
(2000) 11 P&H CK 0098
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12563 of 2000

Sunil Dagar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 11 P&H CK 0098

Hon'ble Judges : R.S. Mongia, J;K.C. Gupta, J

Bench : Division Bench

Advocate : Mr. Tribhuvan Dahiya, for the Appellant; Mr. Gurpreet Singh, for the Respondent

Judgement

K.C. Gupta, J.—This writ petition has been filed by Sunil Dagar under Article 226 of the Constitution of India for issuance of a writ of certiorari for quashing Annexure P-7 whereby the petitioner's right to Review Medical Board had been denied and further by way of writ of mandamus, it was prayed that the respondents be directed to conduct Review Medical Board for the petitioner and to send him to the next National Defence Academy Course.

2. Briefly stated, the facts are that the petitioner applied for National Defence Academy Course (hereinafter referred to as "N.D.A. Course") in December, 1999. He appeared in the written test for the N.D.A. Course conducted by the respondents and cleared it. He also cleared the Service Selection Board interview on 28.4.2000 and was declared selected for the N.D.A. Course by securing 81 rank. The petitioner was sent to medical examination for N.D.A. Course at Military Hospital, Bhopal. The Special Medical Board examined him on 3.5.2000 and declared him unfit/Temporary unfit for the N.D.A Course vide certificate Annexure P-1 as he was stated to be suffering from Aone Vulgris, Cardiac murmur and digital tremors. Against the said decision, the petitioner preferred an appeal and reported at Base Hospital, Delhi Cantt. on 5.5.2000. He was ultimately examined by the Appeal Medical Board at Base Hospital, Delhi Cantt

on 17.5.2000. According to the Appeal Medical Board (Annexure P-3), he was declared suffering from only one ailment i.e. digital tremors.

3. Against the said examination, the petitioner on 12.6.2000, went to the Recruiting Directorate to challenge the findings of the Appeal Medical Board before Review Medical Board within fourteen days. However, the Joint Director in the Directorate refused to entertain him on account of delay in approaching the Directorate for Review Medical Board. Thereafter, he got himself examined from Medical Officer, General Hospital, Sonapat, on 14.6.2000 and he was declared medically fit vide Annexure P-4. Again, the petitioner represented to respondent Nos. 2 and 3 for conducting the Review Medical Board vide Annexures P-5 and P-6. However, respondent No. 2, vide Annexure P-7 informed him that since 104 N.D.A. Course has already started from 21.6.2000, so no time was available for conducting his Review Medical Board. The refusal to conduct Review Medical Board vide Annexure P-7 is the subject-matter of challenge in the present writ petition.

4. On notice of motion having been issued on 15.9.2000, the respondents filed reply.

5. We have heard counsel for the petitioner, Sh. Tribhuvan Dahiya, counsel for the respondents, Sh. Gurpreet Singh and carefully gone through the record.

Annexure P-3 reads as under :-

"Have been declared unfit Medical Boardp

Diagnosis : Digital Tremors only

If you desire to challenge the finding of the Appeal Medical Board, you may within fourteen days to Recruiting Directorate a copy to Directorate General of Medical Service (Army, Navy and Air Force). You are further informed that holding of Review Medical Board against the finding of Appeal Medical Board is at the discretion of higher medical authorities and not a right.

Sd/- Brig. Commandant Dated : 12.6.2000 President, Medial Board BD Delhi Cantt-10 I have been communicated the result of Appeal Medical Board and fully explained the scope to challenge the finding of the Appeal Medical Board.

Signature of Candidate Name Sunil Dagar Batch No.-B-NDA-66379 Dated 12.6.2000 Chest No. 19

6. Annexure P-7 dated 27.6.2000, vide which the request of the petitioner for Review Medical Board had been rejected, reads as under :-

"1. Reference your letter dated nil.

2. Since, 104 National Defence Academy Course has already started from 21 January 2000, there is no time available for conducting Review Medical Board. Hence your request cannot be acceded to."

7. Para No. 7 of the written statement filed by the respondents reads as under :-

"It is submitted that the petitioner was given the right to challenge the outcome of the Appeal Medical Board by the Base Hospital, Delhi Cantt, but was categorically informed in writing that the holding of the Review Medical Board against the findings of the Appeal Medical Board is at the discretion of the Higher Medical Authorities and not as a matter of right (Annexure E-4). Also, as per para 24 of the Medical Policy, Review Medical Board cannot be claimed as a matter of right (Annexure R/I). It is further submitted that when the petitioner met the Joint Director, Recruiting "A", the said Joint Director, after consultation with Director General Medical Services hold the petitioner that the ailment is incurable and even if cured, would take a long time for the petitioner to become normal and as such would never be recommended for Review Medical Board by them. Further, the time period required to complete the Review Medical Board is thirty days from the date of receipt of the application (para 4 of Annexure R/2). The application for Review Medical Board was received from the petitioner on 12th June, 2000 whereas the last induction for 104 NDA Course was 18.6.2000. There were only six days remaining for the induction of the last candidate and thus within the time frame, it was impossible for the Higher Medical Authorities to grant Review Medical Board to the petitioner. A candidate cannot be inducted for a particular course after the last date of induction is over, even if the course is undersubscribed. The answering respondent has reacted correctly as per rules of the Higher Medical Authority in regard to grant of Review Medical Board."

8. Annexure R-I, which is a circular issued by Adjutant General's Shakra regarding Review Medical Board reads as under :

"23. Review Medical Board : The Review Medical Board will be convened the Director General, Armed Forces Medical Services at Pune/Delhi on the specific requirement of service Headquarters or the Ministry Defence when an opinion of a previous Medical Board is challenged by an individual and Service Hqrs. concerned or the Ministry of Defence considers there is some weight in the challenge. The findings of the Review Medical Board will be accepted as final after appeal by the Director General Armed Forces Medical Services. No further appeal will be entertained by Service Headquarters or Ministry of Defence. In each case, the Review Medical Board will be convened with the prior approval of the Ministry of Defence. The composition of the Review Medical Board will be in accordance with Para-482 of RMSAF-1983.

Procedure for Review Medical Board

24. when a candidate is declared unfit by the Appeal Medical Board, the result should be communicated to him/her by the President of Appeal Medical Board in the prescribed form as per Appendix E. He/she may simultaneously be informed that if he/she desires to challenge the findings of the Appeal Medical Board, he/she may do so within 14 days commencing from the same day, duly supported with a valid medical certificate indicating the medical status of the disability

observed by the Appeal Medical Board from Professor/Consultant of a recognised Government Medical College/Hospital. The candidate shall also be informed by the President Appeal Medical Board that holding of the Review Medical Board will be granted at the discretion of DGAFMS, based on the merits of the case and that Review Medical Board is not a matter of right."

9. Therefore, according to these documents and the averments, the holding of Review Medical Board against the findings of Appeal Medical Board is at the discretion of Higher Medical Authorities and not as a matter of right, which can be claimed by the petitioner. The rationale behind leaving the discretion to Higher Medical Authorities for review is that since the candidate has already been examined by the Special Medical Board and the Appeal Medical Board which consist of highly qualified Specialists is to ascertain whether there is any scope for holding Review Medical Board or not and if the competent authority comes to the conclusion that a candidate suffers from such a disease whereby no useful purpose could be served in holding a Review Medical Board, then in such circumstances, the request of the candidate is declined. It is also declined if the requisite time is not available for conducting the Review Medical Board. It is further stated in the written reply that there was no chance of the petitioner entering into the Armed Force as he was suffering from an incurable disease i.e. digital tremors. Moreover, as per the respondents, the petitioner's application for Review Medical Board was received on 12.6.2000 whereas the Course started on 18.6.2000 and only six days were left during which it was impossible for the Higher Medical Authorities to grant him Review Medical Board. For these reasons, the Review Medical Board was declined to the petitioner. It is true that the petitioner had got himself examined from General Hospital, Sonapat and vide outdoor ticket, Annexure P-4, the diseased mentioned was only Anxiety and the thyroid function normal but there is no certificate of the concerned doctor that he was not suffering from any tremors. The Higher Medical Authorities, in their wisdom, had not found it proper to get him examined by the Review Medical Board and moreover the Course has started and it will take, according to the counsel for the respondents, about one moth in getting the formalities completed, so it was not advisable to get him medically examined from the Review Medical Board. Further, according to the respondents, it will take sufficiently long time to find exact cause and would take more than 180 days more for treatment, so the petitioner is not entitled for Review Medical Board.

For the foregoing reasons, we do not find any merit in the writ petition and as such the same dismissed.

10. Petition dismissed.