

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

Reserved on 12.08.2016

Decided on: 02.02.2017

+ W.P.(C) 10402/2015

G.C. ABHIMANYU SINGH Petitioner
Through: Mr. S.S.Pandey, Advocate.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Arun Kumar, Ms. Poonam
Kalia and Thakur Virender Pratap
Singh Charak, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V.KAMESWAR RAO

JUDGMENT

INDIRA BANERJEE, J

1. This writ petition is directed against the action of the concerned respondents in declaring the petitioner permanently unfit to serve in the Army. The petitioner has also sought orders on the respondents to allow the petitioner to continue with his Pre Commission training in the Officers Training Academy, Chennai, as part of SSC (T)-44 Course, which he had joined in April, 2015.

2. The petitioner applied for permanent commission in the Army in response to an advertisement dated 27.04.2013, after completing his B.Tech in Computer Science. The petitioner was called for an interview before the Service Selection Board (SSB) for selection to the Technical Graduate Course, hereinafter referred to as TGC-118 course at Allahabad, between 19.10.2013 and 23.10.2013.

3. The petitioner was called for medical examination to the Military Hospital at Allahabad, but was found medically unfit on the ground of “Congenital Absence of Middle and Distal Phalanx of Right Hand Index Finger”. The petitioner filed an appeal against the findings in medical examination, but was found medically unfit by the Appeal Medical Board, on the same ground.

4. Thereafter, the petitioner made a representation dated 20.11.2013 to the Director Medical Services (Medical Boards) R.K. Puram, New Delhi, for constitution of a Review Medical Board, at the Army Research Referral Hospital, Delhi Cantonment, for further examination of the petitioner. The petitioner was, however, never called for further examination by the Review Medical Board.

5. The petitioner again applied, this time for the short service Commission in the Army, and was called to appear for interview for the SSC (T)-44 Course at Bhopal. After interview, the petitioner was

selected. The petitioner was recommended for selection for Pre Commission Training at the Officer's Training Academy, Chennai.

6. The petitioner was called for medical examination at the Military Hospital at Bhopal. He was found medically fit for the SSC (T)-44 Course for Pre Commission into the Indian Army.

7. According to the petitioner, at the time of medical examination, the petitioner was asked about his problem of index finger by the concerned medical specialist, to which he replied that it was a Congenital problem, for which he had not faced any problem. The petitioner was thereafter duly cleared.

8. The petitioner has contended that once a candidate is declared fit upon medical examination at the Hospital, no further medical examination is to be carried out, except when the candidate appeals against the findings given by the Medical Board.

9. The petitioner's name was duly included in the merit list. The petitioner joined the Officer's Training Academy, Chennai for Pre Commission Training on 04.04.2015. According to the petitioner he was going through the training without any problem and performing successfully all tasks required to be performed by him.

10. It is pleaded that in one of the sessions of physical training, the Physical Training Officer Lt. Col. Sanjay Verma summoned the petitioner along with the P.T. Instructor and questioned him regarding the condition

of his right hand and the Congenital Absence of Middle and Distal Phalanx of Right Hand Index Finger. The Physical Training Officer also sought clarification as to how the Medical Board had declared him fit, notwithstanding the aforesaid physical condition.

11. According to the petitioner, the petitioner was also called by the Company Commandant, who questioned the petitioner about his physical condition.

12. According to the petitioner, on 29.04.2015, the petitioner was called by the Regiment Medical Officer of the Officer's Training Academy, who sent him to the Military Hospital, Chennai on the very next day.

13. The Doctors of the Military Hospital referred the petitioner to I.N.H.S. Ashvini, Mumbai for second opinion of one Major Rohit Vikas, Graded Specialist Orthopedics, I.N.H.S. Ashvini. After discussing the case with the senior advisor of Orthopedics, it was decided to refer the petitioner for the opinion of the Plastic and Reconstructive Surgeon. However, the opinion of the Plastic and Reconstructive Surgeon was not obtained and it was decided by I.N.H.S. Ashvini, to declare the petitioner unfit for the Army. The petitioner was, therefore, transferred back to Chennai for completion of formalities to declare him medically unfit and for invalidatment of service in the Army.

14. In July, 2015, an Invalidment Medical Board was conducted at the Military Hospital, Chennai and the petitioner was declared medically unfit.

15. Thereafter, the petitioner was served with a show cause notice dated 13.07.2015, to which the petitioner submitted a reply. According to the petitioner, the Show Cause Notice was a mere formality. Without considering the reply meaningfully the petitioner was discharged, from the Military Hospital, Chennai and sent back to the Officer's Training Academy, where he was granted special leave w.e.f. 25.07.2015 and directed to report back to the Officer's Training Academy, Chennai on 29.10.2015.

16. When the petitioner reported back to the Officer's Training Academy, he was informed that final document for his invalidment would take two-three months.

17. The petitioner made representations to the concerned authorities requesting them to consider his case. According to the petitioner his representations have gone un-answered. In the writ petition, it is alleged that a lady officer Lt. Baby Laldhusangi, commissioned on 12.09.2015 with the same problem, as the petitioner, has been retained in service. Examples have also been given of persons who had been declared medically unfit by the Special Medical Board or the Appeal Medical Board, but later commissioned upon Review Medical Examination.

18. The respondents have filed a counter affidavit to the writ application. In the counter affidavit, it is pleaded that at the time of medical examination, the petitioner had to fill in a report, which he duly signed. From the report, copy whereof has been annexed to the writ petition, it is patently clear that he had suppressed the fact that he had earlier been declared medically unfit at the time of his selection to the TGC 118 Course.

19. The respondents also contend that the defect is in the right index finger, which is “trigger finger”. The finger is used for handling weapons. The petitioner is, therefore, medically unfit for any branch of the Armed Forces as he would not be in a position to handle weapons in the manner required.

20. There can be no doubt that Army service requires the highest degree of physical fitness. There is substance in the contention of the respondents, that the defect in the right index finger, which is the trigger finger, (Congenital Absence of Middle and Distal Phalanx of Right Hand Index Finger) would adversely affect the ability of the petitioner to effectively use weapons.

21. Counsel appearing on behalf of the respondents rightly submitted that the Army personnel are required to use arms during armed conflicts irrespective of whether they render service in the infantry or artillery

wings or whether they are in the Technical Wing or the Medical Wing of the Army.

22. Furthermore, the petitioner has apparently obtained admission for the Pre Commission training at the Officers Training Academy, Chennai, by misrepresentation and / or gross suppression of a material fact. The petitioner misled the authorities by suppressing his earlier disqualification by the Medical Board as also the Appeal Medical Board, at the time of his selection to the TGC-118 course at Allahabad. The petitioners ticked 'No' in the column where he was required to state if he had earlier been disqualified in any medical examination for appointment to any armed force.

23. This Court exercising jurisdiction under Article 226 of the Constitution of India does not sit in appeal over administrative decisions taken by Authorities. In exercise of its power of judicial review, Court examines whether the decision suffers from any procedural defect, which renders the decision illegal.

24. It is also not for this Court to decide factual issues as to whether a person with "Congenital Absence of Middle and Distal Phalanx of Right Hand Index Finger" is fit to perform Army duty. The petitioner having obtained admission suppressing earlier medical disqualification, and misleading the Authorities to believe that he had never been medically

disqualified in the past, his appointment by suppression is liable to be cancelled.

25. The action impugned in this writ petition does not warrant interference.

26. The writ petition is, therefore, dismissed.

INDIRA BANERJEE, J

V.KAMESWAR RAO, J

February 02, 2017/ n