

(2022) 02 DEL CK 0084

In the Delhi High Court

Case No : Civil Writ Petition No. 3950 Of 2021, Civil Miscellaneous No. 11867 Of 2021

Ajay

APPELLANT

Vs

Union Of India, Thr. Its Secretary & Ors

RESPONDENT

Date of Decision : 10-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 02 DEL CK 0084

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Ankur Chhibber, Yogesh Mathur, Harkesh, Sangita Rai

Final Decision : Dismissed

Judgement

Navin Chawla, J

The petition has been heard by way of video conferencing.

1. The present petition has been filed seeking quashing of the results of the Detailed Medical Examination (in short, "DME") as well as the

Appeal Medical Examination (in short, "AME") whereby the petitioner was declared medically unfit by the respondents. The petitioner further

prays for a fresh medical examination before an independent board of doctors set up by the respondents and if found fit, appointment in the Indian

Navy with all consequential benefits.

2. It is the case of the petitioner that pursuant to the advertisement inviting applications for Artificer Apprentice (AA) and Senior Secondary Recruits

(SSR)- AUG 2020 Batch dated 08.11.2019, the petitioner applied for the post of Artificer Apprentice (Submarine) in the Indian Navy. Upon clearing

the written examination, the petitioner was called for his DME and other tests at the Recruiting Office, INS Chilka, wherein the petitioner was informed about his provisional selection.

3. The petitioner appeared for his DME on 26.01.2021 and vide report dated the same day, the petitioner was declared to be medically unfit on the ground of "hypo pigmented patches over sternum". Aggrieved by the result of the DME, the petitioner preferred an application for the conduct of his AME.

4. For the conduct of his AME, the petitioner reported at INHS Kalyani, Vishakhapatnam (hereinafter referred to as "INHS Kalyani") on 12.02.2021. During the AME, the petitioner was declared to be medically unfit on the ground of "vitiligo".

5. The learned counsel for the petitioner contends that upon the petitioner reporting to INHS Kalyani, the petitioner was not allowed to appear for his AME and was rendered medically unfit without any medical test being performed. He submits that the petitioner, along with some other candidates, was given a mere verbal intimation with respect to their medical unfitness without the conduct of their medical re-examination.

6. The learned counsel for the petitioner places reliance on the reports of Pt. BD Sharma PGMIS Rohtak (hereinafter referred to as "PGMIS"), wherein the Skin OPD found the petitioner to be negative with regards to the "hypo pigmented patches over sternum". He further relies upon the certificate issued by Garg Mediskin Hospital, Hissar, to contend that a skin specialist found no evidence of "vitiligo" on the petitioner. He submits that as of this date, there is an absence of any pigmented patch on the body of the petitioner and that had such a condition genuinely existed, the petitioner would have still shown signs for it.

7. The learned counsel for the petitioner further contends that there is a discrepancy in the report of the DME and the AME, as the DME declared the petitioner to be medically unfit on the ground of "hypo pigmented patches over sternum", while the AME declared the petitioner to be medically unfit on the ground of "vitiligo".

8. The learned counsel for the respondents, on the other hand, places reliance on the reports of the DME and the RME conducted on the petitioner.

The report of the RME clearly states that the petitioner was found to be medically

unfit on the ground of vitiligo. She further contends that owing to the strenuous and hostile atmosphere and terrains on which personnel in the Forces have to work in, reliance ought to be placed on the medical standards prescribed by the Armed Forces as well as the opinion of doctors who are better conversant with the circumstances of service. She denies that the petitioner was not subjected to medical examination at the AME stage. She contends that the petitioner was in fact, examined by a specialist dermatologist, who found the petitioner to be suffering from Vitiligo.

9. This Court, by its order dated 06.01.2022, had directed the respondents to place on record the entire medical record of the petitioner. The Court had further directed the doctor who attended upon the petitioner during the AME to join the proceedings by way of an online video link.

10. In compliance with the same, Surg. Cdr. Dr. Kaushik Roy joined the proceedings by way of an online video link. Upon being inquired about the differing grounds for medical unfitness at the DME and the RME stage, Dr. Roy submits that the DME was conducted by a General Duty Medical

Officer. Hypo-pigmented patches were observed on the petitioner at the stage of the DME, which consist of areas of lesser pigmentation or

whitish patches over the central bone area of the chest. Vitiligo, the ground on which the petitioner was declared to be medically unfit at the

RME stage by a Classified Specialist (Dermatology), is a disease which presents itself in the form of hypo-pigmented patches over the body. He

submitted that Vitiligo is a skin disease in which the pigmented cells are lost from areas of the skin causing whitish patches. Vitiligo occurs when

pigment producing cells die or stop functioning. It is a permanent condition which is resistant to treatment. One third of cases of Vitiligo are associated

with Autoimmune Diseases (condition where the body's immune system attacks healthy cells) such as Thyroid diseases, Pernicious Anaemia,

Diabetes, Systemic Lupus Erythematosus, Addison's Disease, etc. Complications of Vitiligo can affect the eyes and the hearing.

11. Dr. Roy further submits that as per para 10 (a) of Appendix A of Navy Order (Spl) 01/2008, Skin Diseases unless temporary or trivial are grounds

for rejection during recruitment. The same is also present in the advertisement call.

12. We have considered the submissions made.

13. In the present case, the AME of the petitioner with respect to the hypo-pigmented patches was conducted by a Classified Specialist

(Dermatology) who found the petitioner to be unfit on the ground of 'vitiligo'. Thus, the reports of the DME and the AME have both found the

petitioner to be unfit on account of the hypo-pigmented patches, with, as explained by Dr. Roy and not denied by the learned counsel for the petitioner,

the report of the AME providing a pin-pointed diagnosis of the actual ailment suffered by the petitioner. There is, therefore, no contradiction in the

report of the DME and the AME.

14. As far as the reliance of the report of PGMIS and from Garg Mediskin Hospital, Hissar, is concerned, in view of the fact that the petitioner was

examined by a specialist doctor at the stage of the AME, who opined that the petitioner is suffering from 'vitiligo', we again find no merit. It is

to be noted that the AME is held merely to ensure that no error has been made at the DME stage in examining the candidate. Once the report of the

AME confirms the results of the DME, it is not for this Court to disregard or doubt these medical reports based on reports from a civil hospital.

15. This Court, in its judgment dated 11.01.2022, in Adhir Kumar Verma vs. Union of India, W.P.(C) 14926 of 2021, has held that as the recruitment

process is for the Armed Forces, the candidate must meet the highest standard of medical fitness. It was further held as under:-

'15.It is important to note that no mala fide is alleged against the doctors constituting the RMB. These doctors are the best judge of

medical fitness or unfitness of a candidate. The Court, in exercise of its power under Article 226 of the Constitution of India, cannot

interfere with such findings of the RMB in the absence of any allegation of mala fide or arbitrariness by the doctors.

16. It is also important to note that the recruitment process is for Armed Forces. The selected candidates would have to perform their duty in

most harsh and unfriendly environment. For such recruitment, the candidate should therefore, meet higher standard of medical fitness.

Benefit of doubt on medical fitness cannot be given to the candidate. In fact, once there is a doubt, it must be resolved against the

candidate.'

16. This Court, in its judgment dated 21.12.2020 in *Km. Priyanka vs. Union of India & Ors.*, W.P.(C) 10783 of 2020, has also held that the standard of

physical fitness for the Armed Forces and the Police Forces is more stringent than for the civilian employment. It was held that it is the doctors of the

Forces who are aware of the demands of duties and the physical standards required to discharge the same. It was further held as under:

“8. We have on several occasions observed that the standard of physical fitness for the Armed Forces and the Police Forces is more

stringent than for civilian employment. We have, in *Priti Yadav Vs. Union of India* 2020 SCC OnLine Del 951; *Jonu Tiwari Vs. Union of*

India 2020 SCC OnLine Del 855; *Nishant Kumar Vs. Union of India* 2020 SCC OnLine Del 808 and *Sharvan Kumar Rai Vs. Union of India*

2020 SCC OnLine Del 924, held that once no mala fides are attributed and the doctors of the Forces who are well aware of the demands of

duties of the Forces in the terrain in which the recruited personnel are required to work, have formed an opinion that a candidate is not

medically fit for recruitment, opinion of private or other government doctors to the contrary cannot be accepted inasmuch as the recruited

personnel are required to work for the Forces and not for the private doctors or the government hospitals and which medical professionals

are unaware of the demands of the duties in the Forces.”

17. In *Joginder vs. Union of India & Ors.*, W.P.(C) 522 of 2021, this Court has held that training and military operations are extremely demanding in

terms of the medical fitness of a candidate and a private doctor or a doctor working in a government hospital may not be in a position to comment on

the required medical standards for the Force.

18. In view of the above, we find no merit in the present petition. The same is dismissed. There shall be no order as to cost. d on 5th April, 2022 for

receiving the status report, the affidavits as also the outcome of the mediation proceedings.