
(2013) 05 P&H CK 0242

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 23294 of 2011

Balwinder Singh

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: May 31, 2013

Citation: (2013) 4 SCT 243

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: G.S. Brar, for the Appellant; Hitesh Kaplish, Advocate for the Union of India, for the Respondent

Judgement

Tejinder Singh Dhindsa, J.

The petitioner, who had applied for the post of Constable (General Duty) in the Indo Tibetan Border Police Force (ITBPF), has filed the present writ petition impugning the action of respondent-authorities in having declared him medically unfit on the ground of low distance vision, Annexure P4. Brief facts that would require notice are that the respondents advertised posts for recruitment of Constable (GD) in the ITBPF through the Staff Selection Commission. The petitioner, who belongs to the SC category being eligible for the post, applied for the post in question within the stipulated time frame. The undisputed facts are that the petitioner was permitted to participate in the selection process which comprised of a physical test (PST/PET) as also a written examination. The petitioner was declared qualified and was called upon to appear for a detailed medical examination on 6.7.2011 at TPT BN. ITBPF (Behlana Camp) near Airport, Chandigarh, UT. The petitioner duly appeared for the detailed medical examination on 6.7.2011 but in such medical test, he was rejected on account of low distance vision (right eye 6/9 and left eye 6/12). A copy of the impugned rejection slip stands appended as Annexure P4 along with the petition. It has further been pleaded that immediately thereafter the petitioner had got himself medically examined at Civil Hospital, Fazilka wherein his vision had been found to be normal and the Medical Certificate dated 7.9.2011 in this regard

issued by the Senior Medical Officer, Civil Hospital, Fazilka has been appended as Annexure P5. Placing reliance upon the same, the petitioner sought a review medical examination and in this regard, letter dated 2.11.2011 was issued for such re-medical examination to be conducted on 17.11.2011.

2. Learned counsel for the petitioner has argued that the petitioner had appeared for the re-medical examination on 17.11.2011 but till date, no specific order as regards his medical status has been conveyed to him. Learned counsel submits that the petitioner was orally informed that even in the review medical examination, he has been declared medically unfit on account of low distance vision. Learned counsel submits that the petitioner having negotiated the entire selection process for recruitment to the post of Constable (GD) in the ITBPF successfully, the respondent-authorities are acting in an arbitrary manner to hold him medically unfit. To substantiate such assertion, learned counsel for the petitioner apart from referring to Medical Certificate dated 7.9.2011 issued by the Senior Medical Officer, Civil Hospital, Fazilka has also referred to Annexures P11 and P12 issued by the Department of Ophthalmology, Government Medical College, Chandigarh and Post Graduate Institute of Medical Education and Research (PGI), Chandigarh respectively wherein the petitioner has been certified to be having normal vision. Learned counsel has further adverted to the pleadings contained in CM No. 8720 of 2013 duly supported by an affidavit of the petitioner wherein it has been categorically averred that the petitioner had applied for the post of Constable in Assam Rifles in a subsequent recruitment process and in which he had been medically examined and declared medically fit as per Annexure P9. Accordingly, it has been argued that there can be no justifiable basis for denying to the petitioner appointment to the post of Constable (GD) in the ITBPF on the ground of terming him to be medically unfit.

3. Learned counsel for the respondents/Union of India does not dispute the fact that the petitioner had otherwise been declared successful in the selection process. The fact of the petitioner having been declared medically fit by the same very recruiting Agency in a subsequent selection process has also been conceded.

4. Under such glaring facts, the rejection of the petitioner for the post of Constable (GD) with ITBPF as per rejection at Annexure P4 cannot sustain. The respondent-authorities have acted arbitrarily, without any justifiable basis and have violated the fundamental right of the petitioner as regards equality in matters of public employment. The callous attempt of the respondents would be reflected from even the pleadings on record. In a joint reply filed by the Dy. Inspector General, N.W. Frontier Hqr., ITB Police Force, Chandigarh (U.T.), it has been averred that the petitioner had appeared in the re-medical examination on 17.11.2011 at Composite Hospital, ITBPF Chandigarh but had been found medically unfit. On the other hand, an affidavit dated 28.9.2012/4.10.2012 of the Deputy Regional Director, North Western Regional Office, Sector 9, Chandigarh - respondent No. 2 has also been placed on record wherein it has been deposed that the petitioner did not even appear in the review medical examination on 17.11.2011 and as such, was not considered for final selection. The only inference that can be drawn by this

Court on account of such diametrically conflicting stand is that the petitioner is being denied appointment to the post in question on account of certain extraneous considerations.

5. Accordingly, the present writ petition is allowed. The rejection of the petitioner on account of low distance vision at Annexure P4 is set aside. The respondents are directed to consider the petitioner for appointment to the post of Constable (GD) strictly as per merit in which the petitioner had duly participated and had been declared successful. It is further directed that in the eventuality of the petitioner falling within the merit under the SC category, the appointment letter in favour of the petitioner shall be issued forthwith. Petition allowed in the aforesaid terms.