

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-24539-2023
Date of decision: 30.01.2024

AJAY
Vs.
UNION OF INDIA AND ORS.
....PETITIONER
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Virender Kumar, Advocate
for the petitioner.

Mr. Rakesh Verma, Advocate
For the respondents.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through the instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Medical Report dated 09.03.2023 (Annexure P-7) and 13.03.2023 (Annexure P-10) whereby petitioner has been declared medically unfit for recruitment to the post of Head Constable (Radio Mechanic) in BSF.
2. The petitioner pursuant to advertisement applied for the post of Head Constable (Radio Mechanic). The petitioner appeared in written test and qualified the same. The petitioner was subjected to physical fitness test and he cleared the same. The petitioner was subjected to detailed medical examination on 07.03.2023 wherein he was declared unfit on the ground that he is having keloid at left elbow joint & varicose vein bilateral lower limb.

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3. The petitioner on the asking of respondents appeared before Safdarjung Hospital, New Delhi for dermatological opinion and keloid hypertrophic scar.

4. The experts at Safdarjung Hospital declared him dermatologically fit, however, ignoring the opinion of experts of Safdarjung Hospital, the respondents in review medical examination again declared him unfit on the ground that he is having hypertrophic scar.

5. Counsel for the petitioner submits that petitioner was initially declared unfit on two counts i.e. Keloid and Varicose Vein. He was declared fit by Safdarjung Hospital still review Medical Board has declared him unfit on the ground that petitioner is having hypertrophic scar on left forearm. The opinion of respondents is contrary to the opinion of experts of Safdarjung Hospital. The petitioner in 2016 was declared medically fit by doctors of army and similarly in 2018 by Staff Selection Commission for the post of Constable (General Duty).

6. Per contra, counsel for respondents submits that as per Division Bench Judgment of this Court in ***LPA No. 871 of 2022 titled as Sumit Vs. Union of India decided on 24.04.2023***, the High Court cannot substitute opinion of experts.

7. I have heard counsel for the parties and perused the record.

8. It is settled proposition of law that High Court cannot substitute opinion of experts, however, Court cannot turn a blind eye where there is patent irregularity. The petitioner was subjected to detailed medical examination wherein he was declared unfit on two counts i.e. (i) keloid and (ii) varicose vein. The petitioner was found medically fit by dermatologist of Safdarjung Hospital and medical examination by experts of Safdarjung Hospital was conducted on the asking of respondents vide correspondence dated 13.03.2023. The respondents ignoring report of Safdarjung Hospital declared the petitioner

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dermatologically unfit. The petitioner was medically examined by Army in 2016 and he was issued admit card, finding him medically fit. The petitioner was further medically examined in an exam conducted by Staff Selection Commission for the post of constable. The respondents have relied upon office memorandum dated 20.05.2015. The relevant extracts of the said memorandum read as under:-

“13. Scars, or any other chronic skin disorder of a degree or nature that requires frequent outpatient treatment or hospitalization, which in the opinion of the certifying authority affects thermoregulatory function, or will interfere with the wearing of combatised clothing or equipment, or which exhibits a tendency to ulcerate; or Interferes with the satisfactory performance of duty, are disqualifying. Includes scars at skin graft donor, or recipient sites.”

9. The respondents in its medical report has reproduced second part of the aforesaid memorandum with respect to the disease i.e. scar, however, its first part has been totally ignored. There is nothing in the report to the effect that the petitioner requires frequent outpatient treatment or hospitalization due to scar which he is having on his left forearm.

10 As per medical report of Safdarjung Hospital, petitioner is dermatologically fit which shows that he does not require frequent medical treatment. The respondents have ignored mandate of aforesaid office memorandum as well as report of Safdarjung Hospital, thus, matter needs to be re-examined by a fresh Medical Board consisting of at least one dermatologist.

11. In the wake of above discussions and findings, the present petition is disposed of with a direction to respondents to constitute a Board of Doctors consisting of at least one dermatologist and examine the petitioner *qua* aforesaid disease. In case respondents are not having dermatologist, the services of a

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doctor from reputed medical institute may be availed. The needful shall be done within 8 weeks from today.

30.01.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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