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

+ **W.P.(C) 3389/2016**

NATASHA KOHLI Petitioner

Through: Mr. Azam Ansari, Advocate.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Arun Bhardwaj, Advocate with
Mr. Nikhil Bhardwaj and Mr.
Shashwat Sharma, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

% **ORDER**
07.12.2018

1. By way of the present petition under Article 226 of the Constitution of India, Petitioner seeks quashing of the termination order dated 14th October, 2015 and consequential discharge order dated 2nd November 2015 issued by Respondents, whereby her services have been terminated on medical grounds, prior to grant of commission.

Factual Background

2. The relevant facts to be noted are that the Petitioner applied with Respondent No. 3 Dte General of Medical Service (DGMS) Army

Headquarter, New Delhi for General Nursing and Midwifery Course (GNM Course) in May, 2010.

3. Pursuant to passing the written examination in January 2011, Petitioner was called for an interview at Command Hospital (Central Command), RLB Marg, Lucknow. On the date of interview i.e. 11th April, 2011, Respondents conducted the 'medical examination report on entry' at Command Hospital Lucknow. The Petitioner was declared medically fit in all respects, except being temporarily unfit on account of being overweight.

4. On 20th July, 2011, Respondent No. 3 issued joining letter to the Petitioner, directing her to report to the Principal Tutor, School of Nursing, Command Hospital Air Force, Bangalore. Another 'medical examination report on entry' was conducted on 24th August 2011 at CH (WC) and the Petitioner was declared fit.

5. On completion of three and a half years of training i.e. from 2011 to 2014 and prior to being commissioned as a Nurse, the Petitioner was subjected to a pre-commissioning medical examination at Command Hospital, Bangalore on 14th January, 2015. The examination was conducted by a Senior Advisor Dermatology & Venerology who found the Petitioner to be medically unfit for '**Vitiligo Vulgaris**', a type of skin disease (white patch) near right side of eye lid and left side of neck.

6. The Petitioner then applied for Appeal Medical board. Her request was accepted and she was again medically examined at Base Hospital, Delhi

Cantt on 24th April, 2015. The Appeal Medical Board also declared her to be unfit for commissioning due to Vitiligo Vulgaris (RT) eye lid and left side of neck.

7. On 20th May, 2016, the Petitioner further prayed for another Review Medical Board. Permission was granted by DGAFMS and Review Medical Board was conducted on 15th June, 2015 at Armed Forces Medical College Pune. This time again, she was declared unfit for commissioning, on account of the skin disease mentioned above. The decision was notified to the Petitioner on 2nd July, 2015. The Petitioner made a representation to the Respondents, but there was no change in their decision.

8. Invalidating Medical Board (IMB) proceedings were held at Command Hospital (AF) Bangalore and vide letter dated 16th October, 2015, the Petitioner was declared unfit for commissioning due to the skin disease described above. Consequently the termination letter was issued to her on 14th October, 2015, after due approval of DGAFMS. Aggrieved with the above order, Petitioner has filed the present petition.

9. This Court has heard the learned counsel for the parties.

10. Counsel for the Petitioner submitted that the Respondents are discriminating against the Petitioner. Her submission is that other personnel suffering from the same medical disability are being retained in the service, but the Petitioner has been boarded out.

11. Learned counsel for the Petitioner has also urged that the Petitioner was subjected to medical examination from 2011 to 2014 and also during her internship period, and in each year she was declared to be medically fit. In 2012, Petitioner developed the skin disease and duly informed the Respondents. The Respondents were aware of the said medical condition since 2012 and cannot at this stage terminate her on medical grounds during the pre-commissioning medical examination. Further, the Petitioner also relied on the Medical Certificate issued by All India Institute of Medical Services (AIIMS Hospital), which declares her fit for the job. The said finding of AIMS is reproduced as under:

“The disease is not communicable. It is autoimmune in nature. Currently, there is no evidence of disease spreading to other person. Besides cosmetic appearance, consequence on health perspect. Not interfere with functioning/working capacity.”

12. Learned counsel for the Respondents, on the other hand, has urged that the Petitioner cannot claim parity with persons who are in service and suffer from the same disease. Respondent’s counsel has laid emphasis on the fact that the serving personnel, who have been retained notwithstanding the medical condition is on account special circumstances. The disease was detected whilst the said officers were in service and they were given sheltered appointment. However, in the case of the Petitioner, the disease was detected prior to grant of commission into military nursing service and accordingly the Respondents have terminated her on this ground.

13. The Respondents also rely on their policy to submit that if during the course of training, a candidate is diagnosed with a skin disease, the Respondents would be justified to terminate the training of such a person.

14. We have given a thoughtful consideration to the rival submissions of the learned counsels for the parties. It is an admitted case of the parties that the Petitioner was still undergoing pre-commissioning training when she was declared to be medically unfit. Though, the Petitioner asserts that she has completed her training, however, it is not in dispute that the Petitioner was not granted commission and the medical examination was done at pre-commissioning stage. Therefore, the case of the Petitioner is entirely different from those, with whom she is seeking parity. Moreover, the Respondents have categorically stated that the six service personnel who were suffering from the same disease were retained in service only on the ground of “sheltered appointment” and the said disease in those cases was detected after joining the service. On the other hand, in the instant case the Petitioner was found to be medically unfit at the pre-commissioning stage itself. Moreover, Petitioner’s selection/ appointment for the General Nursing and Midwifery course, was provisional in nature. The confirmation was only by way of commissioning and that was subject to her fulfilling all the requirements of the Respondents including being declared to be medically fit.

15. So far as Petitioner’s challenge to the decision of the Medical Board on merits is concerned, this Court cannot sit in appeal over the decisions of the experts dealing with the subject. The Petitioner was medically examined

by Senior Advisor Dermatology & Venerology, Command Hospital, Bangalore. Thereafter, the Petitioner was re-examined by the Appeal Medical Board and then by the Review Medical Board. The expert Boards comprised of Senior Dermatologists who have given an opinion that the Petitioner is indeed suffering from 'Vitiligo Vulgaris' and that she is not fit for grant of commission.

16. Under Article 226 of the Constitution of India, in the facts of the present case, we would like to refrain ourselves from entering into an arena, which is purely within the domain of the experts in the field. The Petitioner has relied upon the Medical Certificate issued by AIIMS Hospital to assert that her ailment would not affect the discharge of her duties as a nurse, that the disease is not contagious, and is not progressive. However, it is not in dispute that the Petitioner is, in fact, suffering from the aforesaid condition. AIIMS Hospital, while giving the opinion, would not have had the occasion to consider the special requirements of the Respondents i.e the Indian Army. The opinion of the Appeal Medical Board, does not appear to be arbitrary in any manner, and we see no reason to interfere with the same.

17. The Respondents in their affidavit have stated that Vitiligo is a chronic relapsing and unpredictable disease, though, it may show improvement with medications but relapses are very common after the therapy has been stopped. The amount of pigmentation is not an indication that the condition is cured. The Respondents have further averred that looking into the nature of the disease being a chronic and relapsing disease, the Respondents have to take into consideration several factors before deciding to take an officer

on board. Since, officers with the Respondents are required to work in strenuous environment, it could lead to an aggravation of the disease and this could entail visits to doctors and dermatologists for treatment and medication resulting in loss of man hours.

18. The Respondents are justified in terminating the training of the Petitioner, since the disease was detected during the pre-commissioning medical examination in 2015. We have noticed that the cumulative health record conducted during 2011-2014, does not declare the Petitioner to be unfit on medical ground, but that does not mean that the Respondents cannot decide to terminate her at a later stage, when the disease was first detected i.e. during the pre-commissioning medical examination in 2015. The medical condition/fitness expected or desired for recruitment or retention of individuals in Armed Forces has to be guided by the policies of the Respondents.

19. We have not been shown any evidence that would suggest that the evidence of the disease was noticed in any of the medical examination from 2011-2014. Though, the Petitioner asserts that she had acquired the disease in October, 2012, and that she had reported the same many a times while taking treatment at the Army Hospital, however the same is not indicated in her cumulative medical records. Indisputably, the Petitioner is suffering from the aforesaid skin disease. There are no grounds for the Court to issue a mandamus cancelling Petitioner's termination order. We do not find any arbitrariness or illegality in the action of the Respondents.

20. In view of the aforesaid, the writ petition is dismissed.

SANJEEV NARULA, J

S.MURALIDHAR, J

DECEMBER 07, 2018

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