

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

CWP-3903-2016
Date of Decision: 20.11.2023

Sonu

...Petitioner

Versus

Union of India and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Pawan Kumar Sharma, Advocate for the petitioner
Mr. Varun Issar, Senior Panel Counsel
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of communication dated 30.07.2015 (Annexure P-5) and 01.10.2015 (Annexure P-9) whereby petitioner has been declared medically unfit.
2. The petitioner, under OBC Category, pursuant to an advertisement applied for the post of Constable (Animal Transport). The petitioner qualified PST/PET Tests and he was called for detailed medical examination. The petitioner was declared unfit on two counts i.e. 'varicose vein both legs' and 'high blood pressure'. The petitioner was re-examined by Review Medical Board which did not find first infirmity, however, declared him unfit on the ground of 'hypertension with mild mitral regurgitation'.
3. Learned counsel for the petitioner contends that petitioner has been wrongly rejected on the ground of hypertension. The petitioner is not

suffering from aforesaid disease. The petitioner in the initial report was found unfit on two counts whereas in the subsequent examinations, he was found unfit only on the sole ground of hypertension. As per opinion of PGI, the said disease is curable with drug therapy.

4. On 02.04.2018, this Court passed the following order:-

“Petitioner is a candidate for recruitment to the post of Constable (Animal Transport). When he was subjected to medical examination i.e. before Medical Examination Board, it has opined as follows:-

'1. Disease/disability of unfitness-

<i> Varicose vein both legs

<ii> HTN – BP - 1st - 170/110 mmHg, 2nd – 160/100 mmHg, 3rd – 160/90 mmHg where as normal BP – 120/80 mmHg

2. Examinations findings <Hypertension –Average BP – 150/100 mmHG at different time and in different position.

ECHO <Dtd.16/10/15- Mild Mitral Regurgitation

<ii> Varicose vein both lower limb – No varicose vein present only dilated vein venous colour doppler (dtd – 16/10/15) -Sapheno femoral and Saphere popliteal valves. Competent. Perforaters are normal.

3. Opinion of the Re-medical board on specific diseases/disability of unfitness:-

a) Fit/Unfit Unfit

b) Unfit account of Hypertension with Mild Mitral Regurgitation '

The above facts are disputed by the petitioner stating that he is not suffering from the aforesaid defects and therefore he seeks examination by Medical Board of PGIMER. The Director,

PGIMER, Chandigarh is hereby requested to make necessary arrangement for constituting a medical board for the petitioner's examination and also fix a particular date of medical examination.

Petitioner is hereby directed to deposit a sum of Rs.5,000/- to the PGIMER towards medical examination fees within a week from today. Petitioner is permitted to make available the present order to the PGI, Medical Director, Chandigarh. Copy of this order be sent to PGI, Director from the Registry of this Court also. The Medical Board opinion by the PGIMER be furnished to this Court before the next date of hearing.

List this matter on 29.05.2018.”

5. Pursuant to aforesaid order, the petitioner was examined by a Medical Board of PGIMER Doctors. As per opinion of the Medical Board constituted by PGIMER, the petitioner is suffering from Stage-I Hypertension and he requires drug therapy to control hypertension. The relevant extracts of opinion of Medical Board of PGIMER read as:

“The patient, Sonu 23 yrs/Male, CR No.20180313667 was examined by the members of the board at PGIMER, Chandigarh on 03.05.2018 and following observations were made:

- 1. He was found to have stage I hypertension according to JNC 8 guidelines (SBP- Rt. UI 158/40. His echocardiography examination (report enclosed) revealed normal left ventricular systolic function and historically he has a good effort tolerance. He would require drug therapy for control of hypertension and needs to be investigated for secondary causes of hypertension. He is fit to indulge in heavy physical activity on drug therapy.*

2. *His lower limb physical examination did not reveal any varicose veins which was further confirmed by Venous Doppler (No.857/18 dated 03.05.2018-report enclosed)."*

6. The opinion of Board constituted by PGIMER is *para materia* with opinion of Review Medical Board constituted by respondent. The petitioner had applied for the post of Constable in ITBP. A Constable in ITBP is supposed to be posted at hard areas apart from peaceful areas. The opinion of different medical officers is consistent qua disease of hypertension. This Court cannot substitute opinion of Doctors who are experts in their subjects.

7. A Division Bench of this Court while adverting with similar issue in ***LPA No.871 of 2022 (O&M)*** titled as '***Sumit Vs. Union of India***' decided on 24.04.2023 has held that once the medical experts have examined and re-examined the appellant, this Court is not required to sit over the same and adjudicate upon the correctness of the opinion (s) expressed by the Medical Experts especially when this Court does not have expertise to decide as to whether the opinion (s) of the expert are right or wrong. The relevant extracts of the judgment read as:

"Having heard learned counsel for the parties, we are of the considered view that in the facts and circumstances of the case, no illegality or infirmity can be found in the impugned order passed by the learned Single Judge. The appellant has been examined twice firstly by the Recruitment Medical Board and thereafter by the Appeal Medical Board which has also obtained opinion from the Command Hospital, Eastern Command, Kolkata and thereafter taken a decision in the matter. All medical experts have found the blood pressure and

other parameters not to be in consonance with those prescribed.

We are also in agreement with the opinion expressed by the learned Single Judge to the effect that once the medical experts have examined and reexamined the appellant's case thoroughly, this Court is not required to sit over the same and adjudicate upon the correctness of the opinion(s) expressed by the Medical Experts especially when this Court does not have the expertise to decide as to whether the opinion(s) of the Medical Experts are right or wrong. The process of medical examination cannot be converted into an endless process and therefore, finality to the opinion of the Appellate Medical Board has rightly been prescribed.

As far as the reliance placed by learned counsel for the appellant on the order passed by this Court in Letters Patent Appeal No. 635 of 2018 is concerned, it is evident that the said appeal was decided on the conjoint consensus statement made by the parties and therefore, it was an order passed on the basis of the consent given by the parties and does not form any binding precedent. In that case as the matter had been allowed by the learned Single Judge taking into account the medical reports of an hospital, which was not part of the medical set up of the respondents, and inspite of the negative reports being given by the Recruitment Medical Board as well as the Appeal Medical Board and therefore, the Union of India had made a statement that they will get further examination done from the Army Hospital (Research & Referral) New Delhi, a defence hospital and not a private one, to which the appellant therein had agreed and on the basis of the statements made by the parties with consent, the appeal was disposed of. In such circumstances, the reliance placed by learned counsel for the appellant on the order passed in LPA No. 635 of 2018 is misconceived. In the instant case, there is concurrent opinion given by the Medical Experts of the Recruitment Medical Board

as well as the Appeal Medical Board that the appellant is unfit for appointment in Indian Air Force.”

8. The case of the petitioner is squarely covered by aforesaid judgment. There is no reason to form an opinion contrary to the opinion of Division Bench of this Court. The present petition sans merit and deserves to be dismissed, accordingly, dismissed.

(JAGMOHAN BANSAL)
JUDGE

20.11.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>