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(2020) 07 DEL CK 0177

In the Delhi High Court

Case No : Civil Writ Petition No. 4558 Of 2020

Sharvan Kumar Rai — APPELLANT

Vs

Union Of India & Others — RESPONDENT

Date of Decision : 27-07-2020

Acts Referred:

Citation : (2020) 07 DEL CK 0177

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Ajit Kakkar, Naresh Kaushik, Avnish Singh, Abhisekh Khan

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

1. The petitioner has filed this petition impugning the Certificate dated 4th March, 2020 of Medical Unfitness accorded to the petitioner by the

respondents CRPF.

2. It is the case of the petitioner, (i) that pursuant to the notification dated 24th April, 2019 published by the respondent No. 3 UPSC of the

examination for direct recruitment of Assistant Commandants in the respondents CRPF, the petitioner applied and participated in the written

examination held on 18th August, 2019 and qualified for the Physical Standards and Physical Efficiency Test; (ii) the petitioner cleared the Physical

Standards and Physical Efficiency Test conducted on 20th December 2019; (iii) however in the medical examination conducted of the petitioner on

21st December, 2019, the petitioner was found unfit, for the reason of â??Acute Lung Infection (X-ray Chest)â? and informed of his right of appeal

thereagainst; (iv) the petitioner, on 14th June 2020, got himself examined from

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Doctors Diagnostics Centre (DDC) Najafgarh Road, New Delhi

(Private Diagnostics Centre) and on the basis of High Resolution Computed Tomography (HRCT) Chest of the petitioner, opined as under:-

â??HRCT CHEST

â?¢ Left lung field is clear. No evidence of consolidation, cavitation or any mass lesion is seen.

â?¢ Right sided apico-posterior segment shows pleural thickening with fibrotic lesion in right sided segment 10 (posterior basal segment of

lower lobe) with hypoattenuation pattern of the lung.

â?¢ No pleural collection thickening is seen.

â?¢ No proncniectasis mosaic attenuation or ground glass opacities are seen.

â?¢ The mediastinal structures including the aorta and its branches, superior vena cava, the trachea and the esophagus appear normal.

Bilateral pulmonary arteries and veins are normal in course and caliber.

â?¢ Trachea and main bronchi are normal in caliber and wall thickness.

â?¢ Mediastinal lymphnodes are within normal range.

â?¢ Retrosternal fat density is normal. No obvious soft tissue lesion is seen.

â?¢ Cardiac size is within normal limits and all chambers are normal in size.

â?¢ Both anterior and posterior junctional lines are normal in position.

â?¢ Bony parts and pre and paravertebral soft tissues are normal.

Impression: Old healed infective pathology.â??;

(iv) petitioner preferred an appeal but the Review Medical Board, vide the impugned Certificate of Medical Unfitness, has also declared the petitioner

unfit for the reason:-

â??1. Reason for Unit

2. Brief of examination & finding thereof:

Evaluated, Chest NAD, HRCT Cchest reveals right sided apico posterior segment shows pleural sided segment 10 hypoattention pattern of

the lungs.

Although pateint might not manifest symptomps at present but at extreme stress (as expected in training) might reactivate the infection.

3. Opinion.

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(a) Fit: UNFITâ??; and,

(v) that the Guidelines For Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles of May, 2015, in clause XV thereof

provides as under:

XV. EXAMINATION OF LUNGS, PLEURA & MEDIASTINUM

Following are the cause of rejection

1. Evidence of Asthma, including reactive airway disease, exercise-induced bronchospasm or asthmatic bronchitis, reliably diagnosed

(Reliable diagnostic criteria may include any of the following elements: substantiated history of cough, wheeze etc.

2. Evidence of bronchitis, acute or chronic.

3. Evidence of bronchiectasis.

4. Evidence of pleurisy with effusion within last 2 years.

5. Tuberculosis

(a) Evidence of active tuberculosis in any form or location is unfit.

(b) Cases of treated tuberculosis along with normal pulmonary functio will be accepted as fit.â??

3. Counsel for the petitioner has contended that the doctors conducting the Review Medical Board suspected the petitioner to be an old case of

Tuberculosis and which as per the guidelines aforesaid is not a ground for declaring the petitioner unfit. It is thus argued that a case, either of quashing

the medical unfitness of the petitioner or of giving another opportunity to the petitioner for Medical Examination, is made out. In support thereof

attention is drawn to the original of the certificate dated 4th March 2020 of the Review Medical Board, which is very dim; it is pointed out that thereon

the Review Medical Board has written the words â??post infective scquelae P.T.B.â?? and which indicate the Medical Board having suspected the

petitioner to be a old case of Tuberculosis. However, in the typed copy of the said Medical Certificate also filed by the petitioner, the said words are

missing.

4. We have recently in judgment dated 15th July, 2020 in W.P.(C) 3930/2020 titled Priti Yadav Vs. Union of India, in the context of medical test for

recruitment in the officer cadre of Indian Air Force, Rules wherein provide for examination by Medical Board, Appeal Medical Board and Review

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Medical Board, held as under:-

â??8. We have today again considered whether the petitioner is entitled to yet another chance and are unable to find any justification for

the same. We have already in the order dated 6th July, 2020 observed that fitness for serving requisite duties in the Air Force is a matter of

opinion and if in the opinion of the authorities constituted under the Rules of the Air Force the petitioner is unfit, a report of a medical

practitioner of another organization which does not intend to recruit the petitioner and which will not be affected by the medical unfitness

of the petitioner, cannot be the basis for interfering with the assessment by the Air Force. It cannot be lost sight of that just as in justice

delivery, appeal provisions are provided to eliminate the possibility of human error, so have a sufficient number of opportunities of

preferring an appeal and thereafter preferring a review have been provided in the matter of medical examination and just like the decision

making before the Courts cannot be indefinite, so can the decision making with respect to medical fitness in the Air Force, cannot be

indefinite. There has to be a finality in decision making, as is there in the justice delivery system. It cannot be lost sight of that no mala fides

are attributed with respect to any of the medical examinations or to the team of medical professionals conducting the medical examination. It

is the medical practitioners of the Air Force and Defence Services, who have themselves undergone the requisite trainings and discharge

the functions of the organization, who are best suited to form an opinion as to the medical fitness of the candidates to be recruited and once

they have so formed their opinion, there can be no interference therewith, at the mere asking of a rejected/disgruntled candidate.â??

What has been held in the context of Air Force, equally applies here. Once the Rules provide for the report of the Medical Board and Review Medical

Board to be final, every candidate declared medically unfit, cannot, at the mere asking, be granted another opportunity as is found to be sought in

innumerable cases coming up before the courts. Medical opinion, like a legal opinion, can vary from professional to professional and once the Rules

provide for finality and are found in the present case to have provided for a review, to eliminate the possibility of human error, that finality has to be

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accepted, unless a case for interference is made out.

5. In the present case, not only is there definite finding of the Review Medical Board, of the status of the lungs of the petitioner and which when

subjected to extreme stress, as they will be subjected to during employment with the CRPF, not being able to perform but the petitioner himself has not

chosen to give any particulars or records of any past infection as has been suspected or of treatment of such infection in the past at any point of time.

It is quite evident from the findings of the Review Medical Board that the petitioner was examined thoroughly and was found to have lungs which

were opined by the doctors of CRPF, with which the petitioner is to serve, to be incapable of taking extreme stress.

6. Moreover, in the present case the private medical opinion taken by the petitioner on 14th June 2020 is also in consonance with the opinion of the

Review Medical Board to the extent identifying pleural thickening with fibrotic lesions and hypoattenuation pattern in certain sections of the lungs of

the petitioner. The difference between the opinion of the Review Medical Board and of the Private practitioner consulted by the petitioner only is as to

the lung capacity of the practitioner and in which respect, as aforesaid, the opinion of the respondents CRPF with whom the petitioner is to serve, is to

be respected.

7. We have in judgment dated 22nd May 2020 in W.P. (C) No. 3237/2020 titled Dhiraj Milind Dhurve vs. UPSC, in the context of medical

examination test in Central Armed Police Forces (CAPFs) and which includes respondents CRPF, held, that the candidates found medically unfit

cannot seek a change of the terms subject to which they have taken the examination and which terms uniformly apply to all candidates. It was held

that the principle of â??Rules of the Game cannot be changed after the game has begunâ?? applies, with only a few of all those found medically

unfit, who approach the court, being permitted another round of medical test.

8. We have also considered whether the present is a case of inconsistency between the report of the Medical Board and Review Medical Board.

Though the petitioner himself has not pleaded that he was not suffering from a chest infection at the time of being examined by the Medical Board on

21st December, 2019, it is significant that there is a gap of more than four months between the Medical Examination and the Review Medical

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Examination and during which time an acute infection can be cured with medication. As per the Rules of the respondents CRPF, for applying for

Review Medical Examination, the petitioner, along with the application for review, was required to file the Medical Certificate from a specialist

medical practitioner of concerned field, as per the proforma prescribed. The petitioner has not produced before us, the Medical Certificate which must

have been obtained before preferring the review petition. Therefrom also, adverse inference has to be drawn against the petitioner. The opinion of the

private diagnostic centre approached as late as on 14th June, 2020 also confirms what has been found by the Review Medical Board, that is,

â??pleural thickening with fibrotic lesions with hypoattenuation pattern of the lungsâ??.

9. We also do not agree that the certificate of medical unfitness of the petitioner is not in consonance with the guidelines supra. It is evident from

Clause XV of the Guidelines reproduced hereinabove that exercise induced bronchospasm and substantiated history of cough, wheeze etc. is a reason

for rejection. Even qua tuberculosis, only those cases of treated tuberculosis are to be accepted as fit, where there is normal pulmonary function. It

thus cannot be said that the medical unfitness found of the petitioner is not in consonance with the guidelines.

10. No case for interference is made out.

11. Dismissed.

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