
(2012) 05 DEL CK 0440

In the Delhi High Court

Case No : Writ Petition (C) No. 1967 of 2012 and CM No. 4243-4244 of 2012

Mohan Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Citation : (2012) 190 DLT 68

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Devvrat and Mr. Anoop Kumar, for the Appellant; Ravinder Agarwal, Central Govt. Standing Counsel and Mr. Amit Yadav, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The petitioner has sought a direction to the respondents to constitute an Independent Medical Board for his medical examination and has also sought direction to the respondents to allow the petitioner to join the Indian Navy-01/2012 batch in case the petitioner is declared fit. The petitioner has contended that he is a young and bright student, and that he is from a very humble background. The petitioner had passed his Matriculation Examination in the year 2008 from the BSEB, Patna by securing first division. The petitioner, thereafter, passed the Intermediate Examination in the year 2010 from BSEB, Patna by scoring 66% in Physics, Chemistry and Mathematics. Pursuant to an advertisement dated 18th June, 2011 for enrollment as MR/NMR 01/2012 batch in Indian 2. The petitioner disclosed that his medical examination was conducted on 5th October, 2011, and he was declared medically unfit by the Naval Officer of West Bengal on the ground of having- i) Wax (Lt.) Ear (QTU); ii) Hydrocele (Lt.) (QTU); iii) Elevated BP (150/90 MM/Hg) (QTU) and iv) Tachycardia (QTU).

3. The petitioner has contended that he does not suffer from any of the aforementioned problems and on the said grounds he could not have been declared medically unfit. According to him, the declaration by the Medical Board was recorded behind his back without proper examination.

4. The petitioner contended that he got himself medically examined at the Patna Medical College Hospital on 18th November, 2011 to ascertain if he has hypertension (BP) and the report given by the Patna Medical College Hospital recorded his BP as 120/78 MM/Hg.

5. The petitioner also got himself examined at the Govt. Hospital at Ara, Bihar. The Govt. Hospital at Ara, Bihar also declared the petitioner to be fit and fine and suffering from no disease or disability. The petitioner also produced the Medical Certificated dated 8th December, 2011 issued by the Govt. Hospital at Ara, Bihar stipulating his fitness.

6. On the basis of the certificate issued by the Patna Medical College Hospital and Govt. Hospital at Ara, Bihar, the petitioner contended that the medical unfitness report dated 5th October, 2011 by the respondents' Medical Board is not correct and it is, in fact, the outcome of an improper medical checkup.

7. The petitioner contended that the results of the medical examination conducted by the respondents, whereby he was declared medically unfit will have a drastic impact over the future of the petitioner and will deprive him of the better chance of service and will have a demoralizing effect over his physical and mental fitness. In the circumstances, the petitioner has contended that he is ready and willing to undergo any kind of medical test to prove his medical fitness.

8. The petitioner also relied on a decision of this Court in Guddu Prasad v. Union of India & Ors, W.P.(C) No.6151/2010, dated 24th September, 2010 in which the Court was pleased to direct the Commandant, Research and Referral Hospital, Delhi to constitute a Medical Board of Specialist/Expert for examination of the candidate.

9. The petitioner, in the circumstances, has challenged the medical examination done by the respondents on 5th October, 2011 on the ground that the medical examination was not done properly and the petitioner could not be declared unfit for enlistment into the Navy. The petitioner's grievance is that the Medical Board recorded his parameters behind his back without affording him any opportunity of being medically examined. In any case, as per the petitioner, the certificates issued by two independent Govt. Hospitals negate the findings of the Medical Board of the respondents. The petitioner further contended that the result of his medical examination was based on the improper medical checkup and thus he deserves another opportunity.

10. Learned counsel for the respondents, Mr. Ravinder Agarwal, Central Govt. Standing Counsel, who appears on advanced notice has contended emphatically that the petitioner has concealed material information from this Court and has filed an incorrect affidavit along with the writ petition contending that he has not concealed any material information inasmuch as pursuant to the medical examination conducted on 5th October, 2011, he was also communicated to report for Review Medical Board after having himself treated for the medical unfitness detailed in the report dated 5th October, 2011 at Command Hospital,

Kolkata within 21 days from 8th October, 2011.

11. Learned standing counsel contended that, in fact, the petitioner appeared before the Review Medical Board where the review medical examination was carried out on 17th October, 2011. In the Review Medical Board, it was noticed that the petitioner does not have Hydrocele as he got himself surgically fit. The petitioner was again examined by the Review Medical Board on 21st October, 2011 for hypertension at Kolkata Command Hospital, Medical Division and his BP reading was found to be 150/86 mm/Hg, which was higher than admissible limits.

12. Learned standing counsel contended that in the medical examination conducted on 5th October, 2011, the petitioner's BP was found to be 150/90 MM/Hg and in the review medical examination it was found to be 150/86 MM/Hg on 21st October, 2011 and, therefore, the petitioner was ultimately declared medically unfit on 24th October, 2011 even by the Review Medical Board.

13. Learned standing counsel has also contended that the plea of the petitioner, in the circumstances, to have another Review Medical Board for assessment of his medical fitness is not made out as the petitioner has tried to portray that he had been examined by only one Medical Board which had declared him medically unfit. Whereas, the fact is that a Review Medical Board was also constituted which had examined the petitioner on 17th October, 2011, 21st October, 2011 and 24th October, 2011, and, thereafter, declared him medically unfit on 24th October, 2011.

14. This Court has heard the learned counsel for the parties. To the query by this Court as to why the petitioner has not disclosed about the Review Medical Board conducted by the respondents which had examined the petitioner 17th October, 2011, 21st October, 2011 and had declared the petitioner medically unfit again on 24th October, 2011, the learned counsel for the petitioner has not given any satisfactory reply. No cogent reasons, rather no reasons have been disclosed for withholding the said information from this Court. It appears that it has been done by the petitioner with a view to mislead this Court as the petitioner's only prayer is to get him examined by a Review Medical Board which Review Medical Board was constituted by the respondents and the review medical board had examined the petitioner. Had the petitioner disclosed that a Review Medical Board was already constituted and that he was again examined by the Review Medical Board, then his prayer seeking re-examination of the petitioner by another Medical Board would not have survived. In the circumstances, the writ petition of the petitioner is liable to be dismissed for concealing material information from this Court.

15. In any case, the prayer of the petitioner that he should be examined by a Review Medical Board to ascertain his medical fitness is to be rejected since the respondents had already constituted a Review Medical Board which had again examined the petitioner on 17th October, 2011, 21st October, 2011 and 24th October, 2011. The doctors, who examined the petitioner on 17th October, 2011,

21st October, 2011 and 24th October, 2011, were different than those who had carried out the medical examination of the petitioner on 5th October, 2011 and had found him to be medically unfit on account of having hypertension, hydrocele and tachycardia. The Review Medical Board found that the problem of hydrocele had been got corrected by the petitioner surgically, however, the petitioner still had elevated BP. The BP reading of the petitioner in the Review Medical Board was found to be almost similar to the reading recorded by the Medical Board held on 5th October, 2011, which had declared the petitioner to be medically unfit. The petitioner has been unsuccessful in establishing any ground for doubting the findings of the Review Medical Board declaring the petitioner to be medically unfit on 24th October, 2011. In the circumstances, the petitioner is not entitled for the relief claimed in the writ petition. The writ petition is, therefore, without any merit and it is dismissed. All the pending applications are also disposed of.

Navy, the petitioner had applied for the same. Thereafter, the petitioner was issued a call up letter-cum-admit card which was for examination scheduled for 4th October, 2011. The petitioner had passed the written examination and had also cleared the physical fitness test which was conducted thereafter. The result of physical fitness test was declared on the same date and the petitioner was declared successful.