

(2022) 11 DEL CK 0144

In the Delhi High Court

Case No : Civil Writ Petition No. 15923 Of 2022

Rajeev Yadav

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 23-11-2022

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Citation : (2022) 11 DEL CK 0144

Hon'ble Judges : Suresh Kumar Kait, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Ankit Yadav, Tarun Mehra, Gajjala Bhaskar, Ruchir Mishra, Mukesh Kr. Tiwari, Mansi Verma

Final Decision : Disposed Of

Judgement

CM APPL. 49544/2022(for exemption)

1. Allowed, subject to all just exceptions.

2. Application is accordingly disposed of.

W.P.(C) 15923/2022 & CM APPL. 49543/2022 & 49545/2022

3. Present petition has been filed seeking quashing of the orders dated 12.07.2022, 05.09.2022 and 13.09.2022 passed by Directorate General, CRPF whereby petitioner has been terminated from the service. He also seeks directions to respondents to reinstate the petitioner in service with all consequential benefits.

4. Petitioner, Ex-AC(T) (IRLA No.12227) has been relegated from 52nd batch of DAGO (Directly Appointed Gazetted Officer) to 53rd batch, after he joined the Indian Army on 02.04.2005 as a recruit. However, he got injury in his left leg during his army basic training and finally invalidated out from service w.e.f. 16.02.2006 under item IV Rule 13(3) of Army Rules, 1954. During his discharge on medical ground, he was categorized in SHAPE System as S1H1A5P1E1 with

the remarks "Fit for Civil Service but unfit for DSC (Defence Service Core)". He cleared his UPSC (CAPF) Exam in the year 2018. During his selection of DAGO as Assistant Commandant, he was medically examined by a medical board of officers on 08.03.2019 and declared "UNFIT" due to "Obvious fracture left Tibia on history and documentation". Being aggrieved with the medical opinion regarding his unfitness during his initial selection process, he appeared before the Review medical board and was finally found "FIT" by the review medical board on 10.05.2019. He was given offer of appointment by CRPF on 23.09.2020 to report at CRPF Academy for basic training. Accordingly, he reported at CRPF Academy on 12.10.2020 (Afternoon) and joined basic training in 52nd DAGO batch and sustained injury in his left knee on 12.11.2021 and consequently, relegated for 53rd batch. He reported for 53rd batch training on 27.01.2022. Since he did not produce fitness certificate, he was sent to GC, CRPF Gurugram Hospital for fitness certificate. Subsequently, he was examined at GC, CRPF Gurugram Hospital and declared fit for duty with the remarks to avoid jumping, heavy weight lifting, low sitting, squats and strenuous exercise etc.

5. It is not in dispute that petitioner took treatment from Sports Injury Centre, Safdarjung Hospital, New Delhi and vide certificate dated 07.11.2022 it was stated that petitioner was not having any signs and symptoms of early OA knee. MRI dated 22.10.2022 and X-ray dated 17.10.2022 also showed no evidence of OA and stated that he is physically fit for any kind of duty.

6. Based upon the said certificate, petitioner claims that he is fit for all purposes and the medical board and review medical board have wrongly declared him unfit for the service to the department in question.

7. Counsel for the petitioner, on instructions, has agreed that he may be sent to RR Hospital for medical examination to be examined by the experts and report of the same shall be final and he shall not challenge the said report.

8. Mr.Ruchir Mishra, learned counsel appearing on behalf of the respondents, on instructions, submits that the case of the petitioner can be sent to the RR Hospital.

9. Accordingly, keeping in view the peculiar facts and circumstances of the case and without commenting on the abovesaid reports and the submission of learned counsel for the parties, in the interest of justice, we hereby direct the Incharge of RR Hospital, Delhi to constitute a fresh medical board comprising of experts. The said medical board of RR Hospital shall also invite the doctors who participated in the review medical board.

10. Upon constitution of the medical board, the respondents shall intimate the petitioner about the schedule of the medical examination including the date of said examination at least one week before the said medical examination and thence communicate the report thereof to the petitioner within one week thereafter.

11. It is made clear that if the petitioner is found fit by the freshly constituted medical board, respondents shall take further steps to take the petitioner into service.
12. In any event, it is agreed by the parties that the report of the RR Hospital shall be final and binding upon the parties.
13. With the aforesaid directions, the present petition and pending applications, if any, stand disposed of.