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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1147/2018**

ABHIMANYU SINGH Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Arun Bhardwaj, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **21.01.2020**

1. The Petitioner has filed this writ petition for issuing directions to the Respondents to immediately induct him in Indian Army on compassionate grounds and/or conduct a composite test of the Petitioner and one Lieutenant Baby Laldhusangi to ascertain the comparative compatibility and skills or in the alternative to grant him disability pension.

2. In brief, the case of the Petitioner is that after completing his B.Tech. in computer science, he applied for permanent commission in Indian Army in response to an advertisement dated 27th April, 2013 for Technical Graduate Course (TGC-118). He successfully qualified the Service Selection Board (SSB) interview and thereafter, he was called for medical examination at Military Hospital, Allahabad. However, upon medical examination the Petitioner was found medically unfit on account of congenital absence of distal and most of middle phalanx of right index finger. He submitted a representation dated 20th November, 2013 for Review Medical Board but he

was never called for the same.

3. On 16th November, 2014, Petitioner again applied for Short Service Commission (SSC) in the Indian Army and was called to appear before the SSB (T)-44 Course at Bhopal. The Petitioner successfully completed SSB at Bhopal and he was recommended for selection for pre-commissioning training at OTA, Chennai. Petitioner reported for medical examination at Military Hospital, Bhopal where he was asked about his problem of index figure by concerned medical specialists, to which the Petitioner replied that it was by birth and he had never faced any problem on account of this medical condition. The Special Medical Board declared the Petitioner fit for the post of SSC (T)-44 for commission into Indian Army. Petitioner joined the Officer's Training Academy (OTA), Chennai for pre-commission training on 4th April, 2015 and performed all training related task successfully.

4. Petitioner further submits that during one of the training sessions, a Physical Training Officer (PTO), summoned the Petitioner alongwith PT instructor and questioned him regarding his aforesaid medical condition. He was thereafter called by his Company Commander and they were satisfied with the explanation given by the Petitioner. However, on 29th April, 2015, the Petitioner was abruptly called by the Regimental Medical Officer (RMO) of OTA to MI room and he was forcibly sent to MH Chennai on the very next day with a note. Petitioner was examined at MH Chennai and he was found to be completely medically fit but he was referred to INHS Ashvini, Mumbai for second opinion, where he was examined by

Orthopaedics Specialist and a Senior Advisor Orthopaedics and they also consulted plastic and reconstructive surgery on 2nd May, 2015. However, even without obtaining the opinion of the concerned specialists, the Petitioner was declared unfit for Army by Medical Board opinion dated 7th May, 2015. Invalidment Medical Board was conducted at MH Chennai in July, 2015 and Petitioner was declared medically unfit. Show-Cause Notice dated 13th July, 2015 was issued to the Petitioner to which he submitted his reply. Petitioner was discharged from MH Chennai and he reported back at OTA, Chennai where he was granted special leave from 25th July, 2015 to 29th August, 2015 and when he reported back at OTA after availing leave, then he was told that the final documentation for his invalidment would take another 2-3 months. Petitioner submitted many representations but they were not considered. In the meantime, the Petitioner came to know about Lieutenant Baby Laldhusangi, who was having identical medical problem in her index finger of right hand as in the case of present Petitioner, but she was commissioned by the Respondent on 12th September, 2015 and posted to 504 ASC Battalion.

5. Feeling aggrieved, Petitioner preferred writ petition (Civil) No. 10402/2015 before this Court praying for allowing him to resume his pre-commission training at OTA, Chennai. Counter affidavit was filed by the Respondents to which rejoinder was filed by the Petitioner. There was an additional counter affidavit filed on 6th February, 2016 but no reference was made to the medical condition of Lieutenant Baby Laldhusangi. On 11th May, 2016 a specific order was passed to state the medical condition of the Lieutenant Baby Laldhusangi but no such affidavit was filed. It was informed that Petitioner's withdrawal from service on medical ground was

approved on 18th April, 2016. The medical record of Lieutenant Baby Laldhusangi was called for by this Court vide order dated 12th July, 2016. However, on 12th August, 2016 the medical condition of Lieutenant Baby Laldhusangi was not discussed and matter was closed. Ultimately the said writ petition was dismissed vide judgment dated 2nd February, 2017.

6. Being aggrieved, Petitioner preferred an SLP No.7137/2017 before Hon'ble Supreme Court, however the said SLP was dismissed on 10th March, 2017. On 8th December, 2017, Petitioner submitted a representation requesting for allowing him to resume his pre-commission training on compassionate ground even on a non-combat position. However, vide letter dated 21st December, 2017, the Respondents rejected the said representation of the Petitioner. Hence, being aggrieved the Petitioner has preferred the instant writ petition. Later on, amended writ petition was filed in which instances of other officers with medical deficiencies were cited. Cases of war widows, who are given employment on compassionate grounds are also cited, where age limit was relaxed. As per Petitioner, at the time of filling his form for medical examination for SSC (T) -44 Course, he had hurriedly given wrong information as per instruction of the medical staff and he never had intention of hiding the fact regarding his medical condition or regarding his earlier medical examination.

7. Notice was issued and a short affidavit was filed by Respondents on 9th May, 2009. It has been submitted in the short affidavit that earlier the Petitioner had applied for Technical Graduate Course, (TGC)-118 at IMA Dehradun in January, 2014. He was recommended for the said course but when he was medically examined at MH Allahabad, he was found to be

medically unfit. He later applied for Appeal Medical Board (AMD) where he was again found to be medically unfit. Thereafter, his request for Review Medical Board (RMB) was not acceded to and he was not inducted into TGC-118 being medically unfit. Petitioner thereafter applied for SSC (Tech)-44 Course at OTA Chennai, with effect from 6th April, 2015 and was recommended for the same by SSB. He was examined by Special Medical Board (SMB) at MH Bhopal and was found to be medically fit and he started the Pre-Commissioning Training at OTA Chennai. When the defect in his physical condition was observed then he was referred to medical authorities and thereafter declared unfit for service, “ABSENT DISTAL AND MOST OF MIDDLE PHALANX OF RIGHT INDEX FINGER”.

8. In the Invalidation Board at MH Chennai, he was declared medically unfit to serve in the Army. It was further submitted that Petitioner has given false details while filling the medical documents AFMSF-2 in MH Bhopal for SSC (Tech)-44 course and he had signed the false information as correct. Petitioner knew he was declared medically unfit by MH Bhopal previously but he had intentionally not disclosed the same in response to the question in the form, “Have you are ever been rejected as medically unfit before?” This was not an inadvertent mistake. Overlooking of the deformity by the medical board may be because of furnishing wrong information by the Petitioner and it in no way dissolves the case of furnishing wrong information of self by the individual.

9. The comparison with other officers working with the Army has been termed as irrelevant to the case of the Petitioner. As far as war widows are concerned, it has been submitted that by employing them respect and honour

is paid to the martyrs who lost their lives in the line of duty and there is a special sanction granted to the war widows by the Ministry of Defence. Moreover, the said war widows have never hidden their actual age at the time of applying for selection process. The Petitioner ought not to have falsified any medical data of self before the medical board. As far as the prayer for disability pension is concerned, the stand of the Respondents is that it is a facility awarded to an individual whose cause of said disability is attributable to the service in Armed forces. In the present case, the Petitioner himself claims his disability as congenital, so his claim for disability pension is illogical. Petitioner has filed a rejoinder to the said short affidavit reiterating his stand in the amended writ petition.

10. The prayers in the present amended writ petition are as follows:

- a) Issue an appropriate Writ, Order or Direction to the Respondents to allow the Petitioner to resume his pre-commission training in Officers Training Academy, Chennai, as part of SSC (T)-44 Army course, or to allow the Petitioner to join even a non-combat post in the Respondent Indian Army, on compassionate grounds considering the peculiar facts and circumstances of the instant case and/or;
- b) Or in alternative, issue an appropriate Writ, Order or Direction to the Respondents to allow the Petitioner to conduct a composite test of the Petitioner and the said Lt. Baby Laldhusangi to ascertain their comparative efficiencies and skills and if the efficiency of the Petitioner is found to be at par with or better than that of the said Lt. Baby Laldhusangi, then allow the Petitioner to resume his pre-commission training in Officers Training Academy, Chennai, as part of SSC (T)-44 Army course;
- c) Issue a writ of mandamus directing the respondents to grant disability pension to the petitioner in the alternative if the

respondents are not able to grant Commission or Compassionate Appointment on a Non Combatised post to the petitioner.

d) Pass any such further order/order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

11. As far as prayer (b) is concerned, the said chapter is closed as the said ground of comparing his medical infirming with Lt. Baby Laldhusangi was discussed during pendency of the earlier writ petition and ultimately the said Writ Petition (C) 10402/2015 was dismissed on 2nd February, 2017 and an SLP (Civil) No. 7137/2017 filed by the Petitioner was dismissed by the Supreme Court on 10th March, 2017. This Court cannot reopen the same in writ jurisdiction.

12. As far as the first prayer (a) is concerned, the representations submitted by the Petitioner were rejected by the Respondents vide letter dated 21st February, 2017 which is reproduce herein:

“Tele: 23018817
ASCON ; 35028/35028

Additional Directorate General
Manpower/MP-2
Adjutant General's Branch
Integrated HQ of IVIoD(Army)
DHQ PO, New Delhi -110011

PC-08094/Gen/SSC/MP-2

2/Dec 2017

Abhimanyu Singh
C/O IDASA INDIA LIMITED
Ludhiana Road, Malerkotla
Punjab
Pin-148 023

**APPLICATION REQUESTING REINSTATEMENT IN
OFFICERS TRAINING ACADEMY. CHENNAI ON
COMPASSIONATE GROUNDS**

1. Please refer your application dated 08 Dec 2017.
2. Your request for re-joining Officers Training Academy, Chennai and Commissioning, even in non combat role has been examined at appropriate level.
3. As per present policy on commissioning in Indian Army, an individual must be medical fit i.e. SHAPE-1. Also, existing policies does not mandate commissioning on compassionate ground.
4. For information please.

(Karan Singh)
Colonel
(Director manpower/MP-2)
For Adjutant General”

13. It is clear from the contents of above letter that the request of the Petitioner was duly examined by the authorities and it has been specifically mentioned that at the time of commissioning in Indian Army, the person should be medically fit *i.e.* he should be in SHAPE-I, so the present Petitioner could not be considered as he is not in SHAPE-I as per his medical record. As far as the existing policy is concerned, it does not allow commissioning on compassionate ground, hence the said representation dated 8th December, 2017 was rightly rejected by the Respondents. This Court does not find any infirmity in rejection of the said representation as there is no policy for compassionate appointments and at the time of commissioning Indian Army, a person should be medically fit *i.e.* SHAPE-I.

14. The prayer (c) for disability pension, cannot be allowed to the Petitioner as his medical infirmity is congenital and he has not suffered any injury during his service with the Respondents. The stand of the Petitioner that other persons with same medical problems are already serving with Respondents is irrelevant to the case of the present Petitioner.

15. The second round of litigation, after the dismissal of his earlier writ petition before this Court and an SLP before the Supreme Court was not warranted and in normal circumstances, this Court may have imposed heavy costs on the Petitioner. However, keeping in view of the facts and circumstances of the present case, no such costs is imposed.

16. In view of the above, the writ petition is dismissed.

S. MURALIDHAR, J

TALWANT SINGH, J

JANUARY 21, 2020

mr/nk