

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

Sr. No. 201

CWP No.12820 of 2019 (O&M)

Date of decision : 24.10.2019

Gurjot Singh

..... Petitioner

VERSUS

Union of India and others

..... Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Vivek Singla, Advocate, for the petitioner.

Mr. Arvind Moudgil, Sr. Panel Counsel, Govt. of India
with Mr. Kritin Sharma, Advocate, for the respondents.

SUDHIR MITTAL, J.

The petitioner passed his Senior Secondary School Examination from Maharaja Ranjit Singh Armed Forces Preparatory Institute, Mohali, after having been admitted to the said institute in April, 2017. It is averred that total of 56 students were selected out of 3,800 applicants and that the petitioner was one of them. The course is funded by the State of Punjab and the student only has to pay nominal tuition fee. While undergoing the course, the petitioner excelled in various sports events as is evident from certificates collectively annexed as Annexure P-2.

Pursuant to examination notice dated 6.6.2018, issued by the Union Public Service Commission for admission to the National Defence

Academy, Khadakwasla, the petitioner applied and cleared the written examination. The course was to commence on 2.7.2019, but before that the petitioner was required to undergo Services Selection Board test and interview to be followed by a medical examination. The petitioner cleared the Services Selection Board test and interview, but was declared medically unfit for two reasons:- a) flat foot and b) sub standard vision. This information was conveyed vide letter dated 1.2.2019, copy of which has been annexed as Annexure P-4. A perusal thereof shows that on account of 'flat foot', the petitioner was declared unfit for all the three services i.e. Air Force, Army and Navy and on account of sub standard vision, he was declared unfit for Air Force and Navy. The said letter also contained an advisory for appeal against the decision of the Medical Board as per the procedure spelled out therein. Accordingly, the petitioner appealed against the decision of the Medical Board and vide letter dated 5.4.2019, he was informed that the Appeal Medical Board had also declared him unfit for the aforementioned three services. The findings of the Appeal Medical Board were annexed with the said letter. It is further averred that the request for a Review Medical Board has not been responded to till date. Thereafter, the petitioner got himself examined for 'flat foot' at Government Rajindra Hospital, Patiala, where an Associate Professor of Orthopedics opined that there was no stiffness in his feet and that he was fit to run and walk and was also fit for strenuous work. Thereafter, the petitioner got himself examined at the Red Cross's District Disability Rehabilitation Centre, Patiala which also opined that he had functional flat feet. The merit list prepared according

to the scores obtained in the written examination and the Services Selection Board test and interview placed the petitioner at Sr. No.428. By placing reliance on certificate dated 10.5.2019 (Annexure P-10), issued by the Head of Institution which states that the petitioner had displayed excellent stamina, flexibility and high standard of physical fitness and that he was found fit as per NDA standards when medically examined at the stage of induction as well as this opinion of civil doctors, the present writ petition has been filed inter alia seeking quashing of the opinion of the Medical Board, Appeal Medical Board and for directions to the respondents to admit the petitioner to 142 NDA course.

The respondents have filed a detailed written statement, wherein it had been stated that the petitioner has been rightly declared medically unfit. In the Appeal Medical Board, although the finding of sub standard vision had also been upheld, the petitioner was declared fit for 'Army' only. Regarding Review Medical Board, it has been stated that the same is not a matter of right and that the request was rejected keeping in view facts of the case of the petitioner. An additional affidavit dated 18.10.2019, has also been filed, wherein it is stated that even if, the petitioner is declared medically fit, he cannot be admitted as the last candidate admitted has merit No.417, whereas the merit number of the petitioner is 428.

During the pendency of this petition, the petitioner was examined on the direction of this Court, by a Board of Doctors of PGIMER, Chandigarh, which opined that the petitioner had 'flexible flat foot'. By placing reliance upon Clause 4.7.3.1, sub clause (c) (i) and (ii),

learned counsel for the petitioner had contended that as per the regulations of the respondents themselves, a candidate having 'flexible flat foot' was fit for induction into the NDA and thus, a direction be given to the Air Force Medical Board to re-examine the petitioner with reference to the said provision. Accordingly, vide order dated 27.9.2019, the directions were issued for constitution of a Medical Board for re-examination of the petitioner. Relevant part of the order dated 27.9.2019 is reproduced below:-

'After hearing arguments of learned counsel for the parties and on perusal of provisions of the Manual of Medical Examinations and Medical Boards regarding flatfeet as provided under Section 4.7.3.1 against sub clause (c)(i) and (ii), it appears that the claim of the petitioner can be considered under clause (c)(ii) as it is mentioned that in case of flatfeet if the candidate is standing on feet and if the feet are supple, mobile and painless, the candidate can be considered fit.

Said provision is reproduced as under:

'(c) Pes Planus (Flat Foot)

(i) Rigid or fixed flat feet, gross flat feet with planovalgus eversion of heel, cannot balance himself on toes, cannot skip on the forefoot, tender painful tarsal joints, prominent head of talus will be considered unfit.

(ii) If the arches of the feet reappear on standing on toes, and if the feet are supple, mobile and painless, the candidate may be considered fit.'

In view of said provision as mentioned above, a fresh medical examination is required to be conducted.

Learned counsel for the respondents submits that the petitioner can be medically examined at Airforce Centre for Medical Examination (AFCME), Delhi.

Accordingly, respondent-authorities are directed to constitute a medical board to conduct medical examination of the petitioner at Airforce Centre for Medical Examination (AFCME), Delhi. The examination will be with reference to terms of sub clause (c)(ii) referred to above.'

Yet, the petitioner was declared unfit.

An additional affidavit dated 21.10.2019, has been filed by the petitioner stating therein that the last candidate admitted had merit No.479 and that the averment of the respondents that the petitioner was lower in order of merit than the last candidate admitted, is incorrect.

Learned counsel for the petitioner has argued that as per the report of the Government Rajindra Hospital, Patiala as well as the report of PGIMER, Chandigarh, there is sufficient flexibility in the feet of the petitioner, even though, he has 'flat foot'. Thus, as per Clause 4.7.3.1 (c) (ii) of the regulations of the Manual of Medical Examinations and Medical Boards of the respondents, the petitioner is fit for admission to NDA course. The averments of the respondents that the petitioner is lower in order of merit than the last selected candidate is factually incorrect as the merit number of the last selected candidate is 479 as is

evident from affidavit dated 21.10.2019 and there is no denial to the same. Thus, the writ petition deserves to be allowed.

Learned counsel for the respondents, however, submits that the petitioner has been specifically examined with reference to the provisions of Manual of Medical Examinations and Medical Boards reproduced in order dated 27.9.2019 and has still been found unfit. The Courts cannot sit in appeal over the findings of the experts and thus, the writ petition deserves to be dismissed. Since, the petitioner is medically unfit, the question of his position in the merit list is irrelevant.

There is no gainsaying that Courts cannot sit in appeal over the opinion of experts. The petitioner has been medically re-examined with reference to the clause of the Manual of Medical Examinations and Medical Boards relied upon by him, but has still been declared unfit. In such a situation, we are not equipped to say that the medical opinion is incorrect. Assuming, that we were to say that the petitioner did not suffer from the condition of 'flat foot', we would still be unable to grant him admission as admittedly his merit number is 428. We have been told that candidate with merit No.479 has been admitted against a vacancy meant for Air Force and since, the petitioner is unfit for the Air Force due to sub standard vision, he is not entitled to any relief. The last candidate admitted against vacancy meant for 'Army' has merit No.417 and with sub standard vision, the petitioner can only be admitted against a vacancy for the said service. Thus, the petitioner fails, even if, the hypothetical exercise of declaring him medically fit by finding that he does not have 'flat foot', is done.

For the aforementioned reasons, there is no merit in the writ petition and the same is dismissed. This, however, would not debar the petitioner from participating in future selections for the Armed Forces, Police or Para Military Forces.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

24.10.2019
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No