

In the High Court of Punjab and Haryana at Chandigarh

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CM No.12038 of 2019
and
Civil Writ Petition No.9579 of 2019

.....

Date of decision:25.11.2019

Sandeep Sharma

...Petitioner

v.

Union of India and another

...Respondents

....

Coram: Hon'ble Mr. Justice Arun Monga

.....

Present: Mr. Ajay Vijarania, Advocate for the petitioner.

Mr. Abhimanyu Antil, Advocate for the respondents.

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Arun Monga, J. (Oral)

CM No.12038 of 2019:

For the reasons mentioned in the application, same is allowed.

The date of hearing is preponed for today.

The main petition is taken on Board for hearing today itself.

C.W.P. No.9579 of 2019:

The petitioner is aggrieved against his being declared medically unfit by the Appeal Medical Board dated 02.03.2019 (Annexure P-7) constituted by the Indian Air Force for the purpose of selection as Airmen in Group 'X' Trades and Group 'Y' Trades.

2. The learned counsel for the petitioner contends that petitioner was declared medically unfit on 17.01.2019 (Annexure-P.5) and after his

[2]

rejection, he was operated at Sanjivani Multispeciality Hospital, Hisar on 21.01.2019 for “HAEMORRHOIDS”. After the operation, petitioner appeared before the Appeal Medical Board and he was declared medically unfit vide report dated 02.03.2019 (Annexure-P.7) impugned herein.

3. After his rejection, petitioner got himself examined at Postgraduate Institute of Medical Education and Research, Rohtak (for short 'PGIMER') and he was declared fit, as per medical certificates issued to him by the hospitals as reflected from Annexure-P-8.

4. Per contra, learned counsel for the respondents contends that his subsequent rejection is final and binding.

5. Learned counsel for the petitioner also relies on a Division Bench judgement of Delhi High Court W.P. (C) 9239/2016) wherein the petitioner was similarly situated and was found unfit by the Appeal Medical Board. The High Court directed re-examination of the petitioner to be conducted by Army Research and Referral Hospital, New Delhi which is an Armed Forces Medical Institution. It would be instructive to reproduce the relevant extract of the judgement, *ibid*, as below:

“ The letter requiring the petitioner to appear before the Appeal Medical Board clearly stated that they were to be subjected to complete Medical examination afresh. This would necessarily mean conducting a fresh ECG as well. The medical disqualification by the Appeal Medical Board without proper examination of the candidates concerned by conducting an ECG, cannot be sustained. The writ petition as well as

[3]

application are disposed of by directing the respondent-authorities to refer the candidates to the Army Research and Referral Hospital in New Delhi for constitution of a board of experts which shall include a Cardiologist, to assess the medical condition of the petitioner after conducting ECG on them. Needless to mention that the Medical Board may conduct such other tests as may be deemed appropriate.”

6. In a similar situation, a Division Bench of this Court, in LPA No.654 of 2015 also observed as below:

“In view of the fact that the appellant has been declared medically fit by the Medical Boards constituted by the Post Graduate Institute of Medical Education and Research, Chandigarh and All India Institute of Medical Sciences, New Delhi vide certificates dated 25.03.2015 [P5] and 05th May, 2015 [Photostat copy placed on record], we are of the considered view that the respondent – Authorities are required to either constitute a Review Medical Board to re-consider the medical fitness of the appellant or they may verify the original medical certificates relied upon by the appellant. Let an appropriate decision in this regard be taken within one week and if the appellant is found medically fit, desirability of offering him appointment shall also be considered within one month thereafter.”

7. I am in agreement to the contention of learned counsel for the

[4]

petitioner. In view of this and the above two judgements relied by him, the present petition is disposed of with the direction to respondent(s)/Central Airman Selection Board to refer the petitioner to the Army Research and Referral Hospital, New Delhi for re-examination by a board of experts, which shall include the relevant specialists to assess the medical fitness of the petitioner.

8. Needless to say that the Medical Board so constituted is at liberty to conduct any test as it deems appropriate. The selection process to be carried out shall abide by medical report furnished pursuant to the medical examination of the candidate by the Army Research and Referral Hospital, New Delhi.

9. It is expected that the Medical Board, as directed above, shall be constituted as expeditiously as possible. It is also made clear that the result of the medical examination, per se, would not be construed as conferring any right on the petitioner for his appointment.

10. With these observations, the writ petition is disposed of.

November 25, 2019.

(Arun Monga)
Judge

hsp

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