

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

202

CWP No.5742 of 2021
DATE OF DECISION : 4th AUGUST, 2021

Abhinandan Dutt

.... Petitioner

Versus

Union of India & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Mr. B. D. Sharma, Advocate for the petitioner.

Mr. Gaurav Pathak, Central Government Counsel
for Union of India.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of certiorari or any other appropriate writ, order or direction for setting aside the impugned letter/communication dated 18.01.2021 (Annexure P-8) issued by respondent No.2 whereby the application of the petitioner for Review Medical Board against the rejection of his candidature being medically unfit in Technical Entry Scheme (TES-44) Course for permanent commission in Indian Army has been declined; along with certain other prayers.

As per the facts pleaded in the petition and argued by counsel for the petitioner, the petitioner was an applicant for recruitment under the Technical Entry Scheme (TES-44) Course; for entry as commissioned officer in Indian Army. The petitioner qualified the

prescribed test, including the psychological and group test, as well as, the interview. However, at the time of medical examination the petitioner was found to be unfit by the Medical Officer on account of suffering from 'Systolic Ejection Murmur'. The petitioner was referred to the Appeal Medical Board. The Appeal Medical Board re-examined the petitioner. After re-examination, the Appeal Medical Board not only affirmed the heart problem pointed out by the Medical Officer, rather, found two problems, namely CVS-Clicks + ESM & ECHO-Bicuspid Aortic Valve. Accordingly, the petitioner was declared unfit for recruitment. The counsel for the petitioner has submitted that after the petitioner was declared to be unfit by the Army authorities, the petitioner got himself examined by the PGIMER Chandigarh (PGI). As per the medical examination at PGI the heart of the petitioner and his valves have been found to be normal. Therefore, the petitioner deserves to be, at least, referred to the Appeal Medical Board for re-examination.

On the other hand, the counsel for the respondents, while referring to the reply filed by them, has submitted that the petitioner was duly examined by the Medical Officer in the first instance. However he was found medically unfit on account of Ejection Systolic Murmurs. To rule out any error in medical assessment, the petitioner applied for Appeal Medical Board. On re-examination even the Appeal Medical Board re-affirmed the findings of the Medical Officer. Additionally, another problem was also detected by the Appeal Medical Board, i.e., CVS-Clicks + ESM & ECHO-Bicuspid Aortic Valve. It is further submitted by the counsel for the respondents that the Army has its own standards of medical fitness. They have their protocols for medical

examination. Once the procedures and protocols prescribed under the Army Recruitment Rules have been exhausted, no further scope for re-examination is left. Qua the medical examination by the PGI, it is submitted by the counsel for the respondents that the said examination was not, necessarily, conducted as per the standards and requirements of the Army. Still further, it is submitted that the Appeal Medical Board is the final authority on this issue. The petitioner having exhausted his remedy, this court is not expected to sit in appeal over the same. Hence, the writ petition deserves to be dismissed.

Having heard the counsel for the parties, this court finds substance in argument raised by the counsel for the respondents. It is not even in dispute that the petitioner has been examined twice, once by the Medical Officer in the first instance and secondly by the Appeal Medical Board comprising of specialists in the field, and both of them have found the petitioner to be unfit for the problems mentioned above, as have been specified in the certificate of unfitness, issued by the Medical Board. There is not even any assertion by the petitioner that there was some bias against the petitioner at the time of medical examination or any one of the Doctors in the Army establishment was having any malafide intention against him. Since the Army recruitment Rules have prescribed the Appeal Medical Board to be the final authority qua the medical fitness of a candidate for recruitment, this court does not find it appropriate to entertain any challenge to the same and to interfere in the matter; without there being any exceptional and substantive reason for the same. Needless to say that the medical examination of the petitioner has been conducted as per the procedures and protocols of medical testing of a

candidate at the time of recruitment meant to ensure that the candidate fulfills the medical standards prescribed under the Rules. The same having been undertaken by the Army authorities this court does not even find any ground to interfere in the matter.

Although, the counsel for the petitioner has submitted that the petitioner had got himself examined from private medical institution, as well as, from the PGI, Chandigarh; and none of them have found any abnormality with the heart of the petitioner, however, even this argument of the counsel for the petitioner does not carry any weight. This court has already considered a similar situation in CWP No.9587 of 2021 decided on 22.07.2021, wherein this court had rejected a similar argument and had observed as under:

“8. Although, the counsel for the petitioners has sought to rely upon some medical examination conducted by PGIMS, Rohtak, however, that examination is of no help to the petitioners for two reasons, firstly, that medical examination does not categorically say that the deformity/deficiency pointed out by the Army/Medical Board is not present and secondly, the PGIMS, Rohtak is not the appropriate authority to certify qua the standards required to be observed for medical examination for Army recruitment.”

Accordingly; the subsequent medical examination by the PGI, Chandigarh is not relevant for the purpose of the recruitment process. Hence, the same cannot be taken into consideration.

In view of the above, finding no merit in the present petition,
the same is dismissed.

4th AUGUST, 2021
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>