

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.1646 OF 2021

Ajay s/o Madhukar Titirmare
Aged about 20 years,
Occupation – Studying,
R/o. Nehru Ward, Matora,
District Bhandara, Maharashtra

...PETITIONER

VERSUS

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,
Nagpur Region,
Nagpur

...RESPONDENTS

Ms. Laxmi Y. Malewar, Advocate for the petitioner.
Shri N.S. Deshpande, ASGI for the respondents.

**CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.**

DATED : JULY 19, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

2. **RULE.** Rule made returnable forthwith.

3. The communication by respondent No.2-Army Recruiting Office, Nagpur Region, Nagpur dated 26/11/2020 rejecting the petitioner for considering his appointment as a Soldier Technical due to “Dextrocardia with Situs Inversus” is under challenge in the present petition.

4. The respondent No.2-Army Recruiting Office, Nagpur Region, Nagpur had issued an advertisement for various posts like Soldier, Soldier Technical, Soldier Nursing, etc. in August, 2018. On 14/03/2019 on the basis of overall performance, respondent No.2-Army Recruiting Office, Nagpur Region, Nagpur had issued a call letter to the petitioner for considering him for the post of Nursing Assistant. As per the advertisement, the candidates were to be tested into four phases which includes Physical Fitness Test (At Rally Site), Physical Measurement (At Rally Site), Medical Test

as per laid down medical standards and Written Test through Common Entrance Examination (CEE). After completion of first test, the petitioner undergone medical test. After medical test, the petitioner was asked to remain present for special review and was referred to MH KIRKEE at Pune. After medical test, the petitioner has diagnosed as patient of “Dextrocardia Situs Inversus”. In accordance with the said diagnosis he was declared unfit for the post of Nursing Assistant. As per the contention of the petitioner, he is physically and mentally fit to bear all kinds of mental stress. ‘Dextrocardia’ is neither deformity nor a disability. The petitioner had approached to the various hospitals at Nagpur. The reports of Super Speciality Hospital and Private Hospitals gave opinion that the petitioner is fit and fine to join duty and to carry out strenuous physical activity. The communication dated 26/11/2020 of respondent No.2-Army Recruiting Office, Nagpur Region, Nagpur, rejecting the petitioner on the ground of unfitness on account of he is suffering from ‘Dextrocardia’, is irrational, illogical and illegal.

5. The petitioner had made representations but he could not get the response from the Army Office i.e. respondent No.2. He

also issued a notice on 12/07/2019 through Advocate Malewar to respondent No.2. As he could not get the response from respondent No.2, he approached to this Court with a prayer to set aside the said communication issued by respondent No.2 and for direction to consider the name of the petitioner for the post of “Nursing Assistant”. In response to the notice, respondents have taken stand that the present petitioner had earlier approached to this Court by way of filing Writ Petition No.7164/2019 in which this Court had directed the respondents to consider the claim of the petitioner for the post of “Soldier Technical”. It is further the contention of the respondents that the petitioner was declared unfit after seeking the opinion of expert Doctor. The recruited Medical Officer on suspecting a medical problem referred the case to the Specialist and the Specialist Doctor declared him as unfit. The nature of duties are different and hence the petitioner was declared unfit, therefore, no interference is called for.

6. Heard Ms. Laxmi Malewar, learned Counsel for the petitioner. She submitted that the petitioner disqualified only on the ground that he is suffering from “Dextrocardia Situs Inversus”

which is not a disability but it is one kind of congenital disorder present in the petitioner since his birth. The petitioner is of sound health both physically and mentally. He is a normal human being and eligible to do all kinds of physical hard work and to bear all kinds of mental stress required for the job of the army. Said 'Dextrocardia' is curable in today's advanced scientific era. Therefore, the communication of respondent No.2-Army Recruiting Office, Nagpur Region, Nagpur declaring him unfit is irrational and illogical.

7. In support of her contention, she placed reliance on **Vikash Kumar Vs. Union Public Service Commission and ors. (2021) 5 SCC 370**. She also placed reliance on the material i.e. medical standards for appointment, enlistment or induction into the Military Services.

8. On the other hand, Shri N.S. Deshpande, learned Assistant Solicitor General of India for the respondents submitted that the petitioner's candidature was for the post of "Soldier Nursing Assistant". The requirement of the post are different. The

medical standards for recruiting the persons and the parameters laid down for the said appointment are different in the Army. The petitioner is suffering from “Dextrocardia Situs Inversus” which is related to the heart of the human being. The experts examined the petitioner and thereafter diagnosed that he is suffering from “Dextrocardia Situs Inversus” and he is unfit for the said job. Hence, no interference is called for.

9. Heard both the sides and perused the record. It is an admitted position that in response to the advertisement, the petitioner had applied for the post of “Soldier Nursing Assistant”. It is also an admitted position that as per the advertisement, the candidates were to be tested in four phases which includes the Physical Fitness Test, Physical Measurement Test and Medical Test. By communication dated 14/03/2019, it was communicated to the petitioner that he had been provisionally selected for enrollment into Indian Army in “Nursing Assistant” Category. On the basis of his overall performance, he was advised to report at the office on 17/03/2019 along with the various documents. Thereafter he had undergone various medical tests. During his medical test he was

diagnosed with “Dextrocardia Situs Inversus”, therefore, he was referred to MH KIRKEE, Pune for Specialist Medical Advice. After medical examination by the Specialist, he was again diagnosed with “Dextrocardia Situs Inversus” and declared as unfit for the said post. The review certificate by the Specialist shows that the petitioner is suffering from “Dextrocardia Situs Inversus” and unfit for the recruitment.

10. It is vehemently submitted by the learned Counsel for the petitioner that ‘Dextrocardia’ is neither a deformity nor a disease, it is the congenital condition in which heart of the patient is towards the right side. He is physically and mentally fit. She also placed her reliance on the judgment of the Hon’ble Apex Court in the case of Vikash Kumar (*supra*). The facts of the cited case are different than the present case.

11. As per medical science ‘Dextrocardia’ is a congenital condition which is present at birth. There are two major types of ‘Dextrocardia’. “Dextrocardia Situs Inversus” wherein the tip of the heart and its four chambers are pointing towards the right side of

the body. As per the medical science, the reversed organs themselves may function normally, their irregular positioning often makes the diagnosis of other conditions tricky. There may be a complications in such type of heart condition when this anatomical difference is occurred they can also make surgery difficult. As per the medical science, the complications associated with Dextrocardia may include :

- (i) bowel disorders, usually from obstruction due to malrotation (reversal)
- (ii) bronchial diseases, such as like chronic pneumonia, associated primarily with a loss of cilia (hair-like projections) from mucosal tissues
- (iii) esophageal disorders
- (iv) cardiovascular disorders
- (v) heart failure or disease
- (vi) infection and sepsis

12. Admittedly, the standards laid down for the appointment in Army or Para Military Forces are different than the standards applicable for Civil Services. The persons recruited in Army have to work in adverse conditions and from that point of view, fitness is to be checked and considered.

13. The petitioner's fitness was not only verified during the medical test but he was also referred to the Specialist at MH Kirkee, Pune. The Specialist Medical Officer who is M.D. examined him and after various tests diagnosed that he is suffering from "Dextrocardia Situs Inversus" and thus unfit for the job. Admittedly, the physical condition of the petitioner is not as per the normal human being. The standards of physical fitness and parameters to assess the said physical fitness for recruiting the candidates in Army are at higher standards. There is no case made out to disregard the opinion of medical experts nor does the Court possess any expertise in the same. Considering the same, the petition is devoid of merits and the petitioner is not entitled for any relief.

14. Hence, the writ petition is dismissed. No costs.

15. Rule stands discharged.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)