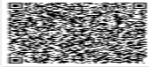


2024:PHHC:099193-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17310-2024 (O&M)
Reserved on 29.07.2024
Pronounced on: 02.08.2024

A-4500974A EX-RECT (DS) GOURAV ...Petitioner

Versus

UNION OF INDIA AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Gurpreet Singh, Advocate and
Mr. Jaskaran Singh, Advocate for petitioner.

Mr. Rohit Verma, Sr. Panel Counsel
for the respondents-UOI.

SUDHIR SINGH, J.

The petitioner has sought a writ in the nature of Certiorari quashing the impugned order dated 25.04.2024 (Annexure P-12) passed by the Armed Forces Tribunal, Regional Bench, Chandigarh at Chandimandir, whereby the Original Application filed by the petitioner, has been dismissed.

2. The facts, in brief, are that the petitioner had applied for recruitment of Agniveer under the Agnipath Scheme. The physical test was conducted on 29.10.2022 and the Recruiting Medical Officer declared him fit. The petitioner after having cleared all other formalities, was directed to report for training on 22.02.2023. Soon

thereafter, he was subjected to medical examination, whereupon the Inspecting Medical Officer, had noticed a large scar on the anterior aspect of his left leg. The petitioner was referred to Military Hospital, Gopalpur, for expert opinion, where he was admitted on 27.02.2023, wherefrom he was referred to Command Hospital, Kolkata. The Surgical Specialist vide his opinion dated 04.03.2023 had opined that the scar being hypertrophic in nature, may break down during hard training and in hot and humid climate. Based on the said opinion, the petitioner was invalided from service on 16.05.2023, after putting him through an Invalidment Medical Board.

3. The stand of the official respondents before the learned AFT was that according to the Policy dated 03.04.2017, regulating medical examination of recruits, a recruit has to be examined on joining the training centre and that the said policy does not violate Regulation 135(d) of the Regulations for the Army (Revised Edition), 1987 (for short 'the Regulations') and that the opinion dated 04.03.2023 given by a Classified Specialist (Surgery) and Reconstructive Surgeon, will prevail over the opinion of the Recruiting Medical Officer.

4. After hearing the rival contentions of the parties, the learned AFT has found that the Recruitment Medical Officer could not be expected to inspect the applicant with closed eye and the petitioner was referred to the Classified Surgical Specialties, who gave his opinion dated 04.03.2024 and it could not be shown by the petitioner that the said opinion was perverse. Thus, the learned AFT did not find any merit in the stand of the petitioner that a differing

medical opinion cannot be made the basis for invaliding the petitioner from service.

5. As regards compensation under the Agnipath Scheme, the learned AFT has noticed the criteria as contained in Clause 8 of the said scheme and concluded that the said criteria is not applicable to a recruit invalided from service. It was further found that compensation is due only to a permanent Low Medical Category, who is not enrolled in the regular cadre due to the same. Accordingly, the OA was dismissed.

6. Learned counsel for the petitioner has vehemently argued that at the time of recruitment, besides having passed the rigorous physical test, the petitioner was found medically fit and was declared as such by the Recruitment Medical Officer. It is further argued that the scar found on the left leg of the petitioner is not a disability as it does not affect the normal working of a soldier and further, it does not affect any bone of the body. While referring to the Primary Medical Examination Report dated 31.10.2022, it is submitted that the said report had declared the petitioner as medically fit and the same is signed by MO 2016 Field Hospital; Medical Officer ARO and AK ATRE COL SRMO, HQ, RTG, Zone. It is further argued that as per Policy dated 03.04.2017 issued by the IHQ of Ministry of Defence (Army), the opinion of the Recruiting Medical Officer is valid for a period of 180 days and, thus, the medical examination of the petitioner after reporting to the training centre, was totally illegal. In this regard reference has been made to Regulation 135(d) of Regulations.

7. It is further argued that the petitioner has been invalidated out of service within three months of the training, but as per the provisions of the Agnipath Policy, once the petitioner had entered the service of army as Agniveer and that too after having been declared medically fit by the Recruitment Medical Officer, he is entitled to the monetary compensation in terms of Clause 29(c) of the Agnipath Scheme.

8. On the other hand, Mr. Rohit Verma, Sr. Panel Counsel, who is present in Court, on service of the advance notice on behalf of respondents Nos. 1 to 5, while defending the order passed by the learned AFT, submits that as the petitioner was not found medically fit, no right has accrued to him either to seek continuation in the armed forces as Agniveer or claim any compensation under the Agnipath Scheme on account of his being invalidated from the service.

9. We have heard learned counsel for the petitioner and have also gone through the writ petition, including the impugned order. In our opinion the following questions arise for determination.

1. Whether the clinical assessment/opinion given by the Classified Specialist (Surgery) and Reconstructive Surgeon, Command Hospital (Eastern Command), Kolkata, can be overlooked/ignored?
2. Whether the petitioner is entitled to the compensation/monetary benefits in terms of the Agnipath Scheme?

10. Coming to Question No.1, as is apparent from the facts of the case, the petitioner after having been selected, reported for the military training on 22.02.2023. However, on 27.02.2023, the petitioner was admitted to the Military Hospital Gopalpur for

provisional diagnosis/hypertrophic Scar (Left) Leg and further transferred to Command Hospital (Eastern Command), Kolkata on 28.02.2023 for opinion by Reconstructive Surgeon. On 04.03.2023, Lieutenant Colonel Vinay Pal Singh, Classified Specialist (Surgery) and Reconstructive Surgeon gave the opinion that the petitioner has a large unstable scar over anterior aspect of his left leg which might break down due to friction during the rigorous physical activities imparted at any army training centre. It was further opined that the posting in hot and humid areas and extremely cold climates can cause discomfort to the individual and breakdown of the scar. The said clinical assessment and recommendation dated 04.03.2023 would read as under:-

“Part-II

CLINICAL ASSESSMENT

1. **History:** This 20 year old Agniveer was found to have a large scare over anterior aspect of left leg during initial medical examination at ATR/AAD centre. On enquiring, he revealed that he sustained injury to left leg 5 years back, when he hit a corner of a wall accidentally and resulting wound was managed conservatively. He was referred for surgical opinion of this scar at MH-Gopalpur, from where he has been transferred to CH (EG) for further evaluation and opinion of Reconstructive Surgeon.
2. **Physical Examination and Findings:** GC – Stable, vitals – WNL
Local examination (Left leg) 15x 5 cm sized scar seen over anterior aspect of middle and lower third leg, which has healed by secondary intention. Overlying skin is firmly stuck over anterior border of tibia and is immobile. Scar is hypopigmented, thinned out and stretched at the centre and hypertrophic at periphery. No local erythema, raw areas or discharging sinuses seen. There is no local tenderness and ROM at knee and ankle joint is full and free. No distal NV deficit.
3. **Investigation Reports:** X-ray Left leg (4279 dt. 04.03.2023, CH (EC) : soft tissue irregularity noted at lower and mid third

leg. Mild cortical irregularity with linear sclerosis also noted at upper part of tibia in its medical aspect.

4. Diagnosis: HYPERTROPHIC SCAR OVER ANTERIOR ASPECT OF LEFT LEG.

Part-III
RECOMMENDATION

- 1. Medical Classification Recommended:** This recruit has a large unstable scar over anterior aspect of left leg, which might break down due to friction during the rigorous physical activities imparted at any army training centre. Also posting in hot and humid areas and extremely cold climates can cause discomfort to the individual and breakdown of scar. In such instances, he will not be able to carry out all military duties expected out of a soldier. Hence, recommended to be invalided out of service in **LMC A5.**”

11. Thereafter, the petitioner on 29.03.2023 was brought before the duly constituted Invalidment Medical Board (IMB) at Military Hospital, Gopalpur to assess the cause, nature and degree of disablement and after having been physically examined, the Invaliding Medical Board opined that the disability ‘Hypertrophic Scar Over Anterior Aspect of Left Leg’ suffered by the petitioner was neither attributable to nor aggravated by the military service as disability occurred prior to the recruitment. Accordingly, on 16.05.2023, the petitioner was struck off strength from the Army.

12. The aforesaid chronological order of the facts would show that the petitioner was put through a proper procedure in order to assess the disability suffered by him. It is the admitted case of the petitioner that he was having a scar on his left leg prior to his recruitment as Agniveer. It has been noticed in the Clinical Assessment dated 04.03.2023 that the petitioner had revealed that he

had sustained injury to left leg five years back, when he hit a corner of a wall accidentally and resulting wound was managed conservatively. The Primary Medical Examination Report dated 31.10.2023 conducted at the time of the recruitment of the petitioner, is not the final report and it has been so admitted by the counsel for the petitioner as well. As noticed above, the said report was only primary medical examination report and once the petitioner had reported for the military duties, the petitioner was admitted in Medical Hospital, Gopalpur for provisional diagnosis/hypertrophic Scar (Left) Leg and thereafter, referred to Command Hospital (Eastern Command), Kolkata, when the opinion dated 04.03.2023 was given by the Classified Specialist (Surgery) and Reconstructive Surgeon.

13. We are of the considered opinion that the clinical report dated 04.03.2023 cannot be said to be untenable, especially when an Armed Forces personnel is to be assessed for his medical fitness by the authorities, in order to ensure that he could perform his regular duties without any hindrance. The learned AFT has examined in detail the provisions of Regulation 135 of the Regulations and paragraphs 6 and 7 of the Policy dated 03.04.2017 and has rightly come to the conclusion that medical examination to determine fitness is not required to be conducted after joining the training centre, but such medical examination *per-se* is not barred. Still further, it was held that on having reported to the training centre, the recruit is to be inspected by a Medical Officer and that the Regimental Medical Officer could not be expected to inspect the applicant with closed eyes. The relevant

extract from the order passed by the learned AFT, would read as under:-

“6. Regulation 135 of the Regulations is reproduced as under:-

“135. Medical Examination of Recruits.- (a) All recruits will prior to enrolment or engagement, subjected to a medical examination in the prescribed manner, (b) Medical examination of all recruits for enrolment by ROs will be carried out by Recruiting Medical Officers or at the nearest Military Hospital Medical examination of recruits for enrolment at unit HQ will be carried out at the Military Hospital located in the same station. (c) Whenever a Recruiting Medical Officer is in doubt as to the nature of a disability, he may refer the recruit to a Specialist for examination and opinion as to his suitability for enrolment in the Army. This will be done only when the recruit is fit in all other respects, and a reasonable doubt exists regarding the disability or disabilities in question. A recruit, who is referred to a Specialist for medical examination and opinion as mentioned above, will be provided where necessary, conveyance by rail on warrant to the nearest Military Hospital where the Specialist is available, and back to the place of recruitment. (d) The Medical re-examination (immediately) on arrival at his unit of a recruit enrolled by a RO and passed fit by a Recruiting Medical Officer is not permissible. Only in exceptional cases, where the medical officer in charge of the case considers it unlikely that a recruit will make an efficient soldier, will he be medically boarded before undergoing training. (e) When a recruit breaks down while undergoing training or is to be suffering from a disability likely to prevent him becoming an efficient soldier he will be medically boarded, and, if found unfit discharged under Army (Rule 13(3) item IV, 136. Determination of Age on Enrolment- (A).

7. A perusal of the said Regulation shows that medical examination of a recruit is to be carried out by the Recruiting Medical Officer and in his absence at the nearest Military Hospital. If a doubt exists in his mind regarding a disability, the Medical Officer may refer the recruit for specialist opinion. Medical examination is not permissible on arrival at the Training

Centre, post recruitment and in case it is discovered at a later stage that the recruit is unlikely to become an efficient soldier, he may be boarded out. This means that medical examination for determining fitness will not be conducted after joining the Training Centre, but medical examination per se is not barred.

8. Paragraphs 6 and 7 of the policy dated 03.04.2017 governing recruit medical examination are also re-produced below:-

Validity Period of Medical Examination

6. The validity period of medical examination for all cases will be 180 days from the date of the initial medical exam conducted by Rtg MO. At time of dispatch, Rtg. MO will identify candidates by identification marks recorded in AFMSF-2A, and carry out medical inspection to rule out any fresh disease or injury following the initial medical examination. If a fresh disability is detected the candidate will be disposed off as described in para 5 above.

(a) Re-Medical Examination. After lapse of the validity period, re-medical examination is mandatory and such a medical examination for all purposes constitutes a fresh med exam and will be added accordingly. These cases will be examined by Rtg MO in consultation with SRMO and disposed off as described in para 5 above. 'FIT' candidates will be dispatched to the Trg Centre and others candidates will be referred to Specialist at affiliated MH.

(b) In such medical examination after validity period, if the SRMO finds that the candidate had been declared fit by specialist at MH in the initial med examination and the disability has not further deteriorated the RMO will not refer the candidate again to MH for the same disability. However, if the disability has deteriorated or a fresh disability is detected the case will be referred again for Spl opinion.

(c) The validity period of 180 days will not be extended under any circumstances.

Medical Examination at Regtl Trg Centre

7. On joining the Regtl Trg Centre there shall be no medical examination for fitness within the validity period as they have already been declared fit. However, all Rects should be inspected by Rtg MO from health point of view to rule out any infections disease or injury so that they can be quarantined and treated if so needed.

8. A perusal of the aforementioned paragraphs makes it clear that medical examination conducted by the Recruiting Medical Officer is valid for 180 days and re-medical examination is mandatory after the lapse of the said period. However, on reporting to the Training Centre, recruit shall be inspected by a Medical Officer. Recruits need to be inspected by Regimental Medical Officer from health point of view to rule out any infectious disease or injury so that they can be quarantined and treated if so needed.

9. Thus, it is evident that on joining the Training centre, every recruit has to be physically inspected by a Medical Officer to rule out any injury or suspected disease. Accordingly, it cannot be said that the medical examination of the applicant after reporting for training was illegal. The said requirement does not violate Regulation 135 referred to hereinabove as the medical in question is not for determining fitness for recruitment. Submission of learned counsel for the applicant in this regard is rejected.

10. The Regimental Medical Officer could not be expected to inspect the applicant with closed eyes. He suspected the scar to be hypertrophic in nature and thus, referred the applicant to a Classified Surgical Specialist, who has given his opinion dated 04.03.2023 and there is nothing on record to suggest that the said opinion is perverse. Surgical Specialist's opinion has to be respected unless it is shown to be suspect on the basis of attending circumstances. No such circumstances have been pointed out and in fact none exist. Thus, the argument that a differing medical opinion cannot be made the basis of invaliding the applicant from service, is also rejected.”

14. Thus, we are of the considered view that as the scar on the left leg of the petitioner was existing prior to his enrollment as Agniveer, it was rightly found by the Invalidment Medical Board that the disability suffered by him was neither attributable to nor aggravated by the military service and accordingly, his discharge cannot be found fault with in view of the clinical assessment report given by the Classified Specialist (Surgery) and Reconstructive Surgeon. Accordingly, while answering Question No.1, it is held that

the opinion given by the Classified Specialist (Surgery) and Reconstructive Surgeon, cannot be overlooked or ignored.

15. Coming to Question No.2. In order to determine as to whether the petitioner is entitled to any compensation under the Agnipath Scheme, it is to be examined whether the petitioner falls in any of the categories stipulated under Clause 29 of the Agnipath Scheme.

“29. Payment of Disability/Death.

The said Clause reads as under:-

Sl. No.	Category	Entitlements of Agniveers
(a)	Death during engagement period on Bonafides duty (Category ‘Y’/‘Z’)	(i) Insurance Cover of Rs 48 lakhs. (ii) One-time ex-gratia Rs 44 Lakhs (iii) Full pay for unserved period upto four years (with effect from date of death) including Seva Nidhi component. (iv) Balance accumulated (as on date) in the individual’s Seva Nidhi fund and Govt contribution including interest from the Agniveer Corpus Fund.
(b)	Death during engagement period not on duty (Category ‘X’)	(i) Insurance Cover of Rs 48 lakhs. (ii) Balance accumulated (as on date) in the individual’s Seva Nidhi fund and Govt contribution including interest from the Agniveer Corpus Fund.
(c)	Disability (attributed/aggravated due to conditions of engagement)	(i) One-time ex-gratia Rs 44/25/15 lakhs based on % of disability (100/75/50) from public fund. (ii) Full pay for unserved period up to four years (with effect from date of disability) including Seva Nidhi component (from Public Fund). (iii) Balance accumulated (as on date) in the individual’s Seva Nidhi fund including interest and Govt contribution from the Agniveer Corpus fund.

16. Admittedly within a week of his having reported for the training, the petitioner was diagnosis with Hypertrophic Scar (Left) Leg and after having been put through rigorous medical examination, he was recommended for being invalided out of service. The Invalidment Medical Board had assessed the disability suffered by the petitioner and found the same not attributable to or aggravated by the military service. Since the disability suffered by the petitioner is neither attributable to nor aggravated by the military service as the scar which led to the disability, was existing prior to the enrollment of the petitioner as Agniveer, it cannot be said the petitioner is entitled to any monetary compensation under the Agnipath Scheme. Question No.2 is answered in negative and it is held that the petitioner is not entitled to any monetary compensation, including the Seva Nidhi component, in terms of the Agnipath Scheme.

17. In view of the above, finding no merit in the present petition, the same is hereby dismissed.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

02.08.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No