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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 15th October, 2009

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W.P.(C) 9996/2009

SATENDRA SINGH

..... Petitioner

Through : Mr. Arvind Nayar, Advocate

versus

UOI & ORS.

..... Respondents

Through :Mr. Gaurav Liberhan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest?No

ORDER

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15.10.2009

PRADEEP NANDRAJOG, J. (Oral)

1. Heard learned counsel for the parties.
2. A short issue arises for consideration and hence the writ petition is being disposed of at this stage itself as consented to by learned counsel for the parties.
3. The petitioner had applied for the post of 'Ground Duty Officer' under the Indian Air Force in the year 2008 and successfully cleared the written examination and as per the rules applicable was subjected to a fitness test and was certified fit by the Medical Board of the Indian Air Force resulting in the petitioner being empanelled in the list of successful candidates.

4. Unfortunately for him, the merit position of the petitioner being low and the vacancies notified for being filled up being exhausted, the petitioner got no benefit of his success in the year 2008.

5. In the year 2009, the petitioner undertook the process of selection in response to the public notice issued by the Indian Air Force inviting applications from eligible candidates to fill up the notified vacancies to the post of Ground Duty Officer in the year 2009.

6. Having successfully cleared the written test, the appellant was required to undertake medical fitness and unfortunately for him was declared medically unfit. The finding returned was that the petitioner suffers from a congenital defect; being, ATRIAL SEPTAL DEFECT (AST).

7. To put it in a layman's language, a hole in the Septum that separates the two upper chambers (ATRIA) of the heart was detected.

8. Being foxed by the fact that in the year 2008 no such defect was detected and in the year 2009 such a defect was detected, which according to the petitioner, could not have happened had it been a congenital birth defect.

9. To satisfy himself, the petitioner got himself examined at a Government Hospital i.e. DDU Hospital, New Delhi and

obtained a certification from the Medical Officer of the said hospital certifying the petitioner had no congenital defect.

10. Annexing the said opinion and the relevant material on which the opinion was given by the doctors at DDU Hospital as Annexure P-6, instant petition was filed praying that directions be issued to the respondents to declare the petitioner fit for appointment and the petitioner be permitted to participate in the 126 GDOC training course for the post of Ground Duty Officer (GD Officer).

11. It is urged at the hearing of the writ petition by Sh. Arvind Nayar, learned counsel for the petitioner, that it cannot happen that within one year the petitioner would develop the cardiac defect which is alleged by the respondents.

12. Counsel urges that the medical infirmity alleged against the petitioner, if at all, has to be congenital and there is just no way the same could not be detected for 25 years i.e. the age of the petitioner.

13. We find from the record of the respondents and as per counter affidavit filed, that the Atrial Septal Defect was detected at the medical examination of the petitioner conducted on 13.05.2009.

14. The petitioner, as per rules applicable, sought Review Medical Board to be constituted which was convened and the

Review Medical Board, vide its report dated 20.07.2009, reiterated the fact of the petitioner suffering from the ASD.

15. As per the respondents, three cardiologists of the Armed Forces Medical Services conducted three repeated tests upon the petitioner.

16. We have been shown medical literature on the issue; being *Harisson's: Principles of Internal Medicine*; 17th Edition.

At page 1459 whereof it has been noted as under:

"Patients with atrial septal defect are usually asymptomatic in early life, although there may be some physical under development and an increased tendency for respiratory infections ; cardiorespiratory symptoms occur in many older patients. Beyond the fourth decade, a significant number of patients develop artial arrhythmias, pulmonary arterial hypertension, bidirectional and then right-to -left shunting of blood, and cardiac failure. Patients exposed to the chronic environmental hypoxia of high altitude tend to develop pulmonary hypertension at younger ages. In some older patients, left-to-right shunting across the defect increases as progressive systematic hypertension and / or coronary artery disease result in reduced compliance of the left ventricle."

17. At page 1460 it has been further opined as under:-

"ECHOCARDIOGRAM *Echocardiography reveals pulmonary arterial and RV and RA dilatation with abnormal (paradoxical) ventricular septal motion in the presence of a significant right heart volume overload. The atrial septal disease may be visualized directly by two -dimensional imaging, colour flow imaging, or echocontrast. In most institutions, two-dimensional*

echocardiography plus colour Doppler flow examination has supplanted cardiac catheterization. Transesophageal echocardiography is indicated if the transthoracic echocardiogram is ambiguous, which is often the case with sinus venosus defects, or during catheter device closure. Cardiac catheterization is performed if inconsistencies exist in the clinical data, if significant pulmonary hypertension or associated malformations are suspected, or if coronary artery disease is possibility”.

18. It is apparent that with the advent of science and technology the procedure of detecting heart ailments has been refined as a result, defects which hitherto fore could not be detected, have become capable of being detected.

19. The multifaceted procedure of Echocardiogram envisaged as per the medical literature noted hereinabove in para-17 above shows that when two-dimensional imaging, colour flow imaging or echocontrast is done with colour doppler flow examination, best results are obtained.

20. The record of the respondents shows that the petitioner was subjected to the said procedure.

21. The medical record produced by the petitioner pertaining to the DDU Hospital shows that the cardiologists in the said hospital subjected the petitioner to a simple ECHO test.

22. On the issue as to how come the said defect was not detected in the year 2008, suffice would it be to state that in view of the medical literature noted in para-16 above, as the

patient ages the defect become more prominent.

23. Exercising jurisdiction under Article 226 of the Constitution of India, this court is not to sit as a superior medical expert expressing opinions over the opinions rendered by the experts in the field.

24. Whenever an opinion of an expert pertaining to a subject of specialized knowledge is brought before the court, the domain and the jurisdiction of the court is limited to firstly consider whether the opinion relates to a specialized subject. Secondly, whether the person giving the opinion is an expert in the field and lastly, whether there is accepted literature on the material which is accepted by the experts in the field and that the expert opinion is based thereon.

25. A learned single Judge of this court, in the decision reported as 2000 IV AD (Delhi) 446 Sh. Umesh Chakravarti vs. UOI & Ors. held that exercising jurisdiction under Section 226 of the Constitution of India, a court would not comparatively evaluate opinion given by a Medical Board constituted by a appointing authority with reference to opinions of doctors obtained from hospitals elsewhere.

26. Under the circumstances, within the confines of our jurisdiction under Article 226 of the Constitution of India, noting the aforesaid facts and the medical literature, we

express our inability to grant relief to the petitioner as prayed for.

28. The writ petition is dismissed with no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

OCTOBER 15, 2009
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