

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Letters Patent Appeal No. 1381 of 2016 (O&M) in
CWP No. 26728 of 2013
Date of decision: 19.4.2018

Patil Sachin Mohan and others

.. Appellants

v.

Union of India and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B. S. WALIA

Present: Mr. Pawan Kumar Sharma, Advocate for the appellants.
Mr. Pankaj Jain, Advocate for the respondents.

...

Rajesh Bindal J.

The order dated 3.6.2016 passed by the learned Single Judge dismissing the writ petition has been impugned by filing the present intra court appeal.

The appellants in the present case were working as Constables with ITBP. They being in-service candidates are eligible for selection and appointment to the post of SI/LDC. The vacancies for the purpose were notified on 13.8.2013. The appellants had been able to pass the written examination, physical measurement and physical efficiency test. However,

in medical examination, they were found deficient, hence, their candidature

was rejected. The communication dated 25.11.2013 was impugned by filing the writ petition. The learned Single Judge did not find any merit in the contention raised by learned counsel for the appellants that their medical examination be re-conducted.

At the time of issuance of notice of motion, learned counsel for the appellants submitted that it was a case of accelerated promotion of in-service candidates and not direct recruitment and they are ready and willing to undergo medical examination by the Review Medical Board or any independent institution like PGIMER, Chandigarh. On 29.11.2016, this Court directed PGIMER, Chandigarh to constitute a Board to medically examine the appellants. The report was received in sealed cover vide communication dated 15.2.2017, which has been taken on record. A perusal of the report shows that four-Member Board consisting of doctors from different departments was constituted to medically examine the appellants. After conducting different tests, the Medical Board opined that clubbing of left middle finger in the case of Patil Sachin Mohan is not of the kind of functional deformity, which could put limitation on level of activity. All other standards were found normal. In the cases of two other appellants, namely, Ramveer and Champak Raj Bonshi also, the opinion was that they are medically fit. PGIMER is an institute of international repute, hence, we have no doubt in our mind to accept the report submitted by the Medical Board constituted there.

In view of the aforesaid factual matrix, the stand of the appellants is that once they have been found medically fit by an independent hospital, the reason on which their candidature was rejected, no more exists, hence, they deserve to be appointed. He further submitted that the appellants

have become over-age and will not be able to compete for the post in future, hence, great prejudice will be caused to them. They had immediately approached the court after their candidature was rejected on the ground of they being medically unfit.

On the other hand, learned counsel for the respondents submitted that the appellants were found to be medically unfit on the date of consideration by the Medical Board constituted by the selecting agency. There are guidelines issued by the employer, in terms of which there is right to appeal against rejection of candidature of a person on account of his being medically unfit and the said remedy was not availed of. However, he could not dispute the fact that the appellants have been found to be medically fit by the Medical Board constituted by PGIMER, Chandigarh.

After hearing learned counsel for the parties, we find merit in the present appeal. The only ground on which the candidature of the appellants was rejected by the respondents was that certain medical deformity was found during their medical examination. The same are reproduced hereunder:

“Roll No. 50102 Name **PATIL SACHIN MOHAN**

Father's Name Sh. **MOHAN AADHAR PATIL**

Category **Gen**

Cause of Rejection: **MIDDLE FINGER DEFORMITY (LT.)
HAND (LEFT)**

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“Roll No. 40130 Name **RAMVEER**

Father's Name Sh. **HARI OM**

Category **SC**

Cause of Rejection: **ANAL FISTULA**

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“Roll No. 50120 Name **CHAMPAK RAJBONSHI**

Father's Name Sh. **RATNESHWER RAJBONSHI**

Category **OBC**

Cause of Rejection: **A BIN TATOO MARK ON LEFT
ARM”**

The appellants have been got medically examined from PGIMER, Chandigarh. The Board constituted there had found the appellants to be medically fit. Even in the rejection slips in the cases of two of the appellants, the reason assigned was not such which was not curable, whereas in the case of third appellant, the opinion by PGIMER is that deformity will not in any way affect the level of activity.

Once the appellants have already passed the entire process of selection and for selection in future for the post in question they have become over-age and further it is not a case of direct recruitment, rather, accelerated promotion of the in-service candidates, hence, in our view, the present appeal deserves to be allowed. Ordered accordingly. The respondents are directed to offer appointment to the appellants for the post they participated in the process of selection if there is no other bar on their appointment as they have been found to be medically fit by the Board constituted by PGIMER, Chandigarh. However, considering the fact that the selection pertains to the year 2013 and during the pendency of the writ petition and the present appeal in this court, there may be further process of selection, we deem it appropriate to direct that the appellants may be given

the benefit of the promoted post from the date of joining. The needful shall be done within a period of three months from the date of receipt of copy of the order.

(Rajesh Bindal)
Judge

19.4.2018
mk

(B. S. Walia)
Judge

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