
(2017) 01 DEL CK 0155
In the Delhi High Court
Case No : W.P.(C) 7657 of 2016

Narendra Kumar Gupta

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 162 DRJ 274

Hon'ble Judges : Banerjee and Anil Kumar Chawla, JJ.

Bench : Division Bench

Advocate : Mr. Ankur Chhibber, Advocate, for the Petitioner; Mr. Vikas Mahajan, CGSC along with Mr. S.S. Rai, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

CM No. 46107 of 2016 (delay)

This is an application for condonation of delay of 29 days in filing the counter affidavit. For the reasons mentioned in the application, the application is allowed. The counter affidavit be taken on record.

W.P.(C) 7657 of 2016

2. In this writ petition, the petitioner has challenged an order dated 13.02.2016, whereby, the petitioner has been declared medically unfit and accordingly his candidature for appointment as a Sailor of the Indian Navy has been cancelled. According to the petitioner, the petitioner applied pursuant to an employment notice. He appeared for a written examination in which, he was successful. Thereafter, he had to take a Physical Efficiency Test which he successfully cleared. It, however, appears that the petitioner was medically examined. At the initial medical examination, which was held on 14.09.2015, the petitioner was declared permanently unfit for "Cubitus Valgus" and temporarily unfit for "Rt Latent Squint & Phimosis". He was directed to report for an Appeal Medical Examination to Military Hospital, Dehradun within 21 days. At the Military

Hospital, Dehradun, the petitioner was declared fit, whereupon, he was asked to proceed to the INS Chilka for final enrolment medicals.

3. At the INS Chilka, the petitioner was again examined medically. The petitioner was found to suffer not from "Cubitus Valgus" but from "Hyper Extension of Elbow Joints". It is true that there are some discrepancies in the medical opinion upon initial examination; the Appeal Medical Examination and the Medical Examination at INS Chilka. The petitioner was first found to suffer from "Cubitus Valgus". In appeal, he was cleared and at INS Chilka, the doctor opined that the petitioner did not suffer from "Cubitus Valgus", but, he suffered from joint extension.

4. On behalf of the respondents, our attention has been drawn to the effects of Hyper Extension of the elbows, which according to the respondents, could get aggravated by service in the Navy. Articles have also been shown to us with regard to the complexities of the Hypermobility Syndrome.

5. It is not for us to go through the different medical reports and medical literature to determine whether the petitioner at all suffers from Hyper Extension of elbows and if so whether such Hyper Extension would affect the kind of service which the petitioner is required to perform.

6. The petitioner has relied upon a medical prescription of All India Institute of Medical Sciences. The concerned doctor and Assistant Professor of the Orthopaedics of the All India Institute of Medical Sciences, New Delhi has opined that there is "No Cubitus Valgus Deformity". No active intervention is required from Orthopaedic suspect. No clinico radiological abnormality seen.

7. On behalf of the respondents, it is submitted that the medical opinion of the doctors of the All India Institute of Medical Sciences indicates that there is no clinic radiological abnormality seen. However, hyper extension cannot be detected merely by an X-ray. The functioning of a Sailor would be affected by hyper extension of the joints. The abnormality would manifest upon exercise, at the time of training and afterwards.

8. It is contended that the prescription of the All India Institute of Medical Sciences indicates only partial clearance in that no clinico radiological abnormality was seen. It is not a clear report clearing the petitioner from any kind of abnormality.

9. It is also argued that the finding that there is no Cubitus Valgus Deformity is even affirmed by the doctors of INS Chilka who medically examined the petitioner. The petitioner has been debarred on the ground of hyper extension and not Cubitus Valgus deformity. The two deformities are different.

10. On behalf of the petitioner, our attention has been drawn to an order dated 19.05.2016 of the Division Bench in W.P. (C) 4246/2016 (Rahul Gainan v. Union of India & Ors.). In the aforesaid case, the certificate of Dr. Ram Manohar Lohia Hospital, New Delhi dated 12.04.2016 revealed that the petitioner did not suffer

from Hyper Extension of the elbow joints. The opinion was contrary to the medical report of the respondents. In the aforesaid circumstances, the Court referred the candidate to the Army Research and Referral Hospital, New Delhi for a review examination. In this case, two reports, the report of the preliminary medical examination and the report of the medical examination at INS Chilka reveal abnormality of the fore arm. The doctors who conducted the preliminary examination opined that the petitioner had the abnormality of Cubitus Valgus whereas the doctors of INS Chilka opined that it was not Cubitus Valgus but Hyper Extension of the fore arm.

11. There can hardly be any dispute that the service in the defence forces, be it the Navy, the Army or the Air Force requires medical fitness of the highest degree. This writ Court cannot make a comparative assessment of different medical reports to decide which medical report is correct. In view of the opinion of two sets of doctors, with regard to the abnormality in the fore arm of the petitioner and having regard to the opinion of All India Institute of Medical Sciences, which does not give a complete clearance to the petitioner, we are not inclined to refer the petitioner for any further medical examination. The writ petition is, therefore, not entertained and the same is dismissed.