

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

205

CWP No.9587 of 2021 (O&M)
DATE OF DECISION : 22nd JULY, 2021

Jogender

.... Petitioner

Versus

Union of India & another

.... Respondents

206

CWP No.12337 of 2021 (O&M)

Vinay Sharma

.... 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. Manoj Tanwar, Advocate for the petitioner(s).

Mr. Parvesh Saini, Senior Panel Counsel
for the respondents-UOI

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RAJBIR SEHRAWAT, J. (Oral)

CM-9082-CWP-2021 & CM-9089-CWP-2021

The applications are allowed as prayed for.

CM-9083-CWP-2021 & CM-9090-CWP-2021

These are the applications for placing on record the written
statement on behalf of respondents No.1 and 2.

The applications are allowed as prayed for and the written statement filed on behalf of respondents No.1 and 2 are taken on record.

CWP No.9587 of 2021 & CWP No.12337 of 2021

1. This judgment shall dispose of aforesaid two civil writ petitions, involving common question of law. For brevity, the facts are being taken from CWP No.9587 of 2021.

2. The present petitions have been filed by the petitioners under Articles 226 and 227 of the Constitution of India for issuance of an appropriate writ order or direction in the nature of certiorari for setting aside the Medical Unfitness Certificate dated 25.03.2021 in respect of petitioner-Jogender and dated 17.03.2021 in respect of petitioner-Vinay Sharma, prepared by the respondents wherein the petitioners have been declared medically unfit, along with certain other prayers.

3. The entire allegation of the petitioners had been that the petitioners were never examined properly by the Army Authorities. They were declared unfit without their medical examination. It is further submitted that at the time of recruitment in the rally the petitioner-Jogender was referred to Military Hospital at Jaipur and petitioner-Vinay Sharma was referred to Military Hospital at Hisar for review examination. However, at Military Hospitals at Jaipur & Hisar, the petitioners were kept sitting and they were never examined at those hospitals by any person. Then the petitioners were asked to go back.

4. The counsel for the respondents has filed written statement wherein he has attached the copy of the record of the medical examination of the petitioners as Annexure R-1. Referring to the document, learned counsel for the respondents has submitted that the

petitioners were examined at the recruitment rally by the Recruitment Medical Officer and the petitioners were found to be unfit. Thereafter, on the same day the petitioners were re-examined by the Senior Recruitment Medical Officer. However, even in this medical examination they were found to be medically unfit. To ensure fairness, the petitioners were referred to Military Hospitals at Jaipur & Hisar. There also the petitioners were examined by the specialists and the petitioners have been found to be unfit on account of a deformity which was pointed out in the examination at the time of recruitment rally. It has been further submitted that the entire record of the medical examination of the petitioners show that they have particular medical deformity, which are: (a) Arcus Juveniles (Bilateral); (b) Varicose Vein Rt Leg. & (c) Deformed Finger, B/L 4th Digit, Lower Limb in respect of petitioner-Jogender and (a) Bow Legs; (b) Sclera Scar: Hypo Pigmentation in Right Eye & (c) Hairy Nevus: lateral aspect of right forearm in respect of petitioner-Vinay Sharma. The counsel for the respondents has submitted that these deformities render the petitioners unfit for the Army service under the prescribed standards. Hence, the petitioners have rightly been declared unfit. Referring to the pleadings of the petitioners, the counsel for the respondents has further submitted that the petitioners have not averred in the petition that they were not medically examined at Military Hospitals at Jaipur & Hisar. On the contrary, in para 3 of both the petitions, they have specifically submitted that they were examined at Military Hospitals at Jaipur & Hisar. Hence, the counsel for the petitioners has made a wrong statement that the petitioners were not examined at the Military Hospitals at Jaipur & Hisar.

5. Having perused the record on files, this court finds that the petitioners were examined by the Recruitment Medical Officer at the time of recruitment rally. They were declared unfit on three counts each. To ensure that the petitioners are not prejudiced unnecessarily, the petitioners were examined by the Senior Recruitment Medical Officer (SRMO). Even this authority found the petitioners to be unfit for the Army service on account of the above deformities pointed out by the Recruitment Medical Officer. To grant another opportunity; and to rule out any mistake and to avoid any adverse effects, which may arise because of the perception qua the stated unfitness, the petitioners were referred to Military Hospitals at Jaipur & Hisar; for review medical examination. This entire exercise duly bears the signatures of the petitioners. Thereafter, the record shows that at Military Hospitals at Jaipur & Hisar the petitioners were examined by specialist and they have given their report, according to which the petitioners have been found unfit for only one of the factors of unfitness out of three pointed out by RMO and SRMO. That means the specialists have given their objective opinions to the effect that instead of three deficiencies, the petitioners suffered only with one deficiency; but which still rendered them unfit for Army Service. The specialists had also issued certificates in respect of the petitioners to that effect, which have also been attached with the record.

6. The above facts leave no doubt that the petitioners have been duly examined by the three Doctors, including the Recruitment Medical Officer, Senior Recruiting Medical Officer and the Ortho/ Specialist Doctor. All the Doctors have given the concurrent opinions

qua the unfitness of the petitioners due to the deformity/deficiency mentioned in their respective final certificates. This court does not find any reason to disbelieve the Doctors, including the Specialist Doctors at Military Hospitals at Jaipur & Hisar. Rather, the objectivity observed by the specialist at Military Hospitals at Jaipur & Hisar is amplified by the fact that they have found the petitioner-Jogender unfit only for 2(c) and petitioner-Vinay Sharma unfit only for 2(b), as against the three counts which were pointed out against the petitioners in the first instance. Moreover, there is no assertion of any personal bias or casualness or extraneous considerations on the part of the Medical Offices or the Specialists at the Military Hospitals at Jaipur & Hisar. Hence, the assertions of the petitioners are devoid of any force.

7. Surprisingly, the counsel for the petitioners; may be on instructions from the petitioners themselves, has been repeatedly asserting that the petitioners were not examined at Military Hospitals at Jaipur and Hisar at all and that they were sent back after making them sit down there for some time. To support this assertion, it is further asserted that the unfitness certificates of the Military Hospitals at Jaipur and Hisar, nowhere bears the signature of the petitioners. Hence, this would show that the petitioners were not actually examined. However, this assertion of the counsel for the petitioners is not inspiring any confidence. The petitioners have nowhere stated in their writ petitions that they were not examined at Military Hospitals at Jaipur and Hisar, rather their assertions in the writ petitions show that they were aware of the fact that they were examined there and there were reports of such examinations; which differed with the report given by the Recruitment Medical Officer in the first instance. This assertion of the petitioners, of

not being examined at Military Hospitals at Jaipur and Hisar, seems to have been raised only to discredit the medical examination by the specialists at Military Hospitals at Jaipur and Hisar. Although, the counsel for the petitioners has asserted that the certificates of unfitness do not bear the signatures of the petitioners, however, this fact is also totally irrelevant. The unfitness certificate is in the prescribed proforma given under the instructions relating to the Medical Examination and that proforma does not, as such, has any column or requirement of signatures of the candidate; as mark of their presence at the time of review medical examination at Military Hospitals at Jaipur and Hisar. Hence, it is clear that the assertions of the petitioners that they were not medically examined at Military Hospitals at Jaipur and Hisar, is not supported by their own pleadings in the petitions and is against the record of the Military Hospitals at Jaipur and Hisar.

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 says 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.

9. In view of the above, finding no merit in both the petitions, the same are dismissed.

22nd July, 2021
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No