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

+ **W.P.(C) 4246/2016**

RAHUL GAINAN

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Vikas Mahajan, CGSC with

Mr. S.S. Rai and Mr. Amit Mehta, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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19.05.2016

1. This order is in continuation of the order dated 13.05.2016, on which date, counsel for the petitioner had sought time to produce the original documents, photocopies whereof have been placed at page 25 of the paper book. Counsel for the petitioner has produced the originals of the documents placed at pages 20 and 25 of the paper book. The certificate dated 21.03.2016 placed at page 20 (Annexure P2) reveals that the same has been issued by a Doctor at the Orthopedic Department of Sawai Man Singh Hospital, Jaipur. As for the certificate dated 12.04.2016 issued by a Doctor at Dr. Ram Manohar Lohia Hospital, New Delhi, learned counsel explains that the Doctor, who is a Resident Pediatrics at the Hospital affixed his signatures at the bottom of the certificate as he was the CMO on duty at the relevant time. However, the petitioner's examination was undertaken by an

Orthopaedist. He states that both the reports reveal that the petitioner does not suffer from hyperextension of the elbow joints, which is contrary to the report of the respondents/Indian Navy and therefore, he could not have been declared medically unfit for the post of a Sailor in the Indian Navy.

2. Counsel for the respondents states on instructions that the parameters for testing the status of hyperextension of elbow joints in the Indian Navy would be entirely different from that required in the private sector and the exigencies of service of a Sailor are of such a nature that any extension of the elbow joint beyond zero degree would make a person unstable and result in his suffering excessive injury. It is in this background that the petitioner was declared unfit on medical grounds.

3. Having regard to the fact that the petitioner has produced the originals of the documents annexed as Annexure P-2 and P-4, which are reports from two separate Government Hospitals, one situated at Jaipur and the other at Delhi, and they are in contradistinction to the report prepared by the respondents at INS Chilka, we are of the opinion that the ends of justice would be met if the respondents are directed to approach the Army R&R Hospital at New Delhi, for conducting a Review Medical Board in respect of the petitioner, limited to his alleged medical condition of hyperextension of elbow joints, the ground on which his candidature was cancelled.

4. Accordingly, the present petition is disposed of with directions issued to the respondents to approach the Army R&R Hospital, Delhi for conducting a Review Medical Board in respect of the petitioner within two weeks. The respondents shall give a written intimation of the date and time fixed, to the petitioner to present himself at the said Hospital with all the

relevant documents. A report shall be submitted by the Army R&R Hospital, Delhi within three weeks from the date the petitioner presents himself. The same shall be submitted directly to the respondents, who shall give a written intimation to the petitioner of the decision taken in respect of his medical condition. It is made clear that the report of the Army R&R Hospital shall be final and binding on both the parties.

5. If the petitioner is found fit by the Army R&R Hospital, then he shall report at INS Chilka for training alongwith the new Batch that shall be inducted in the month of August, 2016, as may be directed by the respondents and at that stage, he shall have to undergo a fresh medical examination for satisfying all other parameters as prescribed. If the petitioner clears the said examination, he shall be recruited by the respondents.

6. The writ petition is disposed of. This order shall not be treated as a precedent in any other case.

HIMA KOHLI, J

DEEPA SHARMA, J

MAY 19, 2016

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