

Court No. - 29

Case :- SPECIAL APPEAL No. - 1076 of 2024

Appellant :- Shivansh Singh

Respondent :- Union Of India And 3 Others

Counsel for Appellant :- Amal Darsingh

Counsel for Respondent :- A.S.G.I., Prem Narayan Rai

Hon'ble Vivek Kumar Birla, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

1. Heard Sri Amal Darsingh, learned counsel for the appellant and Sri Prem Narayan Rai, learned counsel appearing for respondent nos.1 to 3.
2. The instant special appeal is directed against the judgment and order dated 12.11.2024 passed in Writ-A No.15441 of 2024, whereby the writ petition has been dismissed.
3. The writ petition had been filed by the petitioner-appellant, seeking a direction to the concerned respondent-authority to constitute a Medical Board for the medical examination of the petitioner, who has been declared unfit by the respondent-authority during the recruitment of LUC_UTT_VAR_AVGD_2024_121906.
4. The brief facts of the present case are that the petitioner-appellant had applied for the post of Agni Veer (General Duty) in the Indian Army and after being declared successful in the preliminary written examination as well as physical test, he was called for medical test at Varanasi in which, he was declared unfit, as he is suffering from disability of *Onychomycosis Specified right index finger*. Thereafter, the petitioner was referred to the Military Hospital, Prayagraj for review in which, he was also declared unfit. Then, the petitioner approached respondent no.4, who is Head of Department and Assistant Professor, PG Department of Dermatology, Venereology & Leprosy, Moti Lal Nehru Medical College,

Prayagraj for his medical test. According to the petitioner, respondent no.4 issued a certificate to him, opining that *Onychomycosis* is a non-communicable disease and is curable.

5. The principal ground on which the petitioner-appellant had approached the writ court, seeking constitution of a medical board, was based on a medical examination report dated 10.09.2024 given by respondent no.4.

6. In order to verify the status of the report, a personal affidavit of the said respondent no.4 was called for by learned Single Judge and the said respondent also appeared personally before the Court on 12.11.2024.

7. On the same date, instructions were produced by counsel for the respondent-authorities, indicating therein that the petitioner-appellant had been medically examined by the doctors of the Army and he was found unfit for the disability of '**Onychomycosis Specified right index finger**'. Thereafter, petitioner was reviewed by Senior Medical Officer (SRMO) wherein the disability of '**Onychomycosis**' was confirmed by the SRMO. On being found 'Unfit' by two separate doctors (MO & SRMO), the petitioner was further referred to Military Hospital, Prayagraj for medical review test by a specialist doctor for the said disability. The specialist doctor at Military Hospital, Prayagraj also opined and declared the petitioner as unfit for '**Onychomycosis Specified right index finger**'.

8. The affidavit filed by respondent no.4 and the instructions produced by counsel for the respondent-authorities were examined by learned Single Judge and based on the aforesaid, following observations were made:

"4. In the affidavit, it is stated by respondent no. 4 that he has not conducted the medical examination of the petitioner regarding the recommendation of his appointment in any provision of law and only attended the petitioner in general O.P.D. and given his opinion inadvertently without any wilful intention. He has also tendered his unconditional apology, which is accepted.

5. This writ petition has been filed for the following relief:-

" (i) Issue a writ order or direction in the nature of mandamus directing the respondent no. 2 to constitute the medical board for the medical of the petitioner, who has been declared unfit by the respondent no.3 during the recruitment of the LUC-UTT-VAR-AVGD-2024-121906."

6. The basis of filing the present petition is a report dated 10.09.2024 given by respondent no.4. Respondent no.4 has admitted this fact in his affidavit that he has not conducted the medical examination of the petitioner regarding the recommendation of his appointment in any provision of law and only attended the petitioner in general O.P.D. and given his opinion inadvertently without any wilful intention. He has also tendered his unconditional apology which is accepted by the Court.

7. As per the instruction dated 26th October, 2024, petitioner was medically examined by the doctors of the Army and he was found unfit for the disability of "Onychomycosis Specified right index finger". Thereafter, petitioner was reviewed by Senior Medical Officer (SRMO) wherein the disability of "Onychomycosis" was confirmed by the SRMO. On being found "Unfit" by two separate doctors (MO & SRMO), the petitioner was further referred to Military Hospital, Prayagraj for medical Review test by a specialist doctor for the said disability. The specialist doctor at Military Hospital, Prayagraj also opined and declared the petitioner as unfit for "Onychomycosis Specified right index finger".

8. Once the petitioner was found medically unfit by the Medical Officer of the Army and the same was also confirmed by the Senior Medical Officer. Specialist doctor at Military Hospital, Prayagraj also opined and declared him unfit for "Onychomycosis Specified right index finger". This Court is also of the view that no interference is required to the expert opinion given by the doctors and no fresh medical board is required for medical examination of the petitioner in light of facts mentioned here."

9. It is not disputed that the petitioner-appellant had been declared medically unfit by the Medical Board constituted for the purpose of recruitment and thereafter, the petitioner has sought a direction for constitution of fresh medical board on the basis of medical examination report submitted by respondent no.4 subsequently, who is stated to have examined the petitioner.

10. Learned Single Judge has taken note of the instructions produced by counsel for the respondent-authorities, which demonstrated that the petitioner had been medically examined by the medical board and was found unfit, and thereafter, in a review, the disability was confirmed and on a further reference, the specialist doctor at the Military Hospital also opined that the petitioner was unfit.

11. The law with regard to the scope of interference in matters relating to the assessment of fitness by the medical board constituted for the purpose of recruitment under the relevant statutory rules, in exercise of powers under writ jurisdiction, is fairly well settled. In this regard, we may place reliance upon the observations made in **Md. Arshad Khan General (Male) Category, (Roll No.00186474), Registration No.10209488956 vs. State of UP and others**¹, wherein it was observed as follows:

"6. The scope of interference in matters relating to assessment of fitness by a Medical Board constituted under the statutory rules in exercise of powers under writ jurisdiction, in our opinion, would be extremely limited.

7. The Courts have, time and again, emphasised the need for caution when candidates seek to assail the correctness of the findings of a Medical Board constituted under a recruitment process adopted by the State authorities.

8. We may observe that although the powers of the Court under Article 226 are wide enough to issue directions in appropriate cases but such powers are required to be wielded with caution and circumspection. Matters relating to the medical evaluation of candidates in a recruitment process involve expert determination and the Court should exercise caution in supplanting the process adopted by the recruiting agency and substituting it by a Court mandated further medical evaluation.

9. Any such exercise in acceding to requests of candidates who are not found to be medically fit for reassessment on the basis of procedures other than those envisaged by the recruiting agency under the relevant rules would result in the recruitment process being derailed, which would ordinarily be not permissible."

12. A similar view had also been taken in another judgment of this Court in **Vivek Kumar S/o Mool Chandra vs. State of UP & Others**², wherein it was held that matters relating to medical evaluation of candidates in a recruitment process involve expert determination and it may not be desirable to supplant the procedure prescribed therefor as laid

1 (2020) 8 ADJ 235

2 (2020) 140 ALR 330

down under the relevant recruitment rules and taking any other view may have the effect of derailing the recruitment process.

13. In the present case, where recruitment process has been carried out as per the prescribed procedure whereunder the medical fitness of candidates has been tested by a duly constituted Medical Board, the report of the Medical Board is not to be normally interfered with, and that too, solely on the basis of a claim sought to be set up by the appellant-petitioner on the basis of some subsequent report procured by him from another medical practitioner.

14. It is no where the case of the petitioner that the decision taken by the Medical Board was arbitrary or not in accordance with the procedure prescribed for the recruitment in question.

15. We are of the view that a claim sought to be set up on the basis of a subsequent medical report produced by the candidate would not have the effect of overriding or setting at naught the expert opinion of the Medical Board set up as per procedure in a recruitment process.

16. The impugned judgment passed by learned Single Judge in Writ-A No.15441 of 2024 is based on appreciation of the facts and the material on record, and after recording cogent reasons. We do not see any reason to take a different view.

17. The appeal lacks merit and is, accordingly, **dismissed**.

Order Date :- 16.12.2024
Radhika-RKK/-