

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

**LPA No.683 of 2018 (O&M)
Date of Decision: 09.05.2018**

Union of India and another

... Appellants

Versus

Jaswinder Singh

... Respondent

**CORAM:-HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present:- Mr. Lalit Kumar Sharma, Advocate for

Mr. Sunil Kumar Sharma, Advocate,
for the appellants.

TEJINDER SINGH DHINDSA J.

CM No.1880 of 2018 in LPA No.683 of 2018

Instant application has been filed under Section 5 of the limitation Act seeking condonation of delay of 121 days that has occurred in filing the accompanying the appeal.

The only basis disclosed in the application seeking condonation is that the concerned file had to be processed at different levels before a decision could be taken to file the appeal and accordingly delay has occurred.

We do not find the basis disclosed in the application to be a valid ground to condone the delay.

Application is dismissed.

Main appeal

This Letters Patent Appeal is directed against the judgement dated 07.12.2017 passed by the learned Single Judge whereby the order dated 18.06.2015 rejecting the claim of the respondent for selection and appointment to the post of Soldier

(General Duty) under the Armed Forces has been set aside and directions have been issued to reconsider his claim in the light of a Medical Examination Report furnished by PGIMER, Chandigarh as also in terms of a ***Division Bench's Judgment dated 16.12.2014 in CWP No.10900 of 2014 (Govind Vs. Union of India and others)***.

Counsel appearing for the appellant-Union of India has submitted that respondent participated in a selection process for appointment as Soldier (General Duty). Prior to candidates being sent for joining to the respective Regimental Training Centre a mandatory medical inspection is laid down. Medical examination of the respondent was conducted on 04.12.2012 as per procedure by Recruitment Medical Officer and he was declared medically unfit with the condition "CORNEAL OPACITY LEFT". With a view to give a chance to each candidate to be seen by the concerned specialist, a medical review of the petitioner was conducted at Military Hospital, Jalandhar Cantt. on 12.12.2012 and wherein he was declared medically unfit by the eye specialist on account of the same medical condition i.e. "CORNEAL OPACITY LEFT".

It has been argued that in matters of recruitment to the Armed Forces opinion of a Civil Medical Practitioner is not valid as medical standards for army recruitment would be different compared to civil organizations. It was urged that medical standards for army personnel are at variance as the requirement is of serving in different types of weather and terrain. It is vehemently contended that the rejection order dated 18.06.2015 pertaining to the respondent as regards the selection to the post of

Soldier (General Duty) could not have been set aside on the strength of a medical certificate issued by PGIMER as the Recruitment Medical Officer and other specialists of the Armed Forces are the final authority in such matters.

Further submission has been raised that the learned Single Judge has erred in relying upon the Division Bench Judgement in ***Govind's case (supra)*** as the same would be distinguishable on facts.

We have heard counsel at length and have perused the pleadings on record.

It may be noticed that against his rejection for appointment as Soldier (General Duty) on medical grounds, respondent had earlier in point of time approached this Court by filing CWP No.27398 of 2013 and in which directions had been issued on 08.12.2014 for the respondent to be examined at PGIMER and the Director of the Institute had been requested to constitute a Medical Board of Doctors to examine the respondent and to submit a final report.

It so transpires that a medical report dated 24.01.2015 was furnished and whereby PGIMER had declared the respondent to be fit as regards his vision. At this juncture, CWP No.27398 of 2013 was disposed of on 27.02.2015 in terms of the following order:

“When this case came up for hearing on 8.12.2014, following order was passed:-

There are conflicting medical reports available on record about the medical fitness of the petitioner.

In view of the above and to resolve the controversy, it is appropriate to refer the matter to the Director, PGIMER, Chandigarh so as to constitute a medical Board of Doctors and to submit a medical report of the petitioner.

List on 29.01.2015.

Office is directed to send a complete copy of the writ petition along with copy of this order to the Director, PGIMER, Chandigarh so as to enable him to constitute a medical Board and submit the medical report before the next date of hearing.

In compliance of the abovesaid order, medical report dated 24.1.2015 has been received, which is available on record at page Nos. 58 to 61 of the paper book.

Learned counsel for the petitioner submits that the petitioner will be satisfied in case the competent authority, i.e. Zonal Recruiting Officer, ZRO Jalandhar, Cantt-respondent No.2 is directed to reconsider the claim of the petitioner, in accordance with the latest medical report dated 24.1.2015, submitted by the Director, PGIMER, Chandigarh.

Faced with the above, learned counsel for the respondents also fairly states that let the present writ petition be disposed of with a direction to respondent No.2 to reconsider the claim of the petitioner in accordance with the latest medical report.

In view of the above, the Zonal Recruiting Officer, ZRO Jalandhar, Cantt-respondent No.2 is directed to reconsider the claim of the petitioner strictly in accordance with the latest medical report dated 24.1.2015, submitted by the Director PGIMER, Chandigarh.

Let the needful be done within a period of two months from the date of receipt of certified copy of this

order.

Disposed of, accordingly.”

We find that directions had been issued by the Writ Court to reconsider the claim of the petitioner strictly in accordance with the medical report dated 24.01.2015 submitted by Director, PGIMER, Chandigarh. Further more such directions were issued after recording statement of counsel who had represented Union of India. At that stage appellant herein i.e. Union of India had not raised any objection with regard to the medical report furnished by PGIMER, Chandigarh and had not contended that such report was irrelevant and that it is only the opinion of the Recruitment Medical Officer or Medical Specialist of Armed Forces that was to prevail.

Under such circumstances, we would not permit the appellant Union of India now to take a somersault and to wriggle out of the statement recorded by the Writ Court at the stage of disposal of ***CWP No.27398 of 2013 (Jaswinder Singh Vs. Union of India and another) decided on 27.02.2015.***

That apart we have even perused the medical examination report dated 24.01.2015 furnished by a duly constituted Board of Doctors of PGIMER and which is in the following terms:-

“MEDICAL EXAMINATION REPORT”

A medical Board consisting of the following members constituted by the Medical Superintendent vide endst. No. EV (9) PGI-MS/MA-63/2015 dated 16.01.2015 to examine Mr. Jaswinder Singh S/o Sh. Mohinder Pal (CWP No.27398 of 2013 Vs. Union of

India and Others) for eye fitness:

i) Dr. Usha Singh ***Chairman***
Professor

ii) Dr. Amit Gupta ***Member***
Additional Professor

iii) Dr. Jaspreet Sukhija ***Member***
Assistant Professor

Mr. Jaswinder Singh registered in Eye OPD (CR No.201501219233) and was examined on 21.01.2015. His unaided visual acuity is 6/6 in both eyes. Right eye anterior segment is within normal limits and left eye anterior segment examination shows superficial stromal small pin head size corneal opacities (2). These opacities are visually insignificant. Both eyes posterior segment, visual fields and colour vision are within normal limits.

In our opinion, Mr. Jaswinder Singh is medically fit as regards his vision.

Sd/-
Dr. Amit Gupta
Additional Professor
Advanced Eye Centre
PGIMER, Chandigarh
(Member)

Sd/-
Dr. Jaspreet Sukhija
Assistant Professor
Advanced Eye Centre
PGIMER, Chandigarh
(Member)

Sd/-
Prof. Usha Singh
Professor
Advanced Eye Centre
PGIMER, Chandigarh

We find no basis whatsoever to discard such medical examination report furnished by a Medical Board of Doctors by a prestigious and reputed Medical Institution i.e. Post Graduate Institute of Medical Education and Research, Chandigarh. The

opinion recorded in such report as regards respondent being medically fit as regards his vision has to be given due weightage and recognition.

As regards the Division Bench's Judgment rendered in ***Govind's case (supra)***, undoubtedly it was a case of the petitioner therein having been discharged from service by the Army Authorities on the ground of his erroneous recruitment upon not fulfilling the requisite eligibility in respect of measurement of his chest (unexpanded and expanded) at the time of the selection but such judgment would be relevant to the case at hand to the extent that the reports given by the General Hospitals at Charkhi Dadri (Bhiwani) and at Bhiwani in favour of the petitioner therein, namely, Govind had been taken into cognizance.

In view of the discussion hereinabove, we are in agreement to the view taken by the learned Single Judge and affirm the judgment dated 07.12.2017 passed in CWP No.22630 of 2015.

Consequently, the instant appeal is dismissed on the ground of delay as well as on merits.

Dismissed.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

09.05.2018

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No