

(2001) 05 DEL CK 0083
In the Delhi High Court
Case No : CW. No. 2607 of 2001

Shri Vikram Singh Yadav

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-05-2001

Acts Referred:

Citation : (2001) 05 DEL CK 0083

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Ms. Jyoti Singh and Ms. Roopa, for the Appellant; Major Vijay Kumar, for the Respondent

Judgement

Mukul Mudgal, J.—This writ petition arises from a rejection of request for a Review Medical Board made by the petitioner, who was a candidate for the post of Lieutenant in the Indian Army at the Officer Training Academy, Chennai. Since the petition is of an urgent nature, with the consent of the parties it is taken up for final hearing.

2. The petitioner was declared successful in the interview but in the Medical Board held on 15th February, 2001, he was found to be permanently unfit on the ground of "Lenticular Opacity Both Eye (RE LE)". Thereafter on 1st March, 2001, the petitioner moved a Representation for Appeal Medical Board which on 3rd March, 2001 found the petitioner to be unfit on account Lenticular Opacity of Right Eye only as compared to the deficiency in both eyes found by the Medical Board, held on 15th February, 2001. The petitioner under Para 11 of Army Headquarters Policy dated 26th May, 2000 has sought the holding of a Review Medical Board. The relevant Paras 11 & 12 of the said Policy read as follows:

"11. Provision to hold Review Medical Board When a candidate is declared unfit by Appeal Medical Board, there is a provision to hold Review Medical Board (RMB) incase the candidate desires to challenges the findings of the Appeal Medical Board. The candidate may do so within a period of 14 days from the date

of AMB by submitting an application for RMB, addressed to Rtg Dte, Army HQ, duly supported with a valid medical certificate for the fitness of such disability from Professor/Consultant of a recognised Government Medical College Hospital.

12. The candidate is also hereby informed that the Review Medical Board will be granted at the discretion of DGAFMS, based on the merits of the case, and the Review Medical Board is not a matter of right. It is also informed that the RMB, if granted by the competent authority, shall be held either at Army Hospital (R&R), Delhi or at Command Hospital, Southern Command, Pune."

3. In support of its plea that the petitioner deserved a Review Medical Board, the learned counsel for petitioner, Ms. Jyoti Singh, inter-alia relied upon a Certificate, issued by the Associate Professor of Ophthalmology, Dr Rajendra Prasad Centre for Ophthalmic Sciences, AIIMS, New Delhi. The said Certificate opined that "The Lens Opacity is not central and is away from the visual axis. No redolently flare/cells seen. Lenticular opacity is peripheral and seems insignificant and likely to be non-progressive. A review medical board can be considered."

4. The learned counsel for the petitioner has relied upon the said Certificate to submit that since the Lenticular opacity has been certified by the Associate Professor of the AIIMS to be insignificant and likely to be non-progressive, a Review Medical Board should have been summoned. She has further submitted that since the Appeal Medical Board gave a different opinion than the Medical Board, the difference in opinion constituted sufficient reason for the discretion of DGAFMS to be exercised in favor of a Review Medical Board.

5. The respondents in reply have taken a stand in their additional affidavit, filed in Court today that the Review Medical Board is not a matter of right and further pleaded that the required standards of defense services are stricter and different from the civil standards and in the Armed Forces, enrolment can only be of a candidate who is 100 per cent medically fit. Respondents have relied upon Army Headquarters Policy dated 22nd December, 2000 which prescribes physical standards for admission to NDA/IMA/OTA and in particular Paragraph 4(m) (iv) which provides for other cases of rejection and which reads as "Medical Opacities". It has further been submitted that while the two opinions of the Medical Board and Appeal Medical Board are slightly different, there is no differences of opinion on the diagnosis that there was lenticular opacity in the petitioner's right eye. It is also submitted that no specialist can say with certainty that the ailment of the petitioner is not progressive.

6. Learned counsel for the petitioner in rejoinder has submitted that the petitioner is not pleadings for relaxation in physical standards and in fact the petitioner is pleading only for a Review Medical Board.

7. In my view as per the Para 12 extracted above, the Review Medical Board is not a matter of right and it is at the discretion of DGAFMS. I have examined the reasons given by the DGAFMS to decline a Review Medical Board and the reasons given by DGAFMS are not irrelevant or illogical. Furthermore, there is no

irrationality or arbitrariness in the respondents" insisting upon a candidate being totally fit in order to be considered for enrolment to the Armed Forces as per grounds for rejection enumerated in Para 4 (m) (iv) extracted above. Since the petitioner"s own certificate from AIIMS confirms the ailment, though it certifies it as insignificant and likely to be non-progressive, no fault can be found with the respondents" stand in denying the Review Medical Board, sought by the petitioner. There may have been force in the petitioner"s writ in case the diagnosis of the Medical Board and Appeal Medical Board been at variance or the AIIMS Doctor"s diagnosis had certified the petitioner"s vision to be free of blemish. The fact that even the Certificate, relied upon by the petitioner mentions that opacity, (though stated to be insignificant and not likely to be progressive) is present in the petitioner"s right eye, in my view justified the respondents" stand. The writ petition, Therefore, lacks merit and deserves to be dismissed.

8. The Writ petition is accordingly dismissed with no orders as to costs.