

(2020) 09 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No. 3485 Of 2020

Kartikeya Arora

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 02-09-2020

Acts Referred:

Citation : (2020) 09 DEL CK 0002

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Ankur Chhibber, Anshuman Mehrotra, Anil Soni

Final Decision : Disposed Of

Judgement

Asha Menon, J

W.P.(C) 3485/2020 & CM APPL. 12358/2020 (for direction)

1. The petitioner appeared in the examination conducted by the Union Public Service Commission (UPSC) for recruitment to the post of Assistant Commandant in the Central Armed Police Forces (CAPFs) held on 18th August, 2019 in which he was declared successful. Thereafter, he was issued an Admit Card by the respondents for the Physical Standard Test/Physical Efficiency Test (PST/PET) and the Medical Standard Test (MST), which were scheduled to be held on 16th December, 2019. After he cleared the PST/PET, the respondents asked the petitioner to appear for the Medical Examination scheduled on 16th December, 2019 to 18th December, 2019. Unfortunately, the petitioner was declared 'unfit' for the reason of "Right Sided Pleural Effusion".

2. The petitioner desired to seek a Review Medical Board (RMB), as he was informed that he could file for an appeal if he was aggrieved by the decision of the Medical Board. As per the requirement for such an RMB, the petitioner underwent a medical examination on 20th December, 2019 at Safdarjung Hospital, New Delhi. According to the petitioner, he was examined by a Chest

Physician, who declared him 'fit' with the specific remark that "there was no evidence of pleural fluid".

3. Armed with this Medical Fitness Certificate issued by a Government Hospital, the petitioner appeared before the RMB, which was conducted on 4th March, 2020. Once again, the petitioner was declared 'unfit' for the reasons (a) "pleural thickening" and (b) "post tuberculosis".

4. Aggrieved by these findings, the petitioner has filed the instant petition with the following prayers: -

"(a) Issue a writ of certiorari for quashing the order dated 18.12.2019 and 05.03.2020 whereby petitioner was declared medically unfit by the respondents;

(b) Issue a writ of mandamus directing the respondents to allow the petitioner to appear for a fresh medical examination before an independent board set up by the respondents and if found fit, be appointed as assistant commandant with all consequential benefits.

(c) Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case."

5. The learned counsel for the petitioner referred to Annexure P-6 being the OPD Prescription dated 20th December, 2019, relating to the petitioner, which records the following: -

"Asymptomatic subject. No h/o cough/exp./shortness of breath/fever

O/E p- 130/80 BP - 62/minute

(Illegible)

Treated for Empyema Thoracis 15 years ago

Xray chest PA dt. 19.12.19.

Right sided pleural thickening

Imp.: Healed empyema (Illegible)

(Illegible)(Pleural thickening) RT

USG: No evidence of pleural fluid.

No active pulmonary infection is (Illegible) at present.

PFT: - Within NI Limits"

signed Dr.(Prof.) M.K. Sen

Consultant Chest Physician

VMMC & Safdarjung Hospital New Delhi"

Learned counsel submitted that the 'healed empyema' related to a bacterial

infection that the petitioner suffered as a child on sustaining injury, which had healed, and that the petitioner had never suffered from tuberculosis. Thus, the contemporaneous examination of the petitioner by the doctors at Safdarjung Hospital reflected no "pleural fluid" or "pulmonary effusion".

6. The learned counsel submitted that as per the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles May 2015, (Guidelines) for medical examination of recruits, the RMB had to be manned by doctors who were specialist in that area of medicine in which the candidate was found wanting (Annexure R-1). It was argued that as per these Guidelines (Annexure A-9), even if a person had "pleurisy with effusion", it had to be recent, within the last two years and if tuberculosis had been treated and there was normal pulmonary function, the person was to be accepted as fit.

7. Learned counsel argued that the condition of the petitioner was wrongly observed to be of 'tuberculosis' and 'effusion', but even if he had been suffering from such diseases, there was nothing to show that it was of recent origin and as per the explanation of the petitioner, he had injured himself in his childhood several years ago, resulting in a bacterial infection, which left a 'scar'.

8. Learned counsel further submitted that as there was a difference of opinion between a Specialist of a Government Hospital and the doctors of the CAPFs, it was incumbent upon the respondents to have included a subject specialist doctor to confirm whether or not the petitioner was suffering from any lung disease.

9. Learned counsel for the respondents, reiterating the contents of the counter affidavit filed on their behalf submitted that it was as per a radiological examination that the petitioner was found with "Right Sided Pleural Effusion" and was declared 'unfit' in the Medical Standard Test by the Board of Medical Officers in accordance with the Guidelines. It was further submitted that the RMB examination of the petitioner was conducted on 4th & 5th of March, 2020 at Composite Hospital, CRPF, Jharoda Kalan, New Delhi, again in accordance with the Guidelines of May, 2015. It was asserted that this examination was conducted by specialist doctors in accordance with these revised guidelines issued on 20th May, 2015 and that the opinion of the RMB was deemed final and could not be changed.

10. Learned counsel for the respondents also argued that the respondents could not accept and go by the certification by a doctor of a civil hospital as the requirements of the Forces could be assessed only by the doctors familiar with the demands of service exigencies and its contingencies. Therefore, learned counsel submitted that merely because a doctor in a Government hospital had declared the petitioner fit, there would be no automatic conclusion that he was fit to join the Armed Forces.

11. In the light of these submissions, we had on 13th August, 2020, directed the respondents to place on record the details of the qualifications of the doctors, who comprised the RMB, and the same have been filed on 21st August, 2020 and

24th August, 2020. The RMB was constituted of the following doctors:

P.O.

Dr.Raj Kamal, Specialist Grade1/Genl. Surgeon, R.H. ITBP, G. Noida

MBBS, MS in (Genl. Surgery)

Member-I

Dr.Dipankar Chakraborty, Comdt. (Specialist Medical Officer GradeI)(Eye),
Assam Rifles Composite Hospital, Shokhuvi

MBBS, D.O (Diploma in Ophthalmology)

Member-II

Dr.Rahul Roy, Comdt.CMO (NFSG), Medical Specialist, Assam Rifles
Multispecialty Hospital, IGAR (South), Mantripukhri, Imphal

MBBS, MD in (Genl. Medicine)

12. The learned counsel for the petitioner contended that his grievance had been substantiated by this information provided by the respondents as no pulmonary expert had been included in the RMB despite the fact that the first Medical Board had disqualified the petitioner on the ground of "Pleural Effusion".

13. We have heard learned counsel for both sides and we have perused the records. The relevant extract of the Guidelines is reproduced for ready reference, as under: -

"XV. EXAMINATION OF LUNGS, PLEURA & MEDIASTINUM

Following are the cause of rejection

1. Evidence of Asthma, including reactive airway disease, exercise-induced bronchospasm or asthmatic bronchitis, reliably diagnosed (Reliably) diagnostic criteria may include any of the following elements; substantiate history of cough, wheeze etc.

2. Evidence of bronchitis, acute or chronic.

3. Evidence of bronchiectasis.

4. Evidence of pleurisy with effusion within last 2 years.

5. Tuberculosis

(a) Evidence of active tuberculosis in any form or location is unfit

(b) Cases of treated tuberculosis along with normal pulmonary function will be accepted as fit."

This extract would show that where a person has had no "Pleurisy with effusion" within the last two years of the medical examination, it would not necessarily

result in rejection. Further, only cases of active tuberculosis are to be declared unfit, but cases of treated tuberculosis along with normal pulmonary function were to be accepted as fit.

14. In the instant case, the original Medical Board, on 18th December, 2019 (Annexure P-1) recorded as under: -

"Mr. KARTIKEYA ARORA, Roll No. 0849007 is hereby informed that he has been medically examined for recruitment of the post of Assistant Commandant/Exe (Direct Entry) in Central Armed Police Forces on 18.12.19 at R H Greater Noida and PO found him unfit due to the reasons mentioned below: -

RT sided pleural effusion

15. This would indicate that as on 18th December, 2019, the petitioner was actually found with "pleural effusion". In order to avail of the right to appeal against this finding and as required for the RMB, the petitioner got himself examined at Safdarjung Hospital where not only was his Chest X-ray taken but he was also subjected to a Spirometry test at the Department of Pulmonary, Critical Care & Sleep Medicine. These reports were considered by the Consultant Chest Physician/Chest Respiratory HOD, Dr. M. K. Sen, when he examined the petitioner on 20th December, 2019, i.e. two days after the First Medical Board. Dr. Sen recorded in the certificate issued by him (Annexure P-7) that there was an error of judgement in concluding that there was "right sided pleural effusion". The X-ray report at Page 69 of the petition dated 19th December, 2019, records "No evidence of pleural fluid". The Spirometry Report dated 20th December, 2019 records the observation "pulmonary function tests are within normal limits".

16. We may add that the X-ray report had recorded "Right sided pleural thickening of 3mm is seen." But it is admitted by the respondents that the petitioner had cleared the physical tests (PST/PET) and hence there is nothing available on the records to suggest that this pleural thickening interfered with the normal pulmonary functioning of the petitioner's lungs.

17. Faced with this kind of completely contradictory conclusions of almost contemporaneous examination of the petitioner, when the respondents deemed it appropriate to allow the request of the petitioner for a RMB, it would be reasonable to assume that the respondents would have included a subject specialist in it. But apparently they did not.

18. The Guidelines of May, 2015 (Annexure R-1) records in the 'Acknowledgement' that a need to revise and redraft the medical examination guidelines in a more exhaustive and illustrative manner was felt due to various judgements of the courts and also the medical advancement which had brought treatment technology to a stage where disease or disability was curable to normal function status. It is significant to note that factoring in all these developments both through judicial pronouncements as well as medical advancement the revised guidelines provided as under:

"Guidelines for Review Medical Boards:-

1. Review Medical Board should examine the candidate specifically for the deficiency for which the candidate has been declared unfit. However for obvious defects/infirmities contracted after the Initial Medical Examination, Review Medical Board may give its opinion. Also, the medical term used as cause of unfitness during the Initial Medical Examination may differ from that arrived at by the Review Medical Board after due investigation and specialist consultation.
2. For the defect for which candidate has been declared unfit should be examined thoroughly and the findings must be got supported by proper investigation reports if applicable.

Review Medical Board may get opinion of concerned specialists or super specialists of Govt. Medical College and Hospital in case of any controversy. It must be kept in mind that a specialist medical officer of concerned field has certified that the candidate is not suffering from the disease for which he has been rejected, making the decision of the earlier Medical Board controversial. Therefore, in cases of rejection in review medical examination, clinical findings should be corroborated with confirmatory tests/investigations/opinion of specialists/super specialists of Govt. Hospitals/Medical Colleges/Govt. approved private medical centers, whichever and wherever applicable.

3. Few examples are being cited for the guidance of Review Medical Board

(a)

(b) In cases of suspected lesions of chest like Hilar Lymphadenitis, calcified spots, Koch's infiltrations, any mass detected in X-Ray chest etc CT Chest should be carried out.

(c)

(d)(k).....

These are few examples just to reiterate and bring home the point that in review medical examination candidates are subjected to require concerned investigations wherever and whenever is applicable or on the basis of scientific evidence but rejection merely on clinical findings is to be avoided. Any decision on rejection must be taken with valid clinical findings fully justified and supported by corroboratory investigation reports and if needed opinion of specialists/super specialists of Govt. Hospitals/Medical Colleges/Govt. approved private medical centers should be taken. Obviously when such confirmatory tests are required to be carried out routinely, time constrain should not be there and for not making review medical examination time bound, all concerned may be informed otherwise proper decision cannot be taken in such cases."

(emphasis added)

19. The Guidelines, therefore, emphasize the need for a thorough investigation

and the need of the RMB to take a subject specialist's opinion to determine the existence of the condition on the basis of which the Medical Board declares a candidate unfit. It is clear that in the case at hand, the qualifications of the doctors who comprised the RMB do not describe any one of them to be a "pulmonary specialist". Though the levels of skills and the abilities of the members of the RMB may not be in doubt, when the Guidelines themselves provide for seeking assistance of a specialist, including from a Government hospital, the non-inclusion of a subject specialist was not proper.

20. There was a clear need in the present case for thorough investigations and the inclusion of a pulmonary/chest specialist, as the certificate (Annexure P-7) recorded that there was an error in judgement in reaching the conclusion of the existence of "pleural effusion" by the Medical Board. This certificate was available to the respondents and they were required to follow the Guidelines which prescribed that when a specialist medical officer of the concerned field had certified that the candidate was not suffering from the disease for which he had been rejected, the decision of the earlier Medical Board was rendered controversial, and it was incumbent upon the respondents to have included a "pulmonary specialist" to assess the fitness of the petitioner, including whether the "pleural thickening" noticed interfered in the normal functioning of the lungs.

21. Neither the Medical Board nor the RMB found the petitioner to be a case of active tuberculosis. Tuberculosis is not a self-curing disease. Even if the petitioner was suppressing information of having been treated for tuberculosis the Guidelines (Annexure P-9) lay down that only active cases are to be declared unfit. The Medical Board and RMB did not observe any active symptoms that were presented by the patient/petitioner at the time of his evaluation on 4th March, 2020. Assuming he was a case of cured tuberculosis, the RMB ought to have assessed him specifically to rule out adverse impact on the normal pulmonary functions of the petitioner's lungs. But they appear not to have done so. A vague opinion has been given that under extreme stress, a reactivation of tuberculosis could not be ruled out.

22. The plea of the respondents is justified that a civilian doctor's opinion cannot suffice to assess fitness of a recruit, as the standards of physical fitness and health are higher for members of the CAPFs. But in the facts of the present case, it would only be fair in the circumstances, to direct the examination of the petitioner by a pulmonary specialist as appointed by the respondents themselves.

23. The respondents are directed to facilitate the constitution of a Medical Board including pulmonary experts at the Army Hospital (R&R), New Delhi and also facilitate the examination of the petitioner within two weeks from the date of this judgment and if the petitioner is found fit, he may be permitted to participate in the further selection process.

24. The petition is accordingly disposed of.