

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16212 of 2015

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1. Basant Raj (aged about 17 1/2 years) son of Aditya Kumar, under the guardianship of his father and well wisher, next friend, Aditya Kumar Resident of Mohalla- Jay Prakash Nagar, Ward No.21, P.O.+P.S. & District- Khagaria.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Defence at New Delhi
2. The Chairman, Union Public Service Commission, New Delhi.
3. The Director General of Arm Force Medical Service, New Delhi.
4. The Commandant Military Hospital Allahabad.
5. The Commandant Military Base Hospital New Delhi
6. The Director General of Rtg. (NDA Entry) AG's Branch, West Block-III R.K. Puram, New Delhi.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Mukesh Kumar
For the Respondent/s :	Mr. S.D Sanjay (Addl. Soc. Gen.)
	Mr. Arvind Kumar Tewary

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 08-02-2016

Heard learned counsels for the parties.

There is a limitation upon a Court of Law, especially a Writ Court, by reviewing the administrative decisions, which are based on scientific materials.

Petitioner was one of the candidates, who was successful in the written examination as well as the physical and interview, conducted by U.P.S.C. for a course in National Defence Academy. While undergoing medical checkup, the first medical board opined that the petitioner suffers from what is technically known as white coat hyper-tension.



Petitioner was duly informed of the opinion of the medical board and was given an opportunity to appeal against the said decision. Petitioner did appeal, subjected himself to another medical opinion before another set of doctors. The second medical board also came to a similar kind of opinion. Thereafter, petitioner prayed for a review. The prayer for review has been rejected by virtue of Annexure – 4, dated 16th of July, 2015. The writ has now been filed not only for quashing Annexure – 4, but also direct the respondents to accept the opinion of All India Institute of Medical Sciences and permit the petitioner to join the National Defence Academy if not direct the respondents to hold yet another medical board.

The Union of India has categorically supported the decision, contained in Annexure-4, on the ground that there is no provision for any review. Every candidate is given an opportunity of appeal, which this petitioner has already availed of and with two consistent opinion of two different medical boards and in absence of provision for review after the opinion of the second medical board, which is technically an appeal against the first medical board, there is nothing wrong with the order of rejection, contained in Annexure-4.

In absence of any provision for a review, the Court will not direct holding of a review as a precedent. To that extent, the prayer of the petitioner as well as interference with Annexure – 4 is negated.

The Court could have put some weightage to the opinion of All India Institute of Medical Sciences, if it was of affirmative view that the opinions of the two medical boards were not medically sound or correct. That does not seem to be borne out because the endorsement on page 17 of the writ application, the word “most likely” has been used against medical opinion of “white coat hypertension”. In other words even the doctors of All India Institute of Medical Sciences were not very far away from the reason assigned for rejection of the candidature of the petitioner, despite his success in the other examination like written, physical or interview.

The physical challenges of service in the army are of higher order and the standards of physical fitness is of much higher than what are ordinary human being is expected to perform. The rigors of service being such, the Court would not like to go against the opinion of not two, but three medical boards, one and two from the authorities of the Army and one from a reputed institution.

Writ application, therefore, is dismissed.

(Ajay Kumar Tripathi, J)

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