

2024:PHHC:066819-DB



Neutral Citation No.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(109)

LPA-372-2024 (O&M)

Decided on : 13.05.2024

Pawan Kumar

.....Appellant(s)

Versus

Union of India & another

.....Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.J.S.Sohal, Advocate, for
Mr.Vipin Pal Yadav, Advocate, for the appellant.

Ms. Anita Balyan, Sr.Panel Counsel, for respondent-UOI.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-864-LPA-2024

1. Application for condoning the nominal delay of 09 days in filing the appeal is allowed in view of the averments made in the application duly supported by affidavit of the appellant.

2. CM stands disposed of.

LPA-372-2024 (O&M)

3. Consideration in the present appeal is to the judgment dated 14.12.2023 passed by the Learned Single Judge whereby CWP-12701-2022 was dismissed on the ground that there was a medical examination report dated 28.04.2022 (Annexure P-8) which was adverse to the case of the appellant and the review medical examination on the next day i.e. 29.04.2022 (Annexure P-9) also did not improve the situation. The appellant had approached the Writ Court on the strength of the examination done a month later on 27.05.2022 (Annexure P-10) before the

4. The Learned Single Judge came to the conclusion that the Court could not substitute the opinion of the medical experts unless and until there is patent or manifest irregularity or illegality in the medical report warranting interference.

5. On 11.03.2024, we noticed that one of the medical condition was of fungal infection which was not a permanent disease and is curable which the Learned Single Judge also noticed and the other issue was of having less dental points. Apparently, a month later, in the report dated 27.05.2022 (Annexure P-10), the said issue was not noticed by the Medical Officer, Civil Hospital, Hansi which was the basis of the writ petition. Resultantly, we had passed the following order:

“Counsel for the appellant *inter alia* contends that the appellant has qualified the written examination and the physical endurance test for the post of Sub Inspector in the Delhi Police in Central Armed Police but rejection has been done in the detailed medical examination on the ground of unfitness on account of the following reasons:-

“(i) *Dental Points <14*

(ii) *Extensive Fungal dermatitis both Buttocks*

2. *Brief of Review Medical Examination & finding thereof Dr. Chahar Dermatologist Skin specialist gives opinion – Tinea Corporis Extensive Fungal infection.”*

The review Medical Examination which was conducted on the next date i.e. 29.04.2022 (Annexure P-9) did not differ as such. Reliance is placed upon the subsequent opinion given by the Medical Officer, Civil Hospital, Hansi on 27.05.2022 (Annexure P-10) which reads thus:-

“Pawan Kumar come with old heald mark of tinea corporis.

This is not a contagious disease & this will not hamper any kind of duty of Pawan Kumar as Govt. employee.”

Prima facie we are of the considered opinion that the medical deficiency of fungus is something which can be cured by getting proper treatment in the form of fungal powder/cream. However, the respondents also did not specify properly as to the dental points issue also which is stated to be less than 14.

Accordingly, let the appellant be examined by a Board of Doctors at PGIMER, Chandigarh for the two points of unfitness mentioned above for which he has been rejected. The Superintendent, PGIMER, Chandigarh shall accordingly take appropriate steps for the examination of the appellant for the concerned two problems for which the rejection has been done. While examining the appellant, the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles, which is appended as Annexure R-4 with the appeal, shall be kept in mind by the concerned Board of Doctors. The appellant shall personally be responsible for supplying the said document at the time of examination.

Let a report be filed by the next date of hearing.

Adjourned to 13.05.2024.”

6. The medical report of the PGIMER, Chandigarh done on 03.05.2024 has now come in favour of the appellant. Same reads as under:

“POSTGRADUATE INSTITUTE OF MEDICAL EDUCATION AND
RESEARCH, CHANDIGARH

Medical Board Report

In pursuance of the orders of Hon’ble Punjab and Haryana High Court, Chandigarh in LPA-372-2024 (O&M) case titled as Pawan Kumar Vs. UOI and another, regarding medical examination of Pawan Kumar, a Medical Board of the following doctors was constituted vide letter no.EV (9) PGI-MS/MA-63/2024 dated 30.04.2024.

1. Prof. Davinder Prasad, Department of Dermatology, Chairman
2. Dr.Satnam Singh, Department of Oral health Sciences, Member
3. Dr.Minal Bhatia, Department of Hospital Adminsitration-Convener

The medical examination was done on 03.05.2024 at 11:30 AM by the above-mentioned board members, two points needs to assessed by the board i.e.

→ Dental Points < 14

→ Extensive Fungal Dermatitis both buttocks

The medical examination was done on 3rd May, 2024 by the above board members. As per the Dermatology examination on above said date, it is observed that there is no active skin disease or fungal infection at present. Dental Examination was done intraorally, OPG(X-ray) Investigation was done, it is observed that, there are 17 Dental points (The distribution of points is as such:- 4 incisor, 2 canine, 3 premolars & 8 Molars.

As per guidelines for recruitment Medical Examination in Central Armed Police Forces and Assam Rifles, SL No.9 iii & Xii given, “A candidate will be accepted provided there are at least 14 Dental points in his/her mouth and all the teeth must be sound or repairable’ and “Localized type of fungus infections which is extensive, interfering with the proper wearing of combatised equipment or the performance of combatised duties, are disqualifying.”

Impression: As per the assessment, the medical board is of the opinion, In reference with the above said guidelines, Dermatology opinion is that the patient doesn’t have any active fungal infection and On Dental Examination, 17 Dental points are observed.

Sd/-	Sd/-	Sd/-
Dr.Satnam Singh	Dr.Minal Bhatia	Prof. Davinder Prasad
Member	Convener	Chairperson”

7. A perusal of the same would go on to show that even the dental points are 17 in number and therefore, the objection which could have been standing in the way of the appellant, no longer stands. The dermatology opinion also goes on to show that there was no active skin disease or fungal infection at present and therefore, proper wearing of the combatised equipment or the performance of combatised duties can be done and the previous disqualification does not come into picture.

8. Ms.Balyan, on instructions, submits that the respondents shall take remedial measures and also get the issue examined as to how there is such a difference in the two reports.

9. Be that as it may, keeping in view the fact that the appellant was seeking appointment as Sub-Inspector and has been denied his right for the last 2 years, we do not wish to postpone his agony, keeping in view the fact that the report of the prestigious Medical Board of the PGIMER, Chandigarh has certified his fitness.

10. Resultantly, we allow the present appeal, set aside the order dated 14.12.2023 and direct the respondents to consider the case of the appellant for the post of Sub-Inspector since apparently, he had made the cut on all other aspects and only in the final examination of fitness he had been rejected. Keeping in view the fact that he had not worked for the said period, we do not grant any benefit of wages on the principle of ‘No work no pay’. However, he shall be entitled for all notional benefits of seniority from the date similarly situated persons were appointed and will be placed at the bottom of the seniority-list in the said cadre. Needful be done within a period of two months from the receipt of certified copy of this order. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

13.05.2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No