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

+ **W.P.(C).10624/2015**

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Judgment dated 20th November, 2015

VIKAS MATHUR

..... Petitioner

Through : Mr. Pradeep Dahiya, Advocate

versus

UNION OF INDIA & ANR

..... Respondents

Through : Ms. Amita Prakash with Mr. Vidhu
Mohan, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V.P. VAISH

G.S.SISTANI, J (ORAL)

CM APPL 17196/2015

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

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3. Aggrieved by the order dated 29.05.2015 passed by the Central Administrative Tribunal(hereinafter referred to for short as 'the Tribunal') by which OA filed by the petitioner was dismissed, the present writ petition.
4. Learned counsel for the petitioner submits that the petitioner pursuant to an advertisement had applied for the post of Security Assistant(Executive) in the Intelligence Bureau. He cleared the written examination, but could not pass the medical fitness examination. The petitioner was rejected based on the opinion of the Civil Surgeon, Dr. Ram Manohar Lohia Hospital dated 06.09.2011. He was diagnosed as suffering from 'defective colour vision.'

The petitioner made a representation on 17.10.2011 against the aforesaid decision declaring him unfit which was rejected by the respondents by a memorandum dated 25.10.2011. The petitioner was informed that the medical certificate attached by him did not contain the note by the concerned medical practitioner that the practitioner had full knowledge of the fact that the candidate had already been rejected as 'unfit' for service by the CMO, Dr. Ram Manohar Lohia Hospital on account of colour vision defect. On 05.11.2011, the petitioner made another representation enclosing certificates of two eye physicians from Angra Eye Institute, Delhi and Satyavadi Harish Chandra Hospital, Narela, Delhi. In November, 2011, the petitioner appeared before the Medical Board which was constituted at his request, but he was again found unfit by an order dated 09.02.2012, which led to the filing of the OA.

5. The learned counsel for the petitioner has strenuously urged before this Court that the petitioner had submitted two opinions procured by him from Angra Eye Institute, Delhi and Satyavadi Harish Chandra Hospital, Narela, Delhi declaring him medically fit and thus, the opinion of the Medical Board by an order dated 09.02.2012 and the opinion of the CMO, Dr. Ram Manohar Lohia Hospital dated 06.09.2011 should not be relied upon, and another Medical Board should be constituted to assess the case of the petitioner. The second and only other ground raised before this Court is that the opinion of the Medical Board cannot be relied upon as once the CMO had declared the petitioner to be unfit, the Medical Board which comprised of doctors junior to the CMO cannot be expected to give an opinion contrary to the opinion given by the CMO.
6. We have heard the learned counsel for the parties. The basic facts which have been noticed hereinabove are not in dispute.

7. We find no infirmity in the orders passed by the Tribunal. The submission of learned counsel for the petitioner that the Medical Board comprised of doctors who were junior to the CMO who had conducted the first examination and declared the petitioner unfit would be biased, in our view, has no force for the reason, firstly, that the petitioner did not protest at the time when the Medical Board was constituted and allowed himself to be examined by the Board and, secondly, in the absence of any specific bias alleged, we see no reason as to why the Medical Board comprising of three eminent doctors would not take an independent stand. The prayer of the petitioner for constituting yet another Medical Board can also not be accepted as, in our view, two opportunities are sufficient and we see no reason to undermine or doubt the integrity of the doctors who have considered the petitioner to be unfit.
8. The Tribunal, in our view, has correctly placed reliance on the decision rendered by the Supreme Court of India in the case of *Secretary, Ministry of Defence & Ors. v. Damodaran A.V.(Dead) through LRs*, 2009(13) SCR 416, wherein it was held that the Medical Board is an expert body and its opinion is entitled to be given the due weightage while examining the medical issues. In this case, the petitioner was examined before the CMO, Dr. Ram Manohar Lohia Hospital on 06.09.2011 and he was diagnosed as suffering from defective colour vision by memorandum dated 19.09.2011 on account of which he was declared to be unfit on medical grounds. The representation of the petitioner against the aforesaid decision was rejected. The petitioner thereafter made yet another representation enclosing certificates of two eye physicians. The matter was thereafter placed before the appellate medical board, who again found him to be unfit. We find no ground to interfere.
9. The writ petition stands dismissed.

CM.APPL 27195/2015(stay)

10. The application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

V.P. VAISH, J,

NOVEMBER 20, 2015

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