

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-145-2023 (O&M)
Date of Decision: 10.02.2023

Vikas Kumar

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

**Present: Mr. H.S. Dhindsa, Advocate,
for the appellant.**

ARUN PALLI, J.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 17.10.2022, vide which the writ petition preferred by the appellant has since been dismissed.

Learned counsel for the appellant has merely reiterated the submissions that were advanced before the learned Single Judge: pursuant to the advertisement No.08/2015, dated 19.07.2015 (P-1), published by Haryana Staff Selection Commission, the appellant competed for selection to the post of Male Constable (General Duty) in the SC Category. He qualified the physical verification test and was amongst the selected candidates, whose names were recommended for consideration for appointment. However, upon being medically examined, he was declared unfit by the Ophthalmology (Eye) Department, Civil Hospital, Faridabad, on 25.06.2017, for he suffered from alternate divergent squint. Whereafter, he underwent a minor surgery at Post Graduate Institute of Medical Education & Research,

Chandigarh, ('PGIMER') and got his squint treated. In reference to his Out Patient Card, dated 19.09.2017 (P-4), issued by the Ophthalmology (Eye) Department, PGIMER, Chandigarh, his visual axis parallel was '6/6'. Accordingly, he moved the authorities, vide representation dated 12.09.2017 (P-5), seeking medical re-examination, which was carried out by a Medical Board of Pt. Bhagwat Dayal Sharma Post Graduate Institute of Medical Sciences, Rohtak, ('PGIMS') on 09.10.2017 (P-11). And, as per the findings recorded by the Board, (comprised of three ophthalmologists), the appellant suffered from left divergent squint for near and distance. However, it was also observed in the report that fitness of the candidate for the post in question may be decided by the concerned authorities, as per rules. Thus, it is urged that, in terms of report dated 19.09.2017 (P-4), issued by the PGIMER, Chandigarh, the appellant suffered no such defect, and in any case, since the said report contradicted the opinion/report, dated 09.10.2017 (P-11) of the Medical Board of PGIMS, Rohtak, which showed that he had left divergent squint for near and distance, he ought to have been re-examined from some other equally competent Board. He submits that learned Single Judge seriously erred, as the fact that, post procedure the squint the appellant suffered from was removed by the specialist, was not even taken into account.

We have heard learned counsel for the appellant and perused the record.

Undoubtedly, the appellant was one of the successful candidates, who competed for selection to the post of Male Constables (General Duty). However, in terms of Rule 12.17 of the Punjab Police (Haryana Amendment) Rules, 2015, the candidates who were finally recommended for appointment as Constable were required to undergo a

medical examination. And, thereon issued a certificate by Civil Surgeon essentially ensuring the candidate's fitness for the post. Concededly, on request of the Civil Surgeon (P-3), the Medical Board, Civil Hospital, Faridabad, comprising of an Eye Surgeon, Orthopedic Surgeon/Physician examined the appellant on 25.06.2017 and found him to be suffering from "B/E Alternate Divergent Squint." Reliance placed by the appellant upon the Out Patient Card (OPD), issued by the PGIMER, Chandigarh, would not advance his case either. Apparently, the OPD Card (*ibid*), signed by an Eye Surgeon, would, at best, show that appellant was examined in routine. But, not for the purpose of issuance of a medical certificate to join Government service, and in any case, it was not the certificate issued by a Medical Board constituted for this purpose. Be that as it may, pursuant to the request of the appellant, based upon the opinion/report of the PGIMER, Chandigarh, a Medical Board at PGIMS, Rohtak, was constituted, and upon examining the appellant, the Board, vide its report dated 09.10.2017 (P-11), noted: "***Anterior Segment-Cover Test-Left divergent squint for near and distance***" and further observed: "***In view of findings above, the fitness of the candidate for the said post may be decided by the concerned authorities as per rules.***" In wake of this observation, it would be apposite to refer to Rule 12.17 of the Punjab Police (Haryana Amendment) Rules, 2015:-

"Candidates who are finally recommended for appointment as Constable shall be got medically examined by the Civil Surgeon. A certificate in the prescribed form (10.64) signed by the Civil Surgeon personally, is an essential qualification for enrolment. The examination by the Civil Surgeon will be conducted in accordance with instruction issued by the Health

Department and he will test the eye sight, speech and hearing of the candidate, his freedom from physical defects, organic or contagious disease or any other defect or tendency likely to render him unfit, and his age. The conditions of police service make it necessary that the medical examination of candidates should be strict. Candidates shall be rejected for any disease or defect which is likely to render them unfit for the active duties of police officer.”

Accordingly, after the report of Medical Board at PGIMS, Rohtak, a certificate dated 15.11.2017 (P-14) was issued by Deputy Civil Surgeon, 2nd BN. HAP, Madhuban, in Form No. 10.64. In the said certificate, the Civil Surgeon observed that he could not discover the appellant to have any *“disaseconatotional affection badly firmed expect squint (LEFT Divergent Squint for near and distant vision.”* He further recorded that the appellant was *“unfit as per report given by PGIMS Medical Board Rohtak and Ophthalmologists opinion from Civil Hospital Faridabad as per instruction under application no. 12 of Haryana Police.”* However, even after having observed that the appellant-candidate had a squint and that he was medically unfit in terms of both the medical reports of Rohtak and Faridabad, somehow, the Civil Surgeon proceeded to note that he did not consider it a disqualification for employment in the office of Haryana Police. It is in reference to this note as well, it was urged by the learned counsel for the appellant that the authorities ought to have obtained another opinion from the Medical Experts or constituting another Board. However, suffice it to say, these observations recorded by the Civil Surgeon pale into insignificance in light of Rule 12.17 (*ibid*), which necessarily

requires the candidate to be free from physical defects which were likely to render him unfit. *Ex facie*, the purport and intent of Rule 12.17 in directing medical examination through Civil Surgeon and thereupon requiring him to issue a certificate is to sieve out unfit candidates. Once the candidate was observed to be unfit, rejection of his candidature, in terms of Rule 12.17, was inevitable.

Likewise, the argument that although vide certificate dated 15.11.2017 (P-14), the appellant was declared medically unfit, but apparently, the said opinion was simply based upon two previous reports (*ibid*), and not on any medical re-examination of the appellant, and thus, the certificate (P-14) was inconsequential and liable to be ignored, lacks conviction. A bare analysis of the said certificate/report reveals that apart from the reference to the two previous reports by PGIMS, Rohtak, and Civil Hospital, Faridabad, upon examining the appellant, the authorities had observed, ***“I do hereby certified that in have examined Vikas Kumar S/o Sh. Guljar Singh village Talheri Rangran P.O. Manu Majra, Tehsil Barara, District Ambala a candidate for employment in the police department and cannot discover that he has any disaseconatotional affection badly firmed expect squint (LEFT Divergent Squint for near and distant vision....”***

We are reminded to point out, at this juncture, that appellant is also guilty of suppression and concealment of crucial fact that post initial medical examination on 25.06.2017, the Civil Surgeon, Faridabad, obtained a second opinion. Accordingly, the appellant was referred to a higher Board at Shaheed Hassan Khan Mewati Government Medical College, Nalhar, Mewat, which comprised of eye specialists, and as per its report dated 28.06.2017 (R-1, annexed with short reply of Respondents 1,5 & 6), after

clinical and radiological examination, the appellant was found suffering from 'R6/6 BE-Alternate Divergent squint.' Accordingly, upon receiving the second opinion, as observed even by the learned Single Judge, the appellant was issued a medical certificate dated 29.06.2017, by the authorities, with remarks: ***"...The recruit must be able to read the Test Dot Card at a distance of ten feet without any mistake, with each eye without spectacles. Failure to do this renders him unfit. Each eye must have a full field of vision as tested by hand movements. Squint or any other morbid condition of the eyes or eye-lids liable to the risk of aggravation or recurrence will render him unfit."***

In the wake of the above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

10.02.2023
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: YES