



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 12.01.2024
Judgment Pronounced on: 18.01.2024

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W.P.(C) 5932/2017

RAJPAL

..... Petitioner

Through: Mr. R.K. Rastogi, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vivek Goyal (CGSPC) with
Mr. Gokul Sharma, Adv. for UOI
with Major Partho Katyayan.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. The petitioner in the present petition under Article 226 of the Constitution of India seeks quashing of the decision of the respondents not to dispatch the petitioner for recruits training, after declaring him 'Unfit' and to direct the respondents to implement the results of the petitioner declared vide IRO-CEE 27 Nov 2016, result of Soldier GD and dispatching him forthwith to 1 STC (Signal Training Centre), Jabalpur.

2. After applying for online recruitment in the Army by IRO, Delhi Cantt. and after receipt of a call letter therefrom, the petitioner qualified in physical test and was declared 'Fit' on 14.10.2016 and found place in the Merit List at S.No.84 on 03.12.2016. Thereafter, though the petitioner was declared fit *vide* dispatch medical examination on 15.02.2016, he



could not be dispatched for 1 STC, Jabalpur since his Police verification from Palwal, Haryana and Mathura, Uttar Pradesh qua his matrix marksheet were not yet received. Awaiting the same, the petitioner got operated on his right ear on 13.05.2017 at Gaba Eye and ENT Hospital, Palwal, whereafter his ears were found to be perfectly all right on 01.06.2017.

3. However, as per the petitioner, when he was again called for re-medical at IRO, Delhi Cantt. before he was scheduled to be dispatched in June, 2017, he was declared 'Unfit' on 05.06.2017 by the Recruiting Medical Officer and sent to Base Hospital wherein an ENT Specialist observed a Scar on his exterior right ear and was sent back to IRO, Delhi Cantt. Once again, the Recruiting Medical Officer at IRO, Delhi Cantt. declared the petitioner 'Unfit'.

4. Based thereon, learned counsel for the petitioner submitted that only a superficial surgery was performed on the petitioner and his ear drum was not operated upon. Furthermore, relying upon a prescription issued by the AIIMS, New Delhi dated 24.06.2017, he submitted that the petitioner was declared 'Fit' thereafter.

5. *Per Contra*, Mr. Vivek Goyal, learned standing counsel for the respondents submitted that despite finding the petitioner 'Fit' in medical examination in 2016, the petitioner could only be dispatched in June, 2017, as there was a delay in Police verification and since as per Recruiting Medical Policy, the medical examination was valid only for 180 days, a fresh medical examination of the petitioner was required. The medical examination conducted on 05.06.2017 by the Recruiting Medical Officer, IRO, Delhi Cantt., found the petitioner 'Unfit' as he was found to



have [i] Periauricular scar right ear (Surgical scar behind right ear) and [ii] Tympanoplasty right ear (Repair of right ear drum). He also submitted that the petitioner was again declared 'Unfit' by the ENT Specialist at the Base Hospital, Delhi Cantt. on 08.06.2017. He further submitted that the medical standards of the Army are at a higher pedestal than those of any routine civilian life and medical fitness given by a civilian hospital which is not aware that it is for the Army cannot be compared with the opinion of Medical Officers of the Army.

6. Learned counsel for the petitioner in rejoinder submitted that as per Integrated HQ of MOD (Army) letter no 76054/DGMS-5A dated 05.01.2015, petitioner ought to have been given a chance to get his condition fixed and reasonable time should have been given to him to get a review done.

7. This Court has heard learned counsel for the parties and perused the documents on records.

8. The facts involved herein disclose that though the petitioner was declared 'Fit' on 15.02.2016 but could not be dispatched for 1 STC, Jabalpur since his Police verification(s) from Palwal and Mathura qua his marksheet(s) were awaited and received only on 27.05.2017. Whereafter, the petitioner was called again for his dispatch re-medical at IRO, Delhi Cantt. before his scheduled dispatch in June, 2017. Further, it is admitted position that in the interregnum, the petitioner was operated upon for the ailment of his right ear on 13.05.2017 at Gaba Eye and ENT Hospital, Palwal. This clearly shows that there was a significant change in situation/ position of the petitioner. Even otherwise, as per the Recruitment Medical Policy, the period of medical examination is valid



only for 180 days, after which fresh medical test is to be conducted for the next dispatch. Thus, in view of the aforesaid two conditions, the petitioner cannot derive any benefit of his being declared 'Fit' at an earlier stage.

9. Coupled with the aforesaid, it is also further *admitted* that the petitioner was found 'Unfit', *firstly* on 05.06.2017 by the Recruiting Medical Officer, IRO, Delhi Cantt. and referred to the Base Hospital, Delhi Cantt. for medical review due to his having [i] Periauricular scar right ear (Surgical scar behind right ear) and [ii] Tympanoplasty right ear (Repair of right ear drum) and *secondly* once again on 08.06.2017 by the ENT Specialist at Base Hospital, Delhi Cantt. as well.

10. Thus, the petitioner was declared 'Unfit' at two stages by two different sets of Recruiting Medical Officers, which, in the opinion of this Court, cannot be questioned or doubted at any stage. The said Recruiting Medical Officers are the best judges to ascertain and to declare a candidate, like the petitioner, is indeed 'Fit' or 'Unfit'. This Court is not competent to give any such finding, especially, as they are medical opinions rendered by Specialist/s in their respective fields. In fact, as per settled law, this Court cannot adjudicate upon them. In the present circumstances, this Court has no plausible reason to doubt either of the above, more so, whence the petitioner himself has not attributed any *mala-fide*, bias or such to them. Therefore, the petitioner has been declared 'Unfit' as many as on two occasions.

11. Lastly, considering the facts and circumstances involved and as the petitioner had applied for the online recruitment in the Army by IRO, Delhi Cantt., in the considered opinion of this Court, the rigours and



requirements of the same, particularly in the Armed Forces, are on a completely different pedestal and ought not to be compared with the lifestyle of a civilian. As such, the Army Medical Standards are not the same as the Civil Medical Standards and cannot be equated or compared with each other. In view thereof, the medical opinion by the AIIMS, New Delhi cannot be applicable to the facts herein and cannot come to the aid of the petitioner. Even otherwise, the petitioner had merely been declared 'Fit' for routine work, which, as per above, is different from those of the Army Medical Standards herein.

12. Interestingly, though the petitioner applied for online recruitment in the Army by IRO, Delhi Cantt. in 2016, he had not applied for the same anytime since then even once (as informed during the course of arguments). Though, it is of not much relevance, however, it certainly raises doubt in the mind of this Court about the petitioner being 'Fit'.

13. As such, this Court finds that there is no reason for either allowing the present petition or to send the petitioner for review medical examination, especially after 'post-surgery'. In view of the afore-stated discussion and reasons enumerated hereinabove, this Court finds no ground in the present writ petition.

14. Accordingly, the petition is dismissed, leaving the parties to bear their own costs.

(SAURABH BANERJEE)
JUDGE

(V. KAMESWAR RAO)
JUDGE

JANUARY 18, 2024/rr