

CWP No.21081 of 2016(O&M)

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

**CWP No.21081 of 2016 (O&M)
Date of Decision:22.02.2019**

Yogesh

....Petitioner

Versus

Union of India through the Secretary, Ministry of Defence, South Block,
New Delhi and others.Respondents

**CWP No.20335 of 2015 (O&M)
Date of Decision:22.02.2019**

Aakash Sheoran

....Petitioner

Versus

Union of India through the Secretary, Ministry of Defence, South Block,
New Delhi and others.Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.R.S.Ponghal, Advocate for petitioner in CWP No.21081 of 2016.
Mr.Raj Kapoor Malik, Advocate for the petitioner in CWP No.20335 of 2015.
Mr.Vipul Aggarwal, Senior Panel Counsel for respondent Nos.1 to 4-UOI in CWP No.21081 of 2016 and
Mr.Parminder Singh Kanwar, Sr. Standing Counsel for Union of India in CWP No.20335 of 2019.

ARUN MONGA, J.(Oral)

In both these petitions, the petitioners are aggrieved against their being declared medically unfit by the Appeal Medical Board constituted by the Indian Air Force for the purpose of selection as Airmen.

2. The learned counsel for the petitioners contends that after their rejection by the Appeal Medical Board, they subsequently got themselves medically examined at Postgraduate Institute of Medical Education and Research, Rohtak and Postgraduate Institute of Medical Education and Research, Chandigarh (for short 'PGIMER') respectively. Pursuant thereto, they have been declared fit, as per medical certificates issued to them.

3. *Per contra*, learned counsel for the respondents contend that subsequent to their rejection by the First Appeal Medical Board they were re-examined by the Specialist Board at Western Command, Chandigarh. Both petitioners were yet again found unfit.

4. The learned counsel for the petitioner contends that the said re-examination by the Specialist Board at Western Command was prior in time, as compared to medical examination conducted by PGIMS, Rohtak and Postgraduate Institute of Medical Education and Research, Chandigarh. Therefore, the petitioners are entitled for one more opportunity to prove their medical fitness, contends the learned counsel for the petitioners.

5. Learned counsel for the petitioner also relied on a Division Bench judgement of Delhi High Court W.P. (C) 9239/2016 (Annexure P-6) 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 of the judgement, *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.”

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 [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 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 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)/ Command Officer, Airman Selection Centre, Ambala Cantt (Haryana) to refer both the petitioners 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 petitioners.

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 candidates 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 petitioners for their appointment.

10. With these observations, both the writ petitions are disposed of.

(ARUN MONGA)
JUDGE

22.02.2019
shalini

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No