

(2013) 03 DEL CK 0278
In the Delhi High Court
Case No : Writ Petition (C) 1914 of 2013

Ashwani Singh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0278

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Atul Kumar and Ms. Sweety Singh, for the Appellant;

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner had applied in response to an advertisement for filling up vacancies to the post of Head Constable (Combatised Ministerial) Group C in the Indo Tibetan Border Police Force (ITBP) in July, 2011. A written test was held in November, 2011; the petitioner was declared successful and short listed to appear in the typing and skill test. He was subsequently selected in February, 2012 and detailed for medical examination after he was successful in the skill test. His candidature was rejected on 2nd March, 2012 on medical grounds; the communication cited that X-ray showing, "consolidation in right mid zone". Aggrieved, the petitioner requested the IG, ITBP, on 20th March, 2012 for re-medical examination on the basis of X-ray and fitness certificate issued by the government doctor. The government doctor had certified that the petitioner is fit and was not suffering from any ailment which impaired his efficiency. Consequently, the petitioner was given another opportunity through a letter dated 8th May, 2012 for re-medical examination, which was to be conducted on 23rd May, 2012. The ITBP, this time again, rejected the petitioner's candidature on 24th July, 2012 stating that there was "consolidation in the right mid zone shown in the X-ray". It was argued by the petitioner that he sought for a copy of the X-ray under the Right to Information Act; this request was turned down. Consequently, he has approached the court for appropriate directions that the

rejection of his candidature is arbitrary.

2. Learned counsel for the petitioner has relied upon the Fitness Certificate issued by the Chief Medical Officer, Naraina Dispensary, Municipal Corporation of Delhi, which states that the rejection on the ground of his suffering from the condition of, "consolidation of right mid zone", was an error of judgment. Petitioner has also relied upon the treatment / medical papers issued by Viswanathan Chest Hospital, Delhi, which contained the history sheet in respect of his medical condition. It is submitted that having regard to these, the petitioner cannot be characterized as medically unfit, and that his condition is merely, "Asymptomatic", and does not require any treatment.

3. This Court has examined the materials on record, and also the submission made by the petitioner. The observations and the medical records produced before the Court, which are part of the records of the Viswanathan Chest Hospital, indicate that, on 13th March, 2012, the patient was stated to be, "Pt. Asymptomatic"; upon examination of the repeat X-ray of the chest, the doctor noted, "infiltration (Rt)(UZ)", and he was recommended to undergo a CT Scan. It was also noted that, "Infiltration" has been "persisting from 3/2012" - no progression + no fresh lesion". The observation concluded "Healed Patch (Fibrosis). The investigation reveals that there is no active lesion and patient does not require any treatment". It is evident from the above that even the medical records relied upon by the petitioner do not unambiguously state that he is 100% fit. He was apparently an old case of Fibrosis, although it has healed, some traces remain which have led the doctors to conclude that he is not medically up to the standard. Learned counsel has argued that the petitioner's qualifying in the physical efficiency test belied the rejection of his candidature. This Court is not in agreement with this proposition. Physical efficiency cannot be entirely equated with medical fitness, especially in a case of this nature where candidate would be deployed on active duty for substantial period of time in high altitude areas. Having regard to all these factors, the respondents were of the opinion that the petitioner's medical condition was not fit enough for his appointment. However, at his request, a review was undertaken. The materials on record do not persuade the Court to conclude that the petitioner was unfairly or arbitrarily dealt with in the matter of rejection of his candidature, therefore, the relief sought cannot be granted. The writ petition is, consequently, dismissed.