under the signatures of the Court Master.

HIMA KOHLI, J

REKHA PALLI, J

DECEMBER 20, 2017

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