
(2006) 10 DEL CK 0175
In the Delhi High Court
Case No : WP (C) . No. 6748 of 2000

Babu Khan

APPELLANT

Vs

D.G. of Medical Services (Army) and Others

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Army Rules, 1954 — Rule 13(3)
Constitution of India, 1950 — Article 226

Citation : (2009) 93 DRJ 256

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : M.T. Khan, for the Appellant; Jyoti Singh, T. Parshad, Dy. J.A.G. and K.M. Rai, OIC, Legal Cell, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—In this case the petitioner applied for recruitment as a soldier G.D. Clerk Category in the Indian Army. As per the requirement of the Recruitment Board, he was invited for a thorough medical examination to be carried out by the Recruiting Medical Officer at Meerut Division. The petitioner was declared medically fit. The petitioner was thereafter called for a written test and he was declared as a successful candidate in the written examination. On 2.12.1999 the Recruiting Officer, Branch Recruiting Office, Meerut Cantt, issued a letter to the petitioner stating therein that he is selected for recruitment as a soldier G.D. clerk category on the basis of merit of the above mentioned examination and he was directed to approach the recruitment office, Meerut on 4.1.2000. The recruitment office at Meerut sent the petitioner to the Head Quarters, M.P. B & Q Area, Jabalpur for undertaking necessary training. During training the petitioner performed his duties sincerely and honestly and he also appeared in the Map reading examination successfully. After 4-5 months a general medical examination was held at training centre at Jabalpur (M.P.) and every trainee was required to appear for this second medical examination. After the examination to the utter shock and surprise the petitioner was verbally told

that he is medically unfit and was asked to report to the medical hospital of the Army, where he was kept for certain time for the required treatment, although it is pleaded in the petition that no treatment was ever given. In September, 2000 he was given a pass of sleeper class, entitling him to undertake journey from Jabalpur to Ghaziabad, and he was told that he has been discharged from service on the ground of being medically unfit. He was informed by his superiors that since he had flat feet, which is a disqualification to be a good soldier, he is discharged. The respondents cleared the accounts of the petitioner up to 17.9.2000. Aggrieved by the discharge, the petitioner has filed the present writ petition for an appropriate writ or order quashing the discharge order issued by the respondents.

2. The learned Counsel for the petitioner has strongly urged that the petitioner had joined Army on 4.1.1999 after thorough medical examination and as such the second medical examination after 4-5 months of training is patently illegal, unlawful and liable to be quashed. The counsel for the petitioner further submitted that the petitioner has no medical defects and is of sound health. During the training there was no complaint of his superiors towards fulfilling his duty and thus his discharge from service is unlawful and illegal. It is further submitted that the carrier of the petitioner has been ruined at the hands of the respondents, since he is a fully qualified candidate for the service. The counsel further submitted that the petitioner had left his studies of B.A. 1st year and joined the military and by the act of the respondents his educational carrier has been jeopardised.

3. Learned Counsel for the respondents submitted that petitioner was sent to Grenadiers Regiment Centre, Jabalpur for basic military training which commenced on 7.1.2000. The second medical examination of the petitioner was carried out during basic military training, under the provisions of Army Headquarters letter No. 76063/DGMS-5A dated 6.7.1999 at the Medical Inspection Room. During the second medical examination of the petitioner his disability was found as flat feet and the petitioner was referred to the military hospital Jabalpur to ascertain the correct diagnosis of his disability. The petitioner was admitted in military hospital, Jabalpur on 11.5.2000. The classified specialist (Surgery) and senior advisor (Surgery) of military hospital, Jabalpur also detected that the petitioner is suffering from flat feet and it was recommended that he be invalidated out in the medical category EEE. It is submitted by the counsel for the respondents that flat feet is not a treatable condition of the disease and that is why the petitioner was declared unfit for further military service. The petitioner was brought before the Invalidated Medical Board on 5.8.2000 and subsequently he was invalidated out of service on 17.9.2000 under Army Rule 13(3) item III (iii), having been found medically unfit for further military service, in the category of EEE. The counsel for the respondents further submits that the disability of the petitioner remained undetected by the recruiting military officer during the primary medical examination and the respondents have carried out the second medical examination. It is submitted

that at times a disease remain undetected at the preliminary examination that is why the DGMS-5A Army Headquarters has incorporated a second medical examination in military hospital vide their letter No. 76063/DGMS-5A dated 6.7.1999. Copy of which has been filed by the respondents along with their counter affidavit. In accordance with the aforesaid communication, candidates recruited are to be subjected to a second medical examination at the authorized hospitals. In fact in the aforesaid communication it has been stressed that recruits should not be declared unfit for treatable disability. The petitioner has not been singled out for a second medical examination and in fact the petitioner has admitted in the writ petition that every trainee was required to appear for the second medical examination, so there has been no discrimination against the petitioner and he has not been singled out for a second medical examination. It would be useful to reproduce para 2 of the brief facts as well as para 1 of the counter affidavit. The same reads as under:

BRIEF FACTS OF THE CASE

1. xxxxxxxx.

2. On arrival at the GRENADIERS Regimental Centre, Jabalpur, the basic military training of the petitioner was commenced on 07 Feb 2000. Second medical examination of the petitioner was carried out during basic military training, under the provisions of Army Headquarters letter No. 76063/DGMS-5A dated 06 Jul 99, at Medical Inspection Room, the GRENADIERS Regimental Centre, Jabalpur (MP) by the Regimental Medical Officer (RMO). During second medical examination of the petitioner his disability was found FLAT FEET and he was further referred to Military Hospital, Jabalpur to ascertain the correct diagnosis of his disability. However, the petitioner was admitted in Military Hospital, Jabalpur on 11 May 2000. The Classified Specialist (Surgery) and Senior Advisor (Surgery) of Military Hospital, Jabalpur also detected that the petitioner is suffering from FLAT FEET (734) with a recommendation to be invalided out in medical category EEE.

PARAWISE REPLY:

1. Para 1 is denied. As per opinion of Medical Board, recorded on Part III of the AFMSF -16 the disability considered pre-existing the enrolment and has remained undetected by Recruiting Medical Officer during the primary medical examination. That is why the DGMS-5A, Army Headquarters has incorporated second medical examination in Military Hospital vide their letter No. 76063/DGMS-5A dated 06 Jul 99. As per instructions laid down in Para 135(e) of Regulations for the Army Vol.I, revised edition 1987, when a recruit is found suffering from disability likely to prevent him becoming an efficient soldier, he will be medically examined and if found unfit, be discharged from service under Army Rule 13(3) Item IV. Therefore decision of the Respondents to discharge the petitioner on medical ground was just and legal.

4. The counsel for the respondents further points out that the petitioner went through Medical Board proceedings and it is absolutely incorrect to suggest that

the petitioner was not aware about the reasons of his being declared medically unfit. A copy of the Medical Board proceedings have been filed along with the counter affidavit. The petitioner was examined by specialist and only after their opinion he was invalidated out. The summary and opinion of the specialist dated 1.7.2000 is reproduced below:

SUMMARY & OPINION OF LT D. BISHT CLASSIFIED SPECIALIST (SURGERY) at M.H. Jabalpur, Dated 01 July, 2000.

21 Yrs old Rect. of GRC is a case of FLAT FEET.

He was detected during remedial examination. He has completed 14 weeks training.

On Exam - General condition fair - Gait & stance normal

S/E - NAD

Feet - The arches of the feet are poorly developed Normal height of the arches is deficient

X-Ray feet No. 4519 dated 02/05/2000 reveals evidence of flat feet. He is likely to develop chronic pain & callosities due to flat feet.

Recommended to be invalidated out in cat "EEE".

SDXXX D.BISHT LT. CCL CL SPL (SURGERY) I agree with the opinion. SDXXX PRUTHWIRAJ RAO COL. AMC SENIOR ADVISER (SURGERY) In new of the individual is brought before medical board.

5. The learned Counsel for the respondents has argued that since the petitioner has flat feet it disqualifies him from becoming an efficient soldier.

6. We have heard learned Counsel for the parties and given our thoughtful consideration to the matter. It is an admitted fact that the petitioner was declared medically fit by the Recruiting Medical Officer. It is only when he joined the Grenadiers Regiment Centre at Jabalpur, he was subjected to a second medical examination. The contention of the counsel for the petitioner that the respondents had no right to carry out a second medical examination is without any force, keeping in mind that admittedly the petitioner was not singled out for a second medical examination and keeping in mind the communication No. 76063/DGMS-5A dated 6.7.1999 as well. It would be useful to reproduce this communication, which reads as under:

06 July 99

0063/DGMS-5A

Headquarters

Southern Command (Med)

Eastern Command (Med)

Central Command (Med)

Northern Command (Med)

Western Command (Med)

RECRUITING MEDICAL PROCEDURE: ZHOs

MODIFICATION

1. Changes as under have been made in the second medical examination procedures for candidates recruited through ZROs/BRO;UHQ quota:

(a) Candidates recruited through UHQ quota will be subjected to a second medical examination at the authorised hospital. Centres will lease with the Commandants/COTs hospital for the necessary arrangements. Candidates found fit/unfit will be dealt with in accordance with the procedure so far followed for ZRO/BRO recruited candidates second medical examination. ZRO/BRO recruited recruits will continue to undergo a second medical examination as hitherto.

b) Status of recruits found unfit at second medical examination. It has been clarified by the RTF Dte that the personnel being subjected to the second medical examination are recruits. They will thus be treated as recruits and not judged by standards for fresh recruitment. Thus recruits with correctible disabilities like hydrocele, etc. will be referred to the authorised hospitals for treatment and retained in serves in accordance with the stipulations of MT 3 letter No. A/203/4/MT-3 dated February, 1986 (photocopy attached). All concerned and in particularly Sr. Advisers in all specialities may be advised to ensure action on the subject. Present practice of declaring recruits unfit for treatable disabilities will ceases forthwith.

2. Contents of this letter may be disseminated to all concerned under your jurisdiction.

3. Please pack.

(Auth : Minutes of meeting held in AG's office on

26. Apl 99) Sd/- x-x-x-x- (AB Pradhan) Col. Dir MS(PS) for DGMS(Army)
Encl: As mentioned.

7. From the aforesaid communication it is clear that the respondents considered appropriate in the interest of justice Armed Forces to carry out a second medical examination. There is no element of bias against the petitioner nor any allegation has been made against any individual. In the entire petition the petitioner has not denied that he has flat feet. In fact during the course of hearing a pointed question was put to the counsel for the petitioner whether he can deny that the petitioner has flat feet. No such denial was made. The proceedings of the Medical Board which have been filed clearly show that the respondents have fully applied

their mind while arriving at a conclusion that the petitioner has flat feet. The opinion of the classified specialist which has been reproduced above and signed by Lieutenant Colonel as well as Colonel has to be given due weightage as they have opined on the basis of a x-ray that the arches of the feet of the petitioner was poorly developed. Normal height of the arches is deficient and the petitioner is likely to develop chronic pain and callosities due to flat feet. Once the Medical Board has arrived at categorical findings based on the advice of classified specialist (Surgery) and senior advisor (Surgery) of military hospital, Jabalpur, that the disability is permanent and flat feet is not a treatable disease, this Court cannot sit in appeal or substitute its own views over the decision of the Medical Board. The findings and opinion recorded by the Medical Board would be binding. Reference in this regard can be made to the judgment of the Supreme Court in the case of Controller of Defence Accounts (Pension) and Others Vs. S. Balachandran Nair, .

8. Learned Counsel for the petitioner has relied upon a Single Bench Judgment of the Madhya Pradesh, Jabalpur Bench in writ petition No. 885/2001 Recruit Sunil Kumar v. Union of India and Ors. The judgment cited by the petitioner is of no help to the petitioner, as the learned Single Judge has in fact directed a fresh medical examination as borne out from para 11 of the said judgment. The same reads as under:

11. However, in the instant case as the service is a defense service; security and other various important aspects are involved and though the medical re-examination was not permissible to be conducted and insinuations are made on particular regimental unit, without going into that in detail, suffice it to say that fresh examination should be conducted by special medical board constituted for the purpose.

9. The petitioner has been discharged from service under Rule 13(3) which empowers the respondents to discharge recruits, who are considered unlikely to become efficient soldiers. As far as the plea of the petitioner that the entire carrier of the petitioner has been jeopardised, inasmuch as that he left his studies of B.A. 1st year, joined the service and resulted in two years loss, we find that the petitioner has neither made any prayer for grant of any compensation nor any serious foundation has been laid.

10. For the reasons a foregoing we find no reasons to interfere in the present writ petition under Article 226 of the Constitution of India. The same is dismissed, while leaving the parties to bear their own costs.