

2023 PLRonline 0122

PUNJAB AND HARYANA HIGH COURT

Before: Jagmohan Bansal, J.

Surjeet Kumar – Petitioner

Versus

Union of India and ors – Respondents

CWP-10345 of 2022

23.11.2023

Constitution of India, Article 226 – Compassionate appointment – Medical opinion – Court Cannot substitute opinion of medical experts – On two occasions, he was examined by different set of doctors and both times he was found patient of hypertension – Respondent cannot be asked to consider candidature of the petitioner on the basis of reports of civil hospital. [Para 6]

Cases referred:

1. Sumit Vs. Union of India, LPA No.871 of 2022 (O&M) decided on 24.04.2023.

Mr. R.D. Bawa, Advocate with Mr. Samuel Gil, Advocate and Mr. Dipanshu, Advocate for the petitioner. Mr. Shivoy Dhir, Senior Panel Counsel for the respondents- UOI.

JAGMOHAN BANSAL, J. (ORAL) – The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 11.02.2022 (Annexure P-4), 02.04.2022 (Annexure P-5) and 09.04.2022 (Annexure P-7) whereby candidature of the petitioner has been rejected on the medical grounds.

2. The father of the petitioner who was serving with respondent- GREF died on 18.09.2012 in harness. The petitioner on 29.12.2020 applied for compassionate appointment. The case of the petitioner from 2012 to 2020 was not considered on the ground that his merit is lower than other candidates. The petitioner in December’ 2021 was called for trade test/interview for the post of Driver Motor Transport (OG). The petitioner on 28.01.2022 was subjected to medical test wherein petitioner was found unfit on the ground of high blood pressure. The petitioner applied for Review Medical Board. The petitioner was subjected to re-medical examination on 28.02.2022 by Review Medical Board. The petitioner was again found patient of hypertension. On account of medical unfitness, the candidature of the petitioner was rejected.

3. Learned counsel for the petitioner contends that petitioner had applied on compassionate ground, thus, lenient view is warranted. The petitioner has got himself

medically checked up from civil hospital wherein his blood pressure has been found normal.

4. Per contra, learned counsel for the respondents submits that respondent cannot make appointment on the basis of medical report prepared by civil hospital. The respondent has its own arrangement of medical examination and standards of medical fitness in the armed forces are stringent than civil post. The petitioner was subjected to medical examination twice and that too on different dates, thus, petitioner cannot be considered on the ground of medical report of civil hospital.

5. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

6. It is undisputed fact that petitioner was firstly examined on 28.01.2022 and thereafter on 28.02.2022. On both the occasions, he was examined by different set of doctors and both times he was found patient of hypertension. It is settled proposition of law that this Court cannot substitute opinion of medical experts. The respondent cannot be asked to consider candidature of the petitioner on the basis of reports of civil hospital.

7. A Division Bench of this Court while adverting with similar issue in **LPA No.871 of 2022 (O&M) titled as 'Sumit Vs. Union of India' decided on 24.04.2023** has held that once the medical experts have examined and re-examined the appellant, this Court is not required to sit over the same and adjudicate upon the correctness of the opinion (s) expressed by the Medical Experts especially when this Court does not have expertise to decide as to whether the opinion (s) of the expert are right or wrong. The relevant extracts of the judgment read as:

"Having heard learned counsel for the parties, we are of the considered view that in the facts and circumstances of the case, no illegality or infirmity can be found in the impugned order passed by the learned Single Judge. The appellant has been examined twice firstly by the Recruitment Medical Board and thereafter by the Appeal Medical Board which has also obtained opinion from the Command Hospital, Eastern Command, Kolkata and thereafter taken a decision in the matter. All medical experts have found the blood pressure and other parameters not to be in consonance with those prescribed.

We are also in agreement with the opinion expressed by the learned Single Judge to the effect that once the medical experts have examined and reexamined the appellant's case thoroughly, this Court is not required to sit over the same and adjudicate upon the correctness of the opinion(s) expressed by the Medical Experts especially when this Court does not have the expertise to decide as to whether the opinion(s) of the Medical Experts are right or wrong. The process of medical examination cannot be converted into an endless process and therefore, inality to the opinion of the Appellate Medical Board has rightly been prescribed.

As far as the reliance placed by learned counsel for the appellant on the order passed by this Court in Letters Patent Appeal No. 635 of 2018 is concerned, it is evident that the said appeal was decided on the conjoint consensus statement made by the parties and therefore, it was an order passed on the basis of the consent given by the parties and does

not form any binding precedent. In that case as the matter had been allowed by the learned Single Judge taking into account the medical reports of an hospital, which was not part of the medical set up of the respondents, and inspite of the negative reports being given by the Recruitment Medical Board as well as the Appeal Medical Board and therefore, the Union of India had made a statement that they will get further examination done from the Army Hospital (Research & Referral) New Delhi, a defence hospital and not a private one, to which the appellant therein had agreed and on the basis of the statements made by the parties with consent, the appeal was disposed of. In such circumstances, the reliance placed by learned counsel for the appellant on the order passed in LPA No. 635 of 2018 is misconceived. In the instant case, there is concurrent opinion given by the Medical Experts of the Recruitment Medical Board as well as the Appeal Medical Board that the appellant is unfit for appointment in Indian Air Force.”

8. In the wake of above discussion and findings, the present petition deserves to be dismissed and accordingly dismissed. The dismissal of present petition would not inhibit the respondent to consider case of the petitioner at subsequent stage.