

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

205

CWP-26018-2017 (O&M)

Date of Decision : 02.09.2023

Amarnath Ram

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Deepak Jindal, Advocate
for the petitioner.

Ms. Anita Balyan, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant writ petition is seeking setting aside of order dated 23.04.2014 whereby name of the petitioner has been struck off from the strength of respondent-BSF.

2. The petitioner was provisionally selected as Constable (GD) in Border Security Force (BSF). The petitioner was directed to report Subsidiary Training Centre, Hoshiarpur. The petitioner reported to aforesaid Centre. The petitioner was allotted to "J" Company for basic recruitment training with batch No.204. The petitioner in the month of September' 2011 suffered from fever. The petitioner was referred to Civil Hospital, Hoshiarpur, on 29.09.2011 wherein he remained admitted upto 12.10.2011 and was diagnosed with bone tuberculosis (TB). The petitioner was further referred to PGI, Chandigarh. The petitioner from October' 2011 to May' 2012 remained under treatment at PGI, Chandigarh which in its

report dated 10.05.2012 confirmed that petitioner may rejoin his duty and

he is fit for the job. The respondent did not accept report of the PGI, Chandigarh and asked the petitioner to face medical board. The petitioner was examined by medical board which vide report dated 03.10.2012 formed an opinion that the petitioner is suffering from Bone TB and he is unfit to undergo Basic Recruitment Training and unsuitable for further retention in service. The petitioner on his request was re-examined by Review Medical Board which vide report dated 23.02.2013 declared him unfit for the basic training.

3. Learned counsel for the petitioner *inter alia* contends that as per opinion of the PGI, Chandigarh the petitioner was fit to join service, however, respondent on the basis of opinion of its Medical Board has declared him unfit. The petitioner at the time of recruitment was not suffering from any ailment and he was found medically fit. The petitioner after joining service has suffered from alleged disease and it is a curable disease. The petitioner has undergone treatment and he is fit for joining. The petitioner had suffered alleged disease after joining, thus, he could not be weeded out. In support of his contention, he relies upon the judgments of Hon'ble Supreme Court in **Kunal Singh vs. Union of India and another, (2003) 4 SCC 524, Bhagwan Dass and another vs. Punjab State Electricity Board, (2008) 1 SCC 579** and **Sukhwinder Singh vs. Union of India, 2014 (14) SCC 364.**

4. Learned counsel for the respondents would submit that the respondents have its own arrangement of medical examination. The petitioner was twice examined by qualified doctors and found unfit for the basic training. The petitioner had not completed basic training and without completing training, no one can be appointed in the BSF. The petitioner

could not be appointed on a post even other than Constable without completing basic training.

5. I have heard the arguments of learned counsel for the parties and with their able assistance perused the record.

6. On being asked, learned counsel for the respondents conceded that the petitioner was not suffering from alleged disease at the time of recruitment. The petitioner suffered from alleged disease after joining.

7. The petitioner as per medical opinion of the respondent could not undergo basic training, thus, he cannot be retained in the Force. The petitioner has suffered from alleged disease post recruitment and at the time of recruitment, he was found fit for the job. It seems to be highly unjustified and unfair to weed out an employee on the ground that he cannot complete basic training because of a disease which he has suffered post joining of service and it is a curable disease. A person after joining service may become incompetent to complete basic training while on duty and on account of reasons beyond his control like accident during the movement of Force from one place to another place, attacked by militants etc. In such circumstances, it cannot be concluded that a person who has fulfilled all the required parameters at the time of recruitment should be weeded out because after joining, on account of unavoidable circumstances, he has become unable to undergo basic training.

8. In view of aforesaid facts and findings, the petition stands disposed of with a direction to respondents to sympathetically reconsider case of the petitioner for any post other than post of Constable. If the respondents come to a conclusion that the petitioner cannot be considered for any post other than Constable, the competent authority would pass a

speaking order after granting opportunity of hearing to the petitioner. The needful shall be done within 06 months from today.

9. Pending application, if any, shall also stand disposed of.

02.09.2023
anju

(JAGMOHAN BANSAL)
JUDGE

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