

\$~42

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

+ W.P.(C) 11197/2018 & C.M.No.43470/2018 (exemption)

SH. CHAMAN KUMAR SHARMA Petitioner

Through Mr.Yomesh Dutt Sharma with
Mr.Ravi Kumar, Advs.

versus

UNION OF INDIA AND ORS. Respondent

Through Mr.Akshay Makhija, CGSC with
Mr.Ankit Tyagi, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **16.10.2018**

1. The present petition has been filed by the petitioner for quashing of the order dated 18.02.2016 passed by the respondent no.3/Indian Navy, whereunder he has been declared medically 'unfit' for recruitment to the post of Sailor in the Indian Navy on the ground of having '*keloid on his right leg*'.

2. Briefly stated, the facts of the case are that in May, 2015, the respondents had issued an advertisement inviting applications for recruitment of Sailors for Artificer Apprentice -139 Batch, 2016. The petitioner had applied in response to the said advertisement on 18.06.2015 and had appeared in the written examination, physical and preliminary medical examination conducted by the respondents.

3. Vide letter dated 23.12.2015, the petitioner was informed that

he had been provisionally selected for the subject post and he was directed to appear for the final medical examination at the Recruitment Office of the respondents situated in Chilka, Odissa. The petitioner appeared in the medical examination on 15.02.2016 and vide order dated 18.02.2016, he was declared 'unfit' on the ground of having a '*keloid on his right leg*'.

4. Aggrieved by the said report, the petitioner submitted a request for a re-medical examination on 25.02.2016. However vide order dated 28.03.2016, the respondent no.2 informed the petitioner that there was no provision in the Indian Navy for conducting a re-medical examination and no plea for review is permitted after the final enrolment examination is conducted.

5. It is the contention of the petitioner as stated in para 6 of the writ petition that in April, 2016, he had got himself examined by a Skin Specialist at the District Government Hospital, Mathura, where no such disorder of '*Keloid*' was diagnosed and instead, the Doctor who had examined him had stated that he does not require any treatment.

6. We may note no such report of the concerned Doctor at the District Government Hospital, Mathura has been enclosed with the present petition. We have enquired from learned counsel for the petitioner as to whether he can produce the said report. He, however, expresses his inability to do so and states that the petitioner has misplaced the said document.

7. Learned counsel further states that on 11.08.2018, the petitioner had approached the Doctor at AIIMS, Delhi for a medical opinion and

he had opined that the scar on the right leg of the petitioner, is an old injury and not a *keloid*.

8. Armed with the aforesaid report the petitioner had submitted a letter dated 18.08.2018 to the respondents seeking a review medical examination. On 08.10.2018, the petitioner received a letter dated 28.09.2018 from the respondent no.2 stating *inter alia* that once he had been declared 'unfit' by the specialist during the medical check-up conducted on him, no review is permissible. It was also stated that over two years had elapsed and therefore, even otherwise, his request for a review medical board could not be entertained.

9. We have requested learned counsel for the petitioner to explain the reasons for a delay of almost two and a half year in approaching the Court for relief and that too in a case where the petitioner is seeking recruitment. Except for stating that the petitioner was unaware of the nature of legal remedy available to him, there is no explanation offered by the counsel for the petitioner to explain such an inordinate delay.

10. We are not inclined to entertain the present petition on two counts. Firstly, on the ground of unexplained and unreasonable delay and *laches* on the part of the petitioner in approaching the Court for relief and secondly, on the ground that counsel for the petitioner is unable to produce the report of the Skin Specialist at the District Government Hospital, Mathura, according to which, as per the learned counsel, it had been diagnosed in April, 2016 that the petitioner was not suffering from any disorder as noted by the respondents.

11. In the absence of any material documents, there is no way to establish at this belated stage as to whether the petitioner was actually suffering from the ailment in question in the year 2016, when he had been declared 'unfit' by the respondents for the subject post.

12. For the aforesaid reasons, the petition is dismissed alongwith the pending application. It is however, clarified that in the event the petitioner applies in response to any fresh recruitment drive that may be undertaken by the respondents in the future, his having been medically declared 'unfit' in respect of the advertisement issued in May, 2015 will not be an impediment. In case the petitioner applies afresh, he shall be medically examined at that relevant point in time and a decision shall be taken by the respondents based on the said examination.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 16, 2018

sr