

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.7164/2019

PETITIONER : Ajay S/o Madhukar Titirmare,
Aged about. 20 years, Occu. Studying
R/o Nehru Ward, Matora,
District Bhandara, Maharashtra

...VERSUS...

RESPONDENTS: 1. Union of India
 Through its Chief Secretary,
 Ministry of Defence,
 New Delhi.

 2. Army Recruiting Office
 Through Colonel Director R.M. Negi,
 Army Recruitment Officer,
 Sitabuldi, Near K.P. Ground,
 Nagpur Region, Nagpur.

Ms Laxmi V. Malewar, Counsel for petitioner
Shri Santhok Sing Sokhi, Counsel h/f Shri U.M. Aurangabadkar
ASGI, for respondents

**CORAM : SUNIL B. SHUKRE AND
 AVINASH G. GHAROTE, JJ.**

DATE : 28/10/2020.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1. Rule. Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned Counsel for the parties.

2. This petition initially started as a challenge to the rejection of candidature of the petitioner for the post of “Soldier Nursing Assistant”, almost at the last stage, rather after having been provisionally selected for that post on medical grounds. It was also turned into a petition raising a grievance for not considering the candidature of the petitioner, in accordance with rules, for another kind of post, the post of “Soldier Technical” only on the ground that this petition is pending, even though the petitioner has already cleared all the four stages of the process of recruitment for the post of “Soldier Technical”. By introducing necessary amendments to the petition and in its prayer clause, the petitioner has raised grievance about the rejection of the candidature of the petitioner for the post of “Soldier Technical” as per the notification of August 2018.

3. The respondents have filed their reply to the amended petition. From the reply of the respondents, it is, however, seen that there is no specific denial of the contention of the petitioner that his candidature for another post of “Soldier Technical”, as per the notification of August 2018, has been rejected only on the ground that this petition is pending. Now it is an admitted fact on the part

of the respondents that the rejection of the candidature of the petitioner for the said post was only because of pendency of this petition and not on merits of the claim of the petitioner. It is also averred in the reply that as per the Army Rules, a candidate who has been rejected after having been found unfit by the team of Medical Officers and Senior Medical Officers and having been endorsed unfit by the specialist of designated hospitals, loses the opportunity to reappear or participate in future rallies. Reliance for this averment is placed upon the paragraph No.248 of the directives for recruitment of Junior Commission Officers and Other Ranks, 2014. We would have accepted this contention based upon the provisions contained in the paragraph No.248, had it been a case that the petitioner, in the subsequent recruitment process held as per the notification of August 2018, applied for the similar post for which he had applied in the previous recruitment process and in respect of which the petitioner was declared medically unfit on the ground of his having Dextrocardia which has also been described on page No.29 of the petition as "Situs Inversus Dextrocardia", about which there is no dispute.

4. The earlier recruitment process held as per the notification of August 2018 in which the petitioner participated and declared medically unfit was in respect of the post of “Soldier Nursing Assistant”, a post different from the post of “Soldier Technical” applied for by the petitioner in the recruitment process held as per the notification of August 2018. Thus, the previous post applied for by the petitioner was different from the post applied for by the petitioner in the recruitment process held as per the notification of August, 2018. So, the provisions contained in paragraph 248 would not stand as a bar for the petitioner who participated in the subsequent recruitment process for a different post and this provision would not disqualify the petitioner from aspiring for a different post in any subsequent recruitment process. The reliance placed upon paragraph No.248 by the respondents is, thus misplaced.

5. The sum and substance of the discussion held so far would be that the petitioner is eligible for being considered for the post of “Soldier Technical”, advertised as per notification of August 2018 on his own merits and the respondents will have to consider

such claim of the petitioner, not on the backdrop of any technical ground such as pendency of the present petition, but on its own merits, as per the rules.

6. As regards the claim of the petitioner in respect of the post of “Soldier Nursing Assistant”, we are of the considered opinion that this Court being not an expert and there being no factual or legal or procedural error shown by the petitioner in the medical expert’s opinion declaring the petitioner unfit for the post of “Soldier Nursing Assistant”, the grievance of the petitioner in respect of this post cannot be entertained by this court and it deserves to be rejected and it is rejected accordingly.

7. In the result, the petition is partly allowed. The respondents are directed to consider the claim of the petitioner for the post of “Soldier Technical”, for which recruitment process has been held as per Notification of August, 2018, on its own merits, without being influenced by the petitioner filing this petition or any averments contained in this petition.

Rule is made absolute in aforesaid terms. No order as
to costs.

JUDGE

JUDGE

J.Pethe