



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12295 OF 2023

Shambhuraj Shivraj Patil

...Petitioner

Versus

The Union of India & Ors.

...Respondents

Mr. K. S. Shukla a/w Mr. Vijayan Balakrishnan and (VC) Mohd. Naved I. Mulla i/by K. S. Shukla & Associates for the Petitioner.

Mr. Advait M. Sethna a/w Mr. Sandeep Raman for the Respondents.

Capt. Nishchay Vyas, OIC, Legal Cell Present in Court.

CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

Date : 7th NOVEMBER, 2023.

P.C.

. We have heard learned counsel for the Petitioner, Mr. Sethna learned counsel for the Respondents and Capt. Nishchay Vyas, OIC, Legal Cell.

2. The Petitioner is an engineering graduate who intended to participate in the selection process as undertaken by the Indian Army for the posts which is described as 61 Short Service Commission (TECH) Male, so as to recruit 175 numbers of the “short service officers” in the Indian Army. The selection is being undertaken by the Service Selection Board. The Petitioner was shortlisted by the Integrated Headquarters of

Ministry of Defence (Army) for appearing in this SSB interview to be held in Bengaluru on 20th May 2023. The Petitioner appeared for the SSB interview on 24th May 2023. The results were declared and merit list of the selected candidates was published. The Petitioner was shown at merit list no.31 of the Mechanical Branch and accordingly the Petitioner was eligible to undertake the medical examination after clearing the interview. The interview was to be held during the period of 25th May 2023 to 1st June 2023. The Petitioner underwent medical examination at the Respondent Center at Bangalore, wherein the Petitioner was found fit on all Medical Parameters except on three counts (a) overweight by 4.5 kgs (b) Lattice degeneration and (c) Hyperbilirubinemia.

3. Immediately on 1st June 2023, the Petitioner appealed before the Medical Board (AMB) at the Command Hospital (SC) Pune. On 10th July 2023, the Petitioner appeared before the Appeal Medical Board (AMB) at Pune. On 11th July 2023, the Appeal Medical Board directed the Petitioner to report to the Endocrinology Department on 11th July 2023 wherein blood sample was taken for the blood test.

4. On 13th July 2023, the Petitioner was declared unfit on the medical condition of “Hyperbilirubinemia” and according to the Petitioner without disclosing to the Petitioner the Bilirubin Parameters

on the record of the Appeal Medical Board. On the same day, the Petitioner submitted an application for Review Medical Board (RMB) to Respondent No.3–Director General Armed Forces Medical Services (DGAFMS) requesting to grant for Review Medical Board at Armed Forces Medical College of Pune against the decision dated 13th July 2023 of the Appeal Medical Board, conducted at Command Hospital (SC), Pune.

5. It is the case of the Petitioner that on 5th August 2023, the Petitioner got himself extensively medically examined with Pathologist Dr. Shilpa Ajit Vaishnav, Consultant Pathologist at Aurangabad and the report recorded the total bilirubin as 0.93 mg/dl which was normal. This according to the Petitioner would show that the Petitioner was not having any condition of Hyperbilirubinemia. As the Petitioner did not receive any response to his request for constitution of a Review Medical Board after several attempts made in that regard, the Petitioner has filed the present Petition praying for the following substantive reliefs :

A. That this Hon'ble Court be pleased to issue a Writ of Mandamus and / or such other Writ as this Hon'ble Court deems fit, directing Respondent No.3 to forthwith Grant Review Medical Board to the Petitioner;

B. That this Hon'ble Court be pleased to Direct the Respondent No.3, to grant Medical Examination of the Petitioner before the Review Medical Board;

6. We have heard learned counsel for the parties, we have also perused the record. Mr. Sethna learned counsel for the

Respondents, has also drawn our attention to the Medical Examination Report Entry dated 1st July 2023. We are also been shown the Biochemistry Report dated 5th August 2023, regarding Bilirubin parameters. Mr. Sethna would contend that at the relevant time such medical condition on Hyperbilirubinemia was seen from the blood reports of the Petitioner, hence he was not given an appointment order. However, insofar as the Petitioner's request for constitution of Review Medical Board is concerned, Mr. Sethna on instructions submit that there would not be any difficulty in constituting Review Medical Board, so that the Petitioner can be examined on such aspects. In our opinion this would meet the ends of justice, so that a fair chance is made available to the Petitioner for his medical condition being reconsidered by Review Medical Board. As of now the disqualification is only on the condition of Hyperbilirubinemia Bilirubin.

7. Considering the peculiar facts of the case, we accordingly propose to dispose of this Petition by the following order :

- (i) The Respondent No.3 is directed to constitute a Review Medical Board within a period of 3 days from today.
- (ii) The Petitioner be intimated to appear before the Medical Board which shall be not be later than one week from the constitution of said Board.

- (iii) Let the Petitioner be examined by the Review Medical Board on the Parameters of the condition of Hyperbilirubinemia and an appropriate decision be taken by the Review Medical Board in accordance with law.
- (iv) If the decision of the Review Medical Board is adverse to the Petitioner all relevant documents be provided to the Petitioner.
- (v) All contentions in that regard are expressly kept open
- (vi) Writ Petition stands disposed of in the above terms. No order as to costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]