

(2022) 02 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1904 Of 2016, IA No. 01 Of 2016

Arun Kaila

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 09-02-2022

Acts Referred:

Citation : (2022) 02 J&K CK 0008

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Surinder Kour, Manpreet Kour, Eishan Dadhichi

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. The Indian Navy issued an advertisement published in various newspapers in the month of December, 2015, inviting applications for recruitment of

Artificer Apprentice (AA)- 140 Batch. The advertisement notification, inter alia, laid down the selection procedure in para 16 (h). The required

medical standard and criteria for recruitment was also clearly stated. The petitioner applied for the said post and qualified the written examination as

well as physical fitness test held at Naval Recruitment Centre, Jammu. The Recruitment Medical examination of the petitioner was conducted by the

Recruitment Medical Officer at the Centre itself. The petitioner was declared temporarily unfit for "DNS" Lt Side Blocked in the

Recruitment Medical Examination which was provisional in nature. He was directed to report to Military Hospital, Jammu within 21 days for conduct

of appeal Medical Examination. The preliminary medical examination was conducted at Military Hospital Jammu where he was declared fit for the

referred disability. The petitioner along with other selected candidates, who had been declared medically fit in the preliminary medical examination, were directed to report at INS Chilka for final enrolment medicals.

2. The medical examination of the petitioner was conducted by the medical experts at INS Chilka as per the rules and regulations of the Navy. The petitioner was declared temporary unfit for 'Color blindness'. The petitioner was thereafter referred for review of his disability for second time by Specialist Medical officer of Indian Naval Hospital Ship, Nivarini where he was finally declared unfit for 'CP-IV by Ishihara', and was, accordingly, not recruited.

3. The petitioner is aggrieved of the order dated 11.08.2016 issued by the Recruitment Officer whereby the petitioner has been informed that he has been found unfit for enrolment into the Navy due to his disability i.e. 'CP-IV by Ishihara'.

4. The petitioner in this petition prays for a direction to the respondents to conduct the Review Medical Board for examination of the petitioner or refer him to some independent Board/Agency, as he does not suffer from any disability and is fit for enrolment into the Indian Navy.

5. The petitioner has mainly relied upon a medical fitness certificate dated 23.08.2016 issued by the Registrar, Department of Ophthalmology, Government Medical College, Jammu, wherein the Registrar has pointed out that the petitioner is fit for enrolment in Indian Navy and there appears to be an error of judgment made by the medical authority of the respondents. There is also a medical fitness certificate issued by Government Hospital, Sarwal, declaring the petitioner fit for service in Indian Navy, placed on record by the petitioner along with his petition.

6. Mrs. Surinder Kour, learned senior counsel, appearing for the petitioner vehemently argues that in view of the contrary opinion expressed by the Civil medical authorities, it was incumbent upon the respondents to convene a Review Medical Board for medical examination of the petitioner afresh or the respondents should have referred the petitioner to some independent Medical Board for re-examination. She submits that the respondents did not act as per the mandate of the law and acting mechanically and without any application of mind declared him unfit for the job. She also points out discrepancies by the Board of Medical Experts of the respondents by urging that

in the Medical Examination report prepared by the respondents, the doctors, who examined the petitioner, have not mentioned the clinical procedure which they followed in reaching a conclusion that petitioner was suffering from CP-IV by Ishihara and is unfit for service in Indian Navy.

7. Per Contra, the respondents in their objections have relied upon the selection procedure and required medical standards and criteria for recruitment of candidates as Artificer Apprentice detailed in the advertisement notification.

8. Mr. Eishan Dadhichi, CGSC, appearing for the respondents placed reliance on paragraph 10 of the advertisement notification and submits that if a candidate is declared to be medical unfit at pre-enrolment stage at INS Chilka, no appeal for review of the medical examination is thereafter

permitted. He also refers to the guidelines provided in the Navy orders with regard to medical examination on entry for sailors and submits that the

procedure laid down in the Navy orders has been scrupulously followed in the instant case and it was only after the petitioner was declared medically

unfit during his medical examination conducted at INS Chilka, Orissa on 11.08.2016, his medical status was got re-examined by the Medical Experts in

INHS Nivarini and it was only after final decision with regard to the physical fitness was rendered by the final authority, the petitioner was informed.

9. Having heard the learned counsel for the parties and perused the record, I am of the considered view that after the petitioner has been declared

medically unfit for enrolment in the Naval Services in the final medical examination conducted at INS, Chilka, which was also reviewed by INHS,

Nivarini, no cause survives to the petitioner to file the instant petition.

10. It may be pertinent to note that though the petitioner has pointed out irregularities in the conduct of the medical examination, yet there is no

allegation of malafide or bias made by the petitioner against the respondents or the medical experts who examined him at different stages of the

recruitment process. In the absence of allegation of malafide or bias having been made and demonstrated in the writ petition, the decisions of the

Medical experts, who under the Rules and Regulations of the Indian Navy are entrusted the task of conducting the medical examination of the

candidates for their enrolment into Indian Navy, must prevail.

11. It is true that the petitioner has, of its own, got himself medically examined from the civil doctors but it is quite possible that many doctors working

in Government Medical Colleges or hospitals may not be aware of varying standards of fitness required for different jobs including the job in Indian

Navy. All members of medical profession are neither expected nor is it possible for them to be conversant with the standards of medical fitness in

every employment or profession. The doctors working in Indian Navy, who are enjoined to discharge this function, are alive to the standards which a

candidate will have to meet to be eligible for enrolment as Artificer Apprentice in the Indian Navy. Viewed thus, the opinion expressed by the doctors

of Indian Navy required to be given respect and accepted unless, of course, the petitioner demonstrates mala fide or bias by the doctors of the Indian

Navy.

12. The petitioner has been subjected to medical examination strictly as per Navy Orders and, therefore, should have no grievance. Otherwise also,

the respondents in their advertisement notification have very clearly indicated, under paragraph 10 thereof, in the following manner:-

10. Medical Standards.

(a) Medical examination will be conducted by authorized military doctors as per medical standard prescribed in current regulations applicable to sailors

on entry.

(b) The medical examination will be conducted by authorized military doctors as per medical standard prescribed in current regulations applicable to sailors on entry.

(c) The medical examination will be conducted by authorized military doctors as per medical standard prescribed in current regulations applicable to sailors on entry.

(d) Initial Medical Examination for recruitment will be considered only if the subject is provisionally fit subject to fitness in the final medical examination. Final

Medical Examination of all selected candidates will be done at INS Chilka. Candidates who are found medically fit at final medical examination will be

enrolled for training. No appeal is permitted for review after the final enrolment medical examination at INS Chilka.

13. From reading of clause (a) of para 10 of the advertisement notification, it clearly transpires that the medical examination has to be conducted as

per the medical standards prescribed in the Regulations applicable to sailors on entry. The procedure for medical examination on entry for sailors is

given in Para 4 of the Navy Orders, which for facility of reference is also reproduced hereunder:-

4. Medical Examination on Entry for Sailors.

(a) Initial Medical Examination.

(i) Recruiting Medical officer (RMO) is responsible for examining the candidates for medical fitness and their identification marks. In case of fit

candidates, the RMO will make endorsement as Fit in Medical Category S,A on AFMSF-2.

(ii) In case of unfit candidates, the RMO will make an endorsement very legibly, with cause/causes for rejection and mention the disability/defect.

(iii) In both the above cases (fitness or otherwise), RMO will write the same in his/her own handwriting and initial the entry.

(b) Appeal Medical Board.

(i) RMO will issue a medical certificate to each of the Temporary or Permanently Unfit candidates and advise them to appeal against his/her findings

if they so desire at the affiliated Armed Forces Hospitals (List available with NRO) within a maximum period of 21 days.

(ii) All Permanently Unfit candidates desirous of an appeal will be required to deposit a sum of Rs. 40/- in the Government Treasury. However, no

fees will be charged from Temporarily Unfit candidates.

(iii) Candidates appealing against their unfitness (Temporary/Permanent) will be referred to the nearest affiliated Armed Forces hospital. The

commanding Officer of the hospital should then detail an appropriate specialist/specialists by name to carry out the medical examination. Commanding

Officer of the hospital will not refer the candidate to another hospital for advice. The Medical Officer at the MI Room of the hospital will not dispose

of the case directly under any circumstances. After obtaining the opinion of the specialist/specialists on AFMSF-2A, it will be put up to the

Commanding officer/ Registrar of the hospital for countersignature.

(c) Final Medical Examination of Candidates at INS Chilka.

All candidates reporting to INS Chilka from Naval Recruiting Establishments and Naval Recruiting Centres will be subjected to a pre-enrolment

medical examination and the findings are recorded on AFMSF-2A. Candidates who do not conform to the recruiting medical standards are referred to

INHS Nivari for the opinion of specialists. Candidates who are found medically fit at pre-enrolment medical examination are enrolled.??

14. As per the procedure prescribed in the Regulations, the pre-enrolment medical examination of the petitioner was conducted at the Naval

Recruitment Centre, Jammu, where he was declared unfit for "DNS" Lt Side Blocked. The opinion was provisional in nature and, therefore,

the petitioner was directed to report to Military Hospital, Jammu for appeal medical examination. In the appeal medical examination conducted at M.

H. Jammu, the petitioner was, however, declared fit for the referred disability. Accordingly, the petitioner along with other candidates declared

medically fit at the Naval Recruitment Centre, Jammu, were directed to report at INS Chilka for pre-enrolment medical examination. Here the

petitioner was declared unfit for "Color Blindness". Annexure R/3 appended with the objections indicates so. As provided in Para (c) reproduced

above, the candidates, who do not conform to the recruitment medical standards at INS Chilka, are referred to INHS Nivarini for opinion of specialists

and only such candidates who are finally declared medically fit at pre-enrolment medical examination are enrolled into the Indian Navy,. As is clearly

indicated in para 10 of the advertisement notification as also the Regulations of Indian Navy, there is no further provision for any appeal or review of

the medical status of the candidate. This procedure, as indicated above, has been fully followed by the respondents and, therefore, it is not appropriate

for this Court to sit in appeal against the opinion of the medical experts and take a contrary view on the basis of some medical fitness certificates

issued by the civil doctors.

15. In the instant case, as noticed above, the petitioner has been medically examined four times and, therefore, the process of medical examination

cannot be indefinite. There has to be finality in the decision making and the petitioner cannot be allowed to seek medical examination after medical

examination till he is declared fit for enrolment into the Indian Navy. If the doctors of Indian Navy have examined the petitioner, not once but four

times, their opinion cannot be lightly brushed aside, for, they are the persons best suited to form an opinion as to the medical fitness of the candidates

to be enrolled into the Indian Navy. Once they have formed their opinion with regard to fitness or otherwise of the candidates, in the absence of

demonstrated allegations of malafide or bias, there should be no interference with such opinion by the Court.

16. Learned senior counsel appearing for the petitioner has not been able to point out any irregularity of procedure committed by the respondents in

conducting the medical examination of the petitioner.

17. For the foregoing reasons, I find no merit in this writ petition and the same is, accordingly, dismissed.