

LPA No.208 of 2021 (O&M)

Date of decision : 22.02.2021

Munesh Devi

..... Appellant

versus

Union of India & others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present :- Mr. R.S.Panghal, Advocate for the appellant.

AJAY TEWARI, J. (Oral)

1 This appeal has been filed against the order dated 27.01.2021 passed by this Court in CWP No.22015 of 2020 titled as ***Munesh Devi Vs. Union of India & ors.***

2 The brief facts of the case are that the appellant was selected for the pre-commissioning training/course as a Nursing Cadet on 1st August, 2011 at College of Nursing AFMC, Pune and underwent her training. Thereafter completion of the pre-commissioning training the appellant was re-examined medically by the Medical Board and was declared unfit due to Bilateral Granular Dystrophy. In that medical opinion, it was recommended as follows :-

(a) *Unfit for commissioning in MNS.*

(b) *Degenerative condition beyond the control or individual.*

3 On the basis of that medical opinion, the appellant was not granted the commission and was discharged on medical grounds. The case of the appellant is that after 5 years she went for medical examination to the Maharaja Agrasen Medical College and Hospital,

Agroha, Hisar wherein the following report was given in Annexures P-4 & P-5 :-

Annexure P-4

Investigations	Treatment
6/6 P 6/6 P AR <-0.252Cx-18 <+0.252Cx-55 Corneal photo (imaging)	O/E = Corneal Opacities (+) In Epithelium B/E Puplt = RRROCE. (Multiple Granular Corneal Dystrophy)

Annexure P-5

Investigations	Treatment
Dva 6/6 P 6/6 P	Genetic testing shows Ch..5TGFB1 C.371G>A P.Arg/His Misence mutation. Vision at present is good. In some cases of granular corneal dystrophy vision may remain good.

4 It is on that ground that she filed the present writ petition claiming that her invalidation out on medical grounds was illegal and she should be now allowed to re-join the course.

5 Learned Single Judge held that the impugned order was passed in 2016 and there was no explanation why the appellant could not go for the second opinion earlier and consequently dismissed the petition on the grounds of delay and latches.

6 Before us the learned counsel for the appellant has argued that once the doctors in the Army informed her that her condition was progressive she had to wait for sometime before she could have gone in for rejoining the course.

7 However, learned counsel for the appellant has not denied that if the appellant had gone for a second opinion at that stage the same report would have come on which she is relying upon even today.

8 In our considered opinion, the reasons which weighed with the learned Single Judge can not be held to be non-germane and consequently find no merit in the appeal.

9 Appeal stands dismissed.

10 As regards, the second prayer regarding ex-gratia award as admissible to the cadets under the Govt. policy dated 04.09.2017 (Annexure P-8) from the date of her invalidment on medical grounds along with interest @ 9% p.a or any other rate, the appellant may approach the respondents.

12 Since the main case has been dismissed, the pending Civil Misc. Application(s), if any, also stands dismissed.

(AJAY TEWARI)
JUDGE

(RAJESH BHARDWAJ)
JUDGE

22.02.2021

pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No