

(2023) 08 DEL CK 0064

In the Delhi High Court

Case No : Civil Writ Petition No. 10067 Of 2023, Civil Miscellaneous Application No. 38732, 38733 Of 2023

Harsh Kumar

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 01-08-2023

Acts Referred:

Citation : (2023) 08 DEL CK 0064

Hon'ble Judges : Sanjeev Sachdeva, J; Manoj Jain, J

Bench : Division Bench

Advocate : Sachin Chauhan, Balender Shekhar, Krishna Chaitanya, Archana Surve, Rattan Negi

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

1. Petitioner seeks setting aside of medical report dated 24.04.2023 whereby petitioner has been declared medically unfit on the ground of "Inguinal Hernia Right". He also impugns the Appeal Medical Board Report dated 01.06.2023 whereby he has been declared unfit on the ground "Inguinal Hernia (less than 8 weeks after laproscopic surgery)".
2. Petitioner also impugns the decision of the respondent in denying an opportunity of Review Medical Board.
3. Petitioner had applied for the post of Assistant Commandant (GD) in the Indian Coast Guard pursuant to the advertisement issued by the respondent. Petitioner cleared all rounds of examination. However, when it came to the Medical Stage-III Examination, petitioner was declared unfit on the ground of "Inguinal Hernia Right". As per petitioner, he was advised to undergo treatment and to come for Appeal Medical Board within six weeks. Learned counsel for petitioner submits that petitioner has undergone the treatment and when he reported back to the Appeal Medical Board within a period of six weeks, he was

informed that period of eight weeks had not elapsed after the laproscopic surgery. Learned counsel contends that respondent should not have conducted the Appeal Medical Board within a period of eight weeks in case eight weeks was the mandatory period after laproscopic surgery.

4. Petitioner relies on "Manual on Medical Examination and Medical Standards for various entries into the Army, Training Academies and MIL Schools". He refers to Instruction 66 which reads as under:-

"Standards for surgery. A candidate shall be considered for fitness only after the minimum laid down period after surgery for the disease/disability is over and there is no complication or residual defect. All open surgeries will be considered for fitness after one year of the surgery. Laparoscopic surgeries will be considered for fitness after twelve weeks. For any other surgery, where time period after surgery is not mentioned in this manual, a minimum of twelve weeks should have elapsed after the surgery, before consideration for fitness. Other, considerations for surgical conditions are as follows:-

(c) Abdomen. Any organomegaly, deformity of abdominal wall, visible pulsations etc is unfit.

(ii) Hernia. After one year of, open mesh hernioplasty or twelve weeks after laparoscopic repair, provided there is no recurrence or post-operative complication and General Tone of abdominal muscles is good. Operation scar should be healthy.

5. It is informed by learned counsel for respondent that the period of twelve weeks mentioned in instructions 66 (c) (ii) has been modified to eight weeks as per the instructions of Navy.

6. Instruction 13 of said Manual provides for "Principle Points of Medical Examination of Candidates" and stipulates that there should be no organomegaly or hernia. Further, Instruction 58 stipulates the general grounds for rejection and one of the grounds mentioned is "hernia".

7. The standard for surgery referred to by learned counsel for petitioner i.e. Instruction 66 extracted hereinabove stipulates that the candidates shall be considered for fitness only after the minimum laid down period after surgery for the disease/disability is over and there is no complication or residual defect. All open surgeries are to be considered for fitness after one year of the surgery and laproscopic surgeries to be considered for fitness after twelve weeks (eight weeks for the Navy).

8. The requirement of Instruction 66 is that a period of one year or twelve weeks or eight weeks, as the case may be, should have already elapsed before the candidate is examined in the first instance for his medical. This period stipulated by Instruction 66 is not the period between first medical examination and appeal and review medical examination. The Appeal and Review Medical Examination are only meant to cater for errors that may have occurred in the initial medical

examination. The Appeal and Review Medical Examination is not to be conducted after giving an individual a period to have the ailment cured or rectified by surgery etc.

9. In the instant case, admittedly, at the time of first medical examination, petitioner had been detected with hernia and petitioner had not already undergone any procedure prior thereto and underwent the procedure after the first medical examination and prior to the Appeal Medical Examination.

10. In the facts and circumstances of the present case, petitioner cannot be permitted to contend that the Appeal Medical Examination should have been conducted after a period of eight weeks from the first medical examination to enable him to have undergone a laproscopic procedure for correction of the ailment of hernia.

11. If the interpretation as suggested by learned counsel for petitioner is to be accepted then Instruction 66 also refers to open surgeries where the waiting period is one year. If such an interpretation were to be rendered to Instruction 66 of said Manual then all individual who opt for open surgeries, the Appeal Medical Board would be conducted after a period of one year. This can never be the principle applied for a recruitment process which has to be conducted in a time-bound manner.

12. In the instant case, recruitment is to the post of Assistant Commandant (GD) and there were 50 posts advertised and after the completion of selection process, all the selected candidates have to undergo training prior to their induction. If the interpretation as sought to be given to Instruction 66 by learned counsel for petitioner is to be accepted then in all cases the training and further recruitment processes will have to be deferred for the period exceeding one year to wait for candidates to get fit. There may also be cases where even after the procedure, the candidates may still not be declared fit.

13. In the instant case, petitioner has been detected with "inguinal hernia right" at the time of his medical examination which is a disqualification for recruitment.

14. Learned counsel for petitioner has relied on the instance of one Mr. Jilla Ritwik to contend that he was given an opportunity for review medical but petitioner has been denied the opportunity for review medical and as such has been discriminated.

15. We are unable to accept the contention of learned counsel for petitioner for the reason that Mr. Jilla Ritwik was alleged to have a different ailment i.e. Gall Bladder Polyp, which is not the same ailment as that of petitioner i.e. inguinal hernia. Even otherwise, it is for the medical experts to determine as to individual suffering from which ailment can be considered and which cannot be. This Court will not substitute its opinion or view for the medical standard prescribed for recruitment. Furthermore, it is also not apparent as to whether Mr. Jilla Ritwik was declared medically fit or not after the Review Medical Board.

16. In view of the above, we find no merit in the petition. The petition is consequently dismissed.