
(2013) 05 CAL CK 0013
In the Calcutta High Court
Case No : Writ Petition No. 10649 (W) of 2013

Master Sairraaj Sarkar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2013) 3 CHN 688 : (2013) 4 WBLR 890

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Sabir Ahmed, Arik Banerjee and Joyjit Dutta, for the Appellant; Sudipto Panda, for the Respondent Nos. 6 and 7 and Sukumar Ghosh, KC for the Respondent Nos. 4 and 5, for the Respondent

Judgement

Soumitra Pal, J.—In the writ petition, Master Sairraaj Sarkar, the petitioner, represented by his father, has prayed for a Direction upon the respondents to admit him in Class VI of Sainik School, Purulia in 2013-14 session after setting aside the order passed by the Appellate Authority in review upholding the order passed by the Medical Board declaring him to be physically unfit as had "knock knee" which had rendered him ineligible for admission, though he was successful in the written examination. At the time of admission of the petition, directions were issued for filing of affidavits. Affidavits have been exchanged and are on record.

2. Heard learned advocates for the respective parties. It is be noted that admission in Sainik School is subject to the final clearance after medical examination. Such examination is done by a medical board. If unsuccessful, candidate has a right to prefer appeal with supporting medical documents before an appellate authority. In the instant case, though the petitioner qualified in the written examination, he was unsuccessful in the examination conducted by a medical board. Admittedly, the medical report of the board, along with a forwarding letter was sent to the petitioner. In the forwarding letter dated 18th March, 2013, it was intimated that the petitioner was at liberty to "appeal to the

Principal, Sainik School, Purulia with supporting medical proof by competent medical authority countering the findings of the previous medical board...." Accordingly, on 25th March, 2013 the petitioner filed appeal before the Principal, Sainik School, Purulia, the respondent No. 4 enclosing the reports of the North Bengal Medical College and Hospital and Siliguri District Hospital, which had declared him to be fit. Consequently the respondent No. 4 by letter dated 25th March, 2013, forwarded the same to the President, Medical Board, Command Hospital (EC), Alipore, Kolkata.

3. The short point is whether the appellate authority while preparing the report had considered the supporting medical proof or documents issued by civil hospitals declaring the petitioner to be medically fit.

4. Evidently the appeal with supporting medical documents was filed before the appellate authority. However, from a perusal of the findings of the appellate authority, appearing from pages 10 to 20 of the affidavit-in-opposition filed by the respondent No. 6, it is evident that those supporting documents were not considered at all. Since an opportunity was granted to the petitioner to file appeal with supporting medical documents issued by competent medical authority to counter the findings of the previous medical board, it was the bounden duty of the appellate authority to consider the same before coming to a conclusion. However, while arriving at a conclusion the appellate authority erred in not considering the said documents. Therefore, the report of the appellate authority cannot be accepted and is thus quashed. Hence, the writ petition is allowed. Accordingly, I direct the respondent Nos. 4, 5, 6 and 7 to constitute a fresh medical board which shall comprise neither doctors of the previous medical board or the appellate authority nor the Command Hospital at Kolkata. Since it has been suggested by the learned advocate for the petitioner that his client is ready and willing to appear before a medical board at the hospital of the army authorities at Delhi Cantonment, which has been accepted by the respondent authorities, the petitioner shall appear before the medical board comprising three doctors specializing in Orthopaedics in the Army Hospital at Delhi Cantonment. Upon examination in accordance with the prescribed norms, and after considering the supporting medical documents which were before the appellate authority, it shall prepare a report and shall send the same to the Principal, Sainik School, Purulia, respondent No. 4 within 15 days from the date of the communication of this order. A copy of the report shall also be forwarded to the learned advocate of the petitioner. It is however made clear that since the documents annexed to the supplementary affidavit were obtained by the petitioner after the time to file appeal had expired, those shall not be taken into consideration by the medical board at Command Base Hospital in Delhi Cantonment. Till the medical report is received by the Principal, Sainik School, Purulia, the respondent No. 4, from the authorities at Delhi, one seat in Class VI in Sainik School, Purulia shall be kept vacant. It is made clear that for the purpose of medical examination, the petitioner shall report before the Command Base Hospital, Delhi Cantonment, New Delhi and such examination shall be

conducted within three days from the date of his report at the hospital.

5. There will be no order as to costs.

6. The learned advocates appearing for the parties are permitted to take down the gist of this order for communication and the respondents shall act on the basis of such communication. Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.