
(2000) 02 DEL CK 0026
In the Delhi High Court
Case No : C.W.P. No. 1326 of 1998

Sh. Umesh Chakravarti

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 5 AD 446 : (2000) 53 DRJ 311 : (2000) 87 FLR 246

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. G.D. Gupta and Mr. Pramod Gupta, for the Appellant; Mr. Mohar Singh, for the Respondent

Judgement

A.K. Sikri, J.—The petitioner, being aspirant for the post of Airman in technical trade of Indian Air Force applied for the said post pursuant to the advertisement issued by the respondent and appeared in the written test. After the written examination, he was required to undergo medical test at Army Selection Centre, Bihta (Patna). Thereafter he was instructed to appear before Army Hospital Allahabad for further test as he was declared temporarily unfit. However he was served with medical unfitness certificate dated 12.5.1997 and Therefore he was not selected for appointment. The case of the petitioner is that he got himself checked up by two known and famous Doctors and both the Doctors declared the petitioner medically fit and on that basis he submitted an appeal to the Central Airman Selection Board, New Delhi on 20.5.1997. He was re-examined on 12.8.1997 on the basis of his appeal but was again declared medically unfit and Therefore refused appointment. In these circumstances, petitioner has filed the present writ petition and it is his submission that he got himself examined even at AIIMS and Safdar jung Hospital on 29.8.1997 and 9.9.1997 and was found medically fit and Therefore respondent could not have refused him appointment to the post of Airman.

2. In the counter affidavit filed by the respondents, it is inter alia, stated as

under :

"It is stated that after having passed the written test on 15.2.1997, the petitioner was medically examined on 18.2.1997 by Recruiting Medical Officer 10 ASC Bihta. The petitioner was declared temporarily medical unfit (TMU) on account of the following:-

(a) Sub standard weight.

(b) Tinea vesicular shoulder.

(c) Chronic Suppurative Otitis Media (Bilateral) ENT OPD.

For CSOM (Bill) which is a deformity related to ear, he was sent to Military Hospital (MH) Allahabad for obtaining ENT Specialist's opinion in Out Patient Door (OPD). He was medically examined on 4.3.1997 by a classified Specialist (ENT) at MH, Allahabad. Hence the allegation that the petitioner was not examined by the Doctor is not true. Moreover, the Specialist at various Hospitals send the disposal of the candidates by post to the concerned Airman Selection Centres who in turn inform the disposals to the candidates. Hence the allegation that the petitioner was declared unfit by the Specialist within 30 seconds is wrong/incorrect. On receipt of the ENT Specialists opinion dated 4.3.1997 Recruiting Medical Officer at 10 Airmen Selection Center, Bihta, issued the medical unfitness certificate to the candidate when he reported back for Review Medical Examination on 12.5.1997. As per policy all the candidates who are declared TMU are to report back for Review Medical Examination on a stipulated date only after their names have figured in all India Merit List."

3. It is further explained that as per the provisions laid down in regulations of Medical Services of Armed Forces, the candidates are to be medically examined by Military Doctors only. The opinion rendered by nonmilitary doctors is not admissible . Therefore, in the present case the medical reports of Dr. S.K. Jain and Dr. R.K. Pande are of no consequence. It is also explained that on 12.8.1997 the petitioner was referred to ENT Specialist at Base Hospital Delhi Cantt. His x-ray was taken on 13.8.1997. He was examined by ENT Specialist and was declared unfit on 19.8.1997. Thereafter the medical case sheet was received back at CASB by post on 26.8.1997 after having gone through various stages in Hospital. On receipt of opinion of ENT Specialist, the unfitness certificate dated 26.8.1997 was issued to the petitioner. No prejudice has been shown in the case of the petitioner. A thorough and detailed medical examination was conducted by the ENT Specialist before declaring his medical status.

4. The same situation had arisen in another case being CW No. 197/96 and order dated 17.11.1998 was passed dismissing the writ petition which reads as under :

"The petitioner applied for being enrolled as an Airman in the Indian Air Force. He cleared the written test but was found to be medically unfit for appointment by the Medical Advisor to the Central Airmen Selection Board. The petitioner claims that he is medically fit and a certificate to this effect has been given by Dr.

S. Bhan of All India Institute of Medical Sciences, New Delhi.

Learned counsel appearing for the petitioner contents that the Doctor examined the petitioner was merely a M.B.B.S. and his opinion cannot be preferred to the opinion of All India Institute of Medical Sciences.

I have considered the submission of the learned counsel for the petitioner. A perusal of the Medical Unfitness Certificate dated 4.9.1995 Annexure "A" to the petition shows that the petitioner was found to be medically unfit by the second respondent. According to the second respondent the petitioner is suffering from "Genu Recurvatum" and failed to achieve the laid down medical standards. The second respondent is Medical Advisor to the Central Airmen Selection Board. His expertise and experience has not been questioned in, the writ petition. Therefore, the same cannot be allowed to be questioned by way of oral submission by learned counsel for the petitioner. In any event the opinion of second respondent cannot be substituted by the opinion of a Doctor of All India Institute of Medical Sciences, New Delhi.

Counsel for the respondent has invited my attention to the decision of Patna High Court in CWP No. 793/97 wherein it was held as follows :

1. The petitioner has been declared medically unfit by Central Airmen Selection Board vide Medical Unfitness Certificate. The petitioner applied for re-medical examination and it appears from Annexure 6 that the Senior Advisor also declared him unfit.
2. Counsel for the petitioner submits that the petitioner had got himself examined at the All India Institute of Medical Sciences and thereby they did not find the petitioner unfit for appointment as Clerk in the Indian Air force. It is by now well settled that when a Medical Board is constituted by the appointing authority it is the opinion of that Medical Board which is relevant and not the opinion of any other Doctor or Hospital elsewhere. In these circumstances no relief can be granted to the petitioner.
3. The writ petition is Therefore dismissed.

I am in respectful agreement with the observation of the Patna High Court."

5. Relying upon the aforesaid judgment, I find no force in the write petition which is accordingly dismissed.