

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

**CWP No. 19727 OF 2016 (O&M)
DATE OF DECISION : 04.12.2018**

Deepak

...Petitioner

versus

Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Gaurav Tyagi, Advocate,
for the petitioner.

Mr. Pawan Kumar Longia, Advocate,
for respondent-Union of India.

ARUN MONGA, J. (ORAL)

CM NO. 12580 OF 2018

For the reasons mentioned in the application, same is allowed and replication along with Annexure P-5 is taken on record, subject to all just exceptions.

MAIN CASE

The present writ petition has been filed, *inter-alia*, seeking issuance of a writ in the nature of certiorari to quash the Medical Examination Report dated 12.08.2016 (Annexure P-2) of the petitioner. The petitioner had applied on 30.04.2016 as Soldier in Clerical Trade/Store Keeper in Indian Army and as part of selection process, his medical examination was carried out.

2. Learned counsel for the petitioner states that the selection process constitutes of three stages viz. Physical Fitness Test and upon clearance thereof; medical examination followed by written examination. It is at the second stage, that the petitioner was found unfit. His primary medical examination was conducted by the Medical Board constituted of three specialized medical officers/physicians. In view of having been diagnosed with "Unhealthy Tympanic Membrane: Left" he was found unfit. Thereafter the petitioner underwent another medical examination conducted by the Appeal Medical Board, as envisaged under the Directive for Recruitment of Junior Commissioned Officers and other Ranks, 2014 (hereinafter referred to as the "Recruitment Directives"). He further contends that vide said Review Certificate (Annexure R-2), the petitioner was once again diagnosed with "Unhealthy Tympanic Membrane of left ear" by the specialized ENT physician along with Registrar of Military Hospital, Hisar. It was also opined therein that the petitioner suffers from "Scarred Tympanic Membrane left with thick Tympano Sclerotic patch."

3. Learned counsel for the petitioner has placed reliance on Medical Certificates issued by Lady Hardinge Medical College, New Delhi dated 18.07.2016 (Annexure P-3), as also Medical Certificate issued by General Hospital, Sonipat dated 19.08.2016 (Annexure P-4), wherein it has been opined that the petitioner has a normal hearing sensitivity and he has no mental and physical disease. He further contends that in view of the said

Medical Certificates issued by Civil Medical Officer, the respondents be directed to conduct another medical review.

4. The said contention of learned counsel for the petitioner is strongly opposed in view of the Directive 248 of the Recruitment Directives *ibid*, which is extracted herein below :

" After the review at the Appeal Medical Board, the candidate will have no right for further reveiw/re-medical. All candidates who are found unfit by team of MOs and SRMO and endorsed unfit by specialist at designated hospitals will be debarred from participation in future rallies."

5. Learned counsel for the respondents contends that in view of the said Recruitment Directives, which is not in challenge in the present writ petition, the petition is liable to be dismissed. He further submits that in any case those who qualified in the medical examination in the meanwhile underwent written examination and have already been selected. They are neither party in the present writ petition, nor there is any order by this Court reserving any position for the petitioner.

6. Upon a query posed by the Court as to how the "scarred tympanic membrane" interferes with the proposed job applied for and non-suits the petitioner, Colonel Rajat Chaudhary, who is present in Court, sought permission of the Court to explain the same. He points out that during combat, everyone and anyone in Army can be deployed or posted in all kinds of terrain within the country or abroad. The combatant is

also required to handle all kinds of explosives, small arms and guns which have audibility gains which can affect the unfit ear and further the eardrum. The petitioner, if selected, would also have to undergo combat training qua the same.

7. In view of the same, learned counsel for the respondents contends that while the petitioner may be fit for civil duties, but he has been rightly rejected by the Army doctors in view of the nature of job likely to be undertaken by the petitioner. Further contends, that even though his initial recruitment was of a store keeper, but in the Army even a store keeper is also given combat training and is expected to carry on combat duties. In view thereof, the petitioner has been rightly found unfit in his own interest as his eardrums are likely to get damaged further.

8. Learned counsel for the respondents also points out that in any case the selection process is now over as the written examinations have already been held and pursuant thereto selection process has finally been completed. Concededly, the petitioner has not undertaken the written examination and therefore, writ petition has become infructuous.

9. Learned counsel for the respondents places reliance upon the judgment of Single Bench rendered by this Court in CWP No. 15561 of 2016 decided on 21.12.2017 titled as, "**Sumit v. Union of India through Secretary Ministry of Defense, Govt. of India, New Delhi and others**", wherein it has been

held that in the absence of challenge to Article 248 of the Recruitment Directives, no mandamus can be issued to the contrary and therefore, similar being the position herein, learned counsel for the respondents seeks dismissal of the writ petition.

10. Learned counsel further places reliance upon another Single Bench judgment of this Court rendered in CWP No. 20669 of 2015 decided on 31.01.2017 titled as, "**Mohit Chauhan v. Union of India and others**", wherein it has been held that a candidate cannot claim appointment as a matter of right and mere qualifying the physical fitness test, does not give a candidate an indefeasible right to appointment by direct recruitment.

11. Per contra, learned counsel for the petitioner relies upon the Division Bench judgment of this Court rendered in LPA No.654 of 2015 decided on 19.05.2015 titled as "**Raju v. Union of India and others**", wherein a candidate was declared medically unfit to be appointed in Air Force and upon being assailed the said Medical Unfit Certificate, a Medical Board of Post Graduate Institute of Medical Education and Research, Chandigarh and All India Institute of Medical Sciences, New Delhi, constituted subsequent thereto found him medically fit. In such peculiar circumstances, an order was passed that another medical review of the candidate therein be conducted, based on the medical certificates issued by the Post Graduate Institute of Medical Education and Research, Chandigarh and All India

Institute of Medical Sciences, New Delhi.

12. This Court is of the view that reliance sought by learned counsel for the petitioner in ***Raju's case (supra)***, is misplaced, as in the present case, the position has been clarified by learned counsel for the respondents, as also the officer of Army, who is present in person.

12. In view of the above discussion, the instant petition stands dismissed, with no order as to costs.

(ARUN MONGA)
JUDGE

DECEMBER 04, 2018
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |