

(2016) 11 DEL CK 0020

DELHI HIGH COURT

Case No: Rev. Pet. 68 of 2016, C.M. Appl. 4290 of 2016 in W.P. (C) 10412 of 2015

Anupriya Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Nov. 10, 2016**Citation:** (2016) 10 ADDelhi 281**Hon'ble Judges:** Mr. S. Ravindra Bhat and Ms. Deepa Sharma, JJ.**Bench:** Division Bench**Advocate:** Sh. Ankur Chhibber with Sh. Manu Padalia, Advocates, for the Petitioner; Ms. Bharathi Raju, CGSC, for the Respondent Nos. 1 to 4**Final Decision:** Dismissed

Judgement

Mr. S. Ravindra Bhat, J. - Undisputed Facts:

The petitioner is an NCC entry applicant and applied for the 38th Short Service Commission course of the Indian Army. Four vacancies were notified for Women NCC entry. She qualified for the SSB and underwent extensive medical examination in which she was declared medically fit. Her name appeared fifth on the final merit list. Miss Rajsri Ramakrishnan, fifth respondent in this case was first in the merit list but her medical status was shown as awaited. The Special Medical Board (SMB) at Bangalore had found her medically unfit as she had undergone laser surgery for correction of refractive index and the axial length was found to be beyond permissible limits. The Appeal Medical Board at Pune also found her to be medically unfit. The Review Medical Board ("RMB") declared her to be fit. She was issued joining instructions on 07.10.2015 after the commencement of the course on 05.10.2015.

2. The petitioner in the original writ petition, had alleged that the fifth respondent had been given undue favour even though the competent medical authorities had found her medically unfit. The petitioner claimed that the medical records were tampered and the opinion of Major General J.K.S. Parihar who had found the

respondent to be unfit was deliberately removed from the file.

3. To prove the unfairness of the procedure and tampering of medical records, the petitioners made the following submissions:

i) Major General J.K.S. Parihar found the respondent to be medically unfit but his opinion was removed from the file and the entire medical procedure was delayed so that he could be transferred and his opinion could be substituted with that of Col. Santosh Kumar who was not only junior to Major General J.K.S. Parihar but was also pressurised by the RMB to declare the candidate fit. However, the petitioner produced no evidence which indicates that Major General J.K.S. Parihar had declared the candidate to be unfit or that his opinion had been removed from the file.

ii) The next submission of the petitioners was that the medical condition of the candidate relating to axial length of the eye being beyond permissible limits was such that it could not have changed with time and such a medical condition is static in nature. Hence, the RMB could not have found her to be fit once she had been found unfit by two medical Boards. The contrary decision of the RMB shows that the procedure was not followed and the candidate was given unfair advantage.

iii) The course commenced on 05.10.2015 and yet the respondents kept a seat vacant for the candidate even when they did not know the outcome of the proceedings of the RMB. According to the petitioners the respondents should have issued joining instructions to the next wait-listed candidate since the course had already begun.

4. This Court on 04.12.2015 by its order dismissed the petition; that order is under review in the present case. After perusing the entire medical record of the fifth respondent, this Court had dismissed the original petition holding firstly that the policy itself allowed for review of the appellate process and hence, the special procedure adopted was not unfair in the given circumstances. No undue favour was shown to the fifth respondent by allowing her to join the course after it had commenced since there existed a policy of 11.07.2006 of the army which specifically provided that if there is a delay in finalisation of medical/review of medical board proceedings, extension can be granted in such specific cases.

5. It is contended that the materials on record reveal that the successful candidate was in fact examined later than the date on which the certificate of fitness was issued and that this renders the Army's assertions suspect. Counsel for the petitioner argues that the original documents produced at the time of giving the order were not shown to the petitioner or her counsel. The petitioner claims that she examined the documents only later (on 13.01.2016) when she filed an application to inspect the documents. This resulted in a delay of 31 days in filing the review petition.

Arguments of the petitioner:

6. The Petitioner's counsel argues that the original medical records indicate that the proceedings of the Review Medical Board have been tampered with. This is sought to be established by bringing out two flaws in the chronology of events suggested by the medical records which according to the petitioner points strongly towards tampering of such documents:

a) The medical up-gradation of the fifth respondent from medically unfit to medically fit was done by Col. S.K. Mishra, Sr. Adviser Ophthalmology on 15.09.2015 whereas the Board approved the Medical Board proceedings on 06.09.2015. Hence, the Review Medical Board comprising of one Lieutenant General and two Major Generals who were not specialists in the field could not have approved the Board proceedings on 06.09.2015. According to the petitioner, while the report of Major General J.K.S. Parihar had found the fifth respondent medically unfit, however, his opinion was removed from the file and the later opinion, declaring the fifth respondent to be fit was taken on record, rendering the actions of the army suspect.

b) The second flaw in the chronology arises from an RTI application filed by the petitioner to the office of DGAFMS seeking details as to the date on which the Board proceedings of the Review Medical Board were submitted by R&R to the office of DGAFMS. In its response to this application the office of the DGAFMS stated that the proceedings were submitted on 11.09.2015 and were received by the office on 18.09.2015. The petitioner argues that if the medical up-gradation was done only on 15.09.2015 then the proceedings could not have been submitted to the office of the DGAFMS on 11.09.2015. They claim that the proceedings were approved on 06.09.2015 and were submitted on 11.09.2015 and later the documents were tampered with and medical up-gradation by the specialist on 15.09.2015 was added.

7. The respondents refute the submissions of the petitioner, especially based on the two facts indicated by her as warranting the conclusion that the medical records were tampered:

i) With respect to the allegation that the medical proceedings were approved by the RMB on 06.09.2015 whereas the medical up-gradation happened on 15.09.2015, the respondents claim that this is factually incorrect. The respondents claim that while the final assessment was done on 15.09.2015, the Board for the candidate assembled only on 06.09.2015 and the proceedings were not approved on 06.09.2015.

ii) With respect to the second allegation of the petitioners, the respondents argue that this again is factually incorrect as the proceedings were submitted to the DGAFMS on 17.09.2015 and not 11.09.2015. The petitioner has based her arguments on the reply to the RTI Application dated 18.11.2015. However, the respondents submit that there was a typographical error in that response and an amendment letter dated 31.03.2016 was sent to the RTI applicant correcting this error (from "11.09.2015" to "17.09.2015").

8. The respondents' submissions with regard to the correct sequence of events is as follows:

i) The fifth respondent was found unfit by the Special Medical Board at Bangalore on 29.06.2015.

ii) The Appeal Medical Board, Pune found her unfit on 23.07.2015.

iii) The matter was referred to the Review Medical Board (RMB).

iv) The RMB first assembled on 04.09.2015 and the opinion of Consultant (Ophthalmology) at Army Hospital R&R was placed before the Board. It was observed that the findings in the right eye were within acceptable limits and there was marginal variation of findings in the left eye. In order to rule out the possibility of any system based variations the Board took the decision to re-examine the candidate.

v) The candidate was re-examined on 15.09.2015 by the Board comprising of DGHS (AF) and Senior Consultants in Medicine and Surgery (Col. S.K. Mishra and Col. Santosh Kumar) in which she was declared medically fit.

vi) The Board for the fifth respondent assembled on 16.09.2015 and declared the candidate medically fit. The proceedings were not approved by the RMB on 06.09.2015 as asserted by the petitioner.

vii) The Board proceedings were submitted to the office of DGAFMS on 17.09.2015.

viii) It was received by the office on 18.09.2015.

ix) The documents were finally approved by the DGAFMS on 01.10.2015.

The respondents, therefore, argue that the chronology of events provided by the petitioner is incorrect and nothing in the correct chronology of events could lead to the conclusion that the documents were tampered.

9. As is evident, this case revolves around a question of fact. Two facts in the present case are disputed. To reach the correct conclusion, this Court has referred to the original medical records of the Army Hospital, the proceedings of the RMB, the letter submitted to the office of the DGAFMS and other documents relating to the medical examination of the fifth respondent produced during the course of the trial. An overall consideration of these documents reveals the following, with respect to the two questions of fact which are in dispute here:

i) The RMB declared the candidate to be fit on 16.09.2015 and not on 06.09.2015 as claimed by the petitioner. This is clearly seen from the Medical Examination Report of the candidate submitted by the respondents.

ii) The proceedings of the RMB were submitted to the office of the DGAFMS on 17.09.2016 after conclusion of the RMB proceedings on 16.09.2015. This can be seen

from the letter enclosing the RMB proceedings submitted to the Office of DGAFMS which contains both the date on which the RMB proceedings took place as well as the date on which the same were submitted to the Office of DGAFMS. Hence, the proceedings were submitted to the office of the DGAFMS only after medical up-gradation and not before it, as claimed by the petitioner.

10. Thus, this Court holds that the medical up-gradation and RMB proceedings are not chronologically inconsistent. The sequence of events given by the respondents in their counter-reply (as outlined earlier) as well as the records produced during the hearing, including copies of the record sent outside Delhi, has been found to be correct. There is no indication that the records were tampered with to give unfair advantage to the fifth respondent. This court is of opinion that there is no logic in alleging that the respondents suborned themselves and falsified the records or presented facts contrary to the record. Furthermore, the fifth respondent had ranked first on merit, in the NCC category; she also satisfied the relevant medical standards and was duly selected. Whilst the review petitioners' angst at being left out can be to some extent understood, that cannot mean that the fifth respondent's merit and selection should be undermined. During the hearing, the review petitioner expressed her anguish at not being selected and also stated that this was her last chance: she was selected on earlier occasions as well; and that having regard to these facts, she may be considered in future vacancies. This court is of opinion that if such representation is made to the respondents, they may consider it in accordance with their policies.

11. The review petition is, therefore, dismissed for the above reasons.