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

+ W.P.(C) 779/2016

VIJENDER SINGH YADAV F/O GAURAV YADAV
Petitioner

Through: Mr. Virender Singh Kadian,
Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mrs. Bharathi Raju, Central
Government Standing Counsel

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
15.03.2016

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1. The present petition has been filed by the petitioner praying *inter alia* for quashing and setting aside the recommendations dated 4th February, 2015 made by Appeal Medical Board held by the respondent No.3 and for directions to the respondents to induct him in the 135 NDA Batch or in the next Batch in the Indian Army.

2. The brief facts of the case are that the petitioner had applied in response to an advertisement inviting applications for recruitment to the National Defence Academy 135 Batch in January, 2015, and had filled up Air Force as his first choice and Army as the second choice. On 19th April, 2015, the petitioner had appeared in the written examination, results whereof were declared in August, 2015. On 16th September, 2015,

the petitioner had undergone a medical examination and he was declared as disqualified temporarily on account of ECG abnormality and 'bilateral in complete sacralisation of LV5'. The aforesaid findings returned by the Medical Board were duly communicated to the petitioner, who was called upon to appear before the Appeal Medical Board on 21st October, 2015 at the AIR HQ, R.K. Puram, New Delhi.

3. The records produced by the respondents reveal that the petitioner had appeared for his medical examination before the Appeal Medical Board on 21st October, 2015 and was directed to undergo medical examination on the next day at the Base Hospital, Delhi Cantt, New Delhi. However, the petitioner had failed to turn up at the Base Hospital. Vide impugned order dated 4th December, 2015, the Appeal Medical Board had turned down the petitioner's appeal with the remarks that he was unfit for 135 NDA in all three services. It was also recorded that the Medical Board was held *in absentia* and the petitioner's medical examination incomplete. Further, the petitioner was informed that if he so desired, he could challenge the findings of the Appeal Medical Board within twenty four hours, with a request for a Review Medical Board.

4. Instead of approaching the respondents with a request for a Review Medical Board, the petitioner has filed the present petition on 27th January, 2016, stating *inter alia* that the action of the respondents in declaring him unfit in NDA 135 for all the three services is illegal and arbitrary for the reason that in the case of a similarly situated candidate, by the name of Subham Paliwal, he was permitted to appear before the Appeal Medical Board and when he did not turn up, instead of declaring him unfit for all the three services, he was permitted to join the Army.

5. On a perusal of the records pertaining to the petitioner and Mr. Subham Paliwal, with whom the petitioner claims parity, it transpires that Subham Paliwal had been medically examined on 21st October, 2015 and on subsequent dates to assess his fitness for 135 NDA Batch for all three services and vide order dated 4th December, 2015, he was declared fit only for the Army in 135 NDA Batch and not for the Air Force or the Navy. Counsel for the respondents informs us that the Appeal Medical Board had also declared the aforesaid candidate fit for the Army alone and not for the Air Force and the Navy and therefore the petitioner cannot claim that he is similarly placed as the aforesaid candidate.

6. At this stage, learned counsel for the petitioners states that having perused the records produced by the respondents, he may be permitted to withdraw the present petition.

7. The petition is accordingly dismissed as withdrawn.

HIMA KOHLI, J

SUNIL GAUR, J

MARCH 15, 2016

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