

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-23669-2023
Date of Decision: 15.02.2024

Rohit Kumar ...Petitioner

Versus

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rajesh Goyal, Advocate for the petitioner
Mr. Sunil Kumar Sharma, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Medical Report dated 07.08.2023 (Annexure P-4) prepared by Medical Board and report dated 08.09.2023 (Annexure P-6) prepared by Appellate Medical Board whereby he has been declared medically unfit on account of abnormal ECG.
2. The petitioner pursuant to Advertisement No.2 dated 04.03.2023 (Annexure P-1) applied for the post of Agniveer Vayu. The petitioner cleared written as well as physical test. The petitioner was subjected to medical examination wherein he was declared unfit on account of '*ECG abnormality- Left Ventricular Hypertrophy*'. The petitioner applied for Appeal Medical Board. The petitioner was re-examined and again declared unfit on the ground as noticed in the earlier Medical Report.

3. Learned counsel for the petitioner submits that respondent was bound to conduct ECHO Cardiography (2D ECHO) in the light of guidelines issued with respect to Advertisement No.2/2023 as well as general guidelines with respect to medical examination of candidates.

4. *Per contra*, learned counsel for the respondents submits that amended guidelines are applicable to officers and petitioner had applied for Agniveer Vayu. The amended instructions are inapplicable to Agniveer Vayu. The 2D ECHO is conducted where a candidate is found suffering from ‘*Incomplete Right Bundle Branch Block*’ (‘IRBBB’). The petitioner was not found suffering from IRBBB, thus, there was no need to conduct 2D ECHO.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. The petitioner twice was subjected to ECG Test and both times, he was found unfit. The Medical Board did not find that petitioner is suffering from disability of IRBBB, thus, he was not subjected to 2D ECHO. The respondent has relied upon Para 3.3.5 of IAP 4303 (5th edition) which is reproduced as below:

“3.3.5. **ECG**. Assessment of a properly recorded ECG (resting – 12 lead) should be carried out by a medical specialist. Note will be taken of wave patterns, the amplitude duration and time relationship. All ECG abnormalities are unfit except incomplete RBBB which may exist without any structural heart disease. 2D ECHO should be performed in cases with incomplete RBBB to rule out an underlying structural heart disease and opinion of Senior Adviser (Medicine) or Cardiologist should be obtained.”

7. The petitioner is claiming that as per amended guidelines every candidate should be subjected to 2D ECHO in case of abnormal ECG. This Court vide order dated 13.02.2024 directed the respondents to confirm whether amended guidelines are applicable to every candidate suffering from abnormal ECG. The respondent during the course of hearing produced communication dated 14.02.2024 of Medical Advisor, disclosing that amended guidelines are applicable to officers of Indian Air Force whereas petitioner has applied for the post of Agniveer Vayu. In view of categorical stand of the respondent and in the absence of contrary material, this Court does not find it appropriate to hold that amended guidelines are applicable to the petitioner and respondents are bound to conduct 2D ECHO in every case where ECG is found abnormal.

8. There is another aspect of the matter. The petitioner twice was subjected to ECG. In both the reports, abnormality has been detected. The petitioner has applied for a post in Armed Forces where parameters and standards of medical fitness are higher than civil posts. This Court cannot substitute opinions of experts.

9. 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.”

10. In view of above discussions and findings as well as judgment of this Court in **Sumit (supra)**, this Court is of the considered opinion that present petition *sans* merit and deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

15.02.2024
Mohit Kumar

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