

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No. 871 of 2022 (O&M)
Date of Decision: 24.04.2023

SumitAppellant

versus

Union of India and othersRespondents

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

Present : Mr. Sandeep Bansal, Advocate, for the appellant.

Mr. Satya Pal Jain , Additional Solicitor General of India with
Ms. Amrita Singh, Advocate, for respondents No.1 to 4 UOI.

RAVI SHANKER JHA, CHIEF JUSTICE (oral)

This appeal has been filed by the appellant being aggrieved by the order dated 02.09.2022 passed by the learned Single Judge whereby the petition filed by the petitioner (appellant herein), praying for quashing of the impugned order dated 18.10.2019 (P-6) passed by the respondents, vide which the petitioner had been declared medically unfit for appointment in Indian Air Force on account of "CVS REVIEW" (Cardiovascular Status), has been dismissed.

While dismissing the petition, learned Single Judge has taken note of the fact that the appellant had applied for appointment in Indian Air Force, which required a very high degree of medical fitness. Learned Single Judge has also taken note of the fact that Recruitment Medical Board of the respondent-authorities examined the appellant and found him to be medically unfit on account of 'CVS REVIEW' (Cardiovascular Status) and 'Hyper Hydrosis' and thereafter the appellant filed appeal before the Appeal Medical Board and the said Board also found the appellant medically unfit on account of 'CVS REVIEW'. Learned Single Judge taking these aspects

into consideration and infallibility of the reports submitted by the Medical Specialists constituted by the Recruitment Medical Board as well as the Appeal Medical Board has dismissed the petition by clearly stating that the High Court cannot sit as an Appellate Authority or Board over the opinion(s) of the Medical Specialists.

Learned counsel appearing for the appellant submits that the appellant was initially declared medically unfit on account of Hyper Hydrosis and CVS REVIEW by the Recruitment Medical Board on 12.07.2019 (P-4) and thereafter the appellant approached the Appeal Medical Board which found that the appellant did not suffer from Hyper Hydrosis. However, the Board gave the finding regarding unfitness of the appellant on account of CVS REVIEW.

Learned counsel for the appellant further submits that the appellant got himself examined in a private hospital where he has been given a clean chit and in such circumstances the respondent-authorities be directed to constitute a Review Medical Board to re-examine the appellant. He further submits that the appellant undertakes to comply with and abide by the opinion of the Review Medical Board. In support of this proposition, the appellant has heavily relied upon an order passed by this Court in Letters Patent Appeal No. 635 of 2018 disposed of on 03.12.2019, wherein this Court had disposed of the appeal by issuing similar directions. He further submits that the appellant is also similarly placed and therefore, similar orders be passed in this appeal also. He also submits that in the instant case even the opinion of the Medical Expert i.e. Cardiologist has not been obtained in accordance with the guidelines issued by the respondent-authorities themselves as contained in Annexure R-2.

Learned Additional Solicitor General of India appearing on behalf of Union of India, *per-contra*, submits that initially the appellant was declared unfit for appointment in Air Force on account of Hyper Hydrosis and CVS Review (Cardiovascular Status) relating to a cardio-logical issue. He submits that the Appellate Board of the respondent-authorities has also found the appellant unfit on account of CVS REVIEW mainly because the appellant's blood pressure was above normal and a person like the appellant who, if recruited, would be required to undergo tremendous stress, physical and mental, being an Air Force Officer, for which high standard fitness parameters have been prescribed.

Learned Additional Solicitor General of India further submits that the appellant was also referred to the Command Hospital by the Appeal Medical Board (Eastern Command), Kolkata for obtaining opinion of the concerned Specialists on his disabilities. In the Command Hospital the appellant was duly evaluated and again his pulse and blood pressure were found to be high thereby rendering him unfit for appointment in Indian Air Force where these key medical factors are being considered in accordance with paras 3.3.2 and 3.3.3 of the Indian Armed Publications 4303 (4th Edition). It is pointed out that as per para 3.3.3 of the existing policy, an individual with BP greater than or equal to 140/90 mm Hg will be rejected. As per para 4.2.1 of IAP 4303 (4th Edition), a candidate must be free from any active or latent, acute or chronic, medical or surgical disability or infection and must be physically and mentally fit for duty in all climates anywhere in the World during peace or war.

Learned Additional Solicitor General of India further submits that as the appellant was not found fit in accordance with the health standards prescribed by the respondent-authorities, he was declared unfit for

appointment. He further submits that as there is no dispute regarding his pulse, blood pressure and tachycardia, the contention of the petitioner that some highly specialized person was required to be deputed to re-examine the appellant is misconceived more so as the Appeal Medical Board had referred his case to the Command Hospital for obtaining opinion and thereafter the opinion of ‘*unfit*’ has been received. He further submits that in the absence of any *mala fide* alleged by the appellant against any officials or the authorities, the opinion(s) have rightly been accepted by the learned Single Bench as it is settled law that this Court does not sit as an Appellate Authority over opinion(s) of the Medical Experts.

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 re-examined 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.

In view of the above facts and circumstances, we find no merits in the appeal and the same stands dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

24.04.2023

Whether speaking reasoned	√Yes/No
Whether reportable	√Yes/No