

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

**CWP No. 12674 OF 2018 (O&M)
DATE OF DECISION : 04.12.2019**

Amit Singh

...Petitioner

versus

The Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. B. S. Bajwa, Advocate,
for the petitioner.

Mr. Abhinav Gupta, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

CM NO. 18066 OF 2019

This is an application for pre-ponement of the main case, which is fixed for 19.03.2020.

For the reasons mentioned in the application and with the consent of both the learned counsels for the parties, the application is allowed and the main case is taken up for hearing today itself.

MAIN CASE

By way of instant petition, the petitioner has sought issuance of a writ in the nature of mandamus directing the respondents to consider the medical certificate of his fresh medical examination conducted by Postgraduate Institute of

Medical Education and Research, Chandigarh (for short 'PGIMER').

2. Learned counsel for the petitioner contends that after his rejection by the Appeal Medical Board, he subsequently got himself medically examined at PGIMER, Chandigarh. Pursuant thereto, he has been declared fit, as per medical certificates issued to him. Learned counsel also contends that the petitioner is entitled for one more opportunity to prove his medical fitness.

3. *Per contra*, learned counsel for the respondents contends that petitioner has been declared unfit by the First Appeal Medical Board on 10.03.2018, which is final and binding.

4. Learned counsel for the petitioner also relied on a Division Bench judgment of Delhi High Court in W.P. (C) 9239/ 2016, wherein the petitioner was similarly situated and due to cardio condition 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 judgment, *ibid*, as below:-

"The letter requiring the petitioners 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 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."

5. 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 [P-5] 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 reconsider 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."

6. The conceded position that emerges on perusal of the return filed by the respondents is that originally the petitioner

was medically examined on 23.08.2017 and was found medically fit. However, there was delay in completion of the recruitment process, which is stated to have been caused due to late receipt of verification reports from Tehsildar. There was a gap of 180 days which led to medical re-examination of the petitioner. That was conducted on 06.03.2018 at Jalandhar, as is borne out from para 7 of the return, as per applicable Recruitment Rules. It is during medical re-examination that the petitioner was found unfit on account of "TM PERFORATION RIGHT".

7. Learned counsel for the petitioner further contends that on the same very date i.e 06.03.2018, the petitioner was referred to Military Hospital, Jalandhar Cantt., for review medical, wherein his medical unfitness was re-affirmed and the petitioner was declared "permanently medically unfit", re-affirming the report dated 06.03.2018 by the ENT specialist on 10.03.2018. Thereafter the petitioner got himself examined at PGIMER, Chandigarh in ENT department. Vide medical opinion contained at Annexure P-5, the ENT specialist opined that the petitioner did not have any medical ailment.

8. Another facet that is worth mentioning here is that on subsequent recruitment examination when the petitioner applied, he was made to undergo medical examination by the competent authority of the respondents, on that subsequent medical examination, he was found fit and it was only thereafter that an admit card (Annexure P-7) was issued to him. A perusal of the

admit card (Annexure P-7) reveals that the same has to be issued to an individual after successful medical examination.

9. In this case, the petitioner, in an earlier round of medical examination, was declared fit but he was declared permanently medically unfit in the second round of medical examination and review medical examination and therefore, his candidature is not being considered.

10. I am in respectful agreement with view taken by this Court and the Delhi High Court in the judgments, *ibid*, and accept the contention of learned counsel for the petitioner for a similar direction. Accordingly, the present petition is disposed of with a direction to competent authority/respondent(s) to refer the petitioner to the Army Research and Referral Hospital, New Delhi or any other institution of their choice for medical examination by constituting a Medical Board, which shall include the relevant specialists to assess the medical fitness of the petitioner.

11. Needless to say that the Medical Board so constituted would be 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 candidates by the Medical Board.

12. 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.

13. With these observations, writ petition is disposed of.

(ARUN MONGA)
JUDGE

DECEMBER 04, 2019

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1. Whether speaking/reasoned Yes/No
2. Whether Reportable Yes/No