

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

105

**CWP No.17267 of 2015
Date of Decision:06.02.2024**

Romy Kumar

....Petitioner

VS.

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Rajeev Anand, Advocate and
Mr. Nikhil Anand, Advocate
for the petitioner

Mr. Anil Chawla, Senior Panel Counsel
for the Union of India

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 13.07.2015 (Annexure P-7) whereby he has been discharged on the ground of medical unfitness.

2. The petitioner pursuant to advertisement dated 03.12.2011 (Annexure P-1) applied for the post of Constable. The petitioner cleared written test and thereafter he participated in the Physical Efficiency Test which he qualified. He was issued appointment letter, however, subsequently declared medically unfit. The respondents found that

petitioner is a patient of chronic supportive ofitis and TM Perforation. The

petitioner approached this Court and on the direction of this Court, the petitioner was subjected to re-examination by a Medical Board of Post Graduate Institute of Medical Education and Research, Chandigarh (in short “PGIMER”). The Medical Board in its report has confirmed that the petitioner had history of chronic discharge in both ears and he was diagnosed as a case of CSOM (Chronic Suppurative Otitis Media) in both ears. It has also been noticed in the report that petitioner has undergone surgery at Jammu.

3. Mr. Anil Chawla, Senior Panel Counsel for Union of India submits that it is undisputed fact that petitioner has undergone surgery and report of PGIMER also confirms that petitioner was chronic patient of discharge in both ears and he was diagnosed as a case of CSOM (Chronic Suppurative Otitis Media).

4. On being confronted with the report of PGIMER, Mr. Rajeev Anand, counsel for the petitioner expressed his inability to controvert contents of the same.

5. 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 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.”

6. There are different medical reports which have been relied upon by the respondents while declaring the petitioner unfit. The report of PGIMER which was prepared on the direction of this Court also does not support case of the petitioner. In any case, the petitioner was discharged within few months from the date of his joining and a period of almost 10 years has passed away from his discharge.

6. In view of the above facts, findings and discussion, the petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

06.02.2024

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Whether speaking/reasoned: Yes

Whether reportable: Yes