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

+ **W.P.(C) 4600/2016**

KAMAL SHARMA

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate with
Mr. Ajit Kakkar, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Barkha Babbar, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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19.05.2016

1. The present petition has been filed by the petitioner praying *inter alia* for quashing the order dated 20.02.2016, passed by the respondents/Indian Navy, whereunder he has been declared medically unfit and his candidature for the post of a Sailor has been cancelled.

2. Learned counsel for the petitioner submits that after clearing the written examinations for the post of a Sailor in the Indian Navy in the year 2015, the petitioner was called upon to appear for his medical examination on 20.02.2016 at INS Chilka, Odisha and was declared unfit by the impugned rejection letter dated 20.02.2016 on the ground that he is suffering

from “*COM(LT) & SMALL PERFORATION*” i.e., the tympanic membrane of his right ear is ruptured. Immediately after returning, the petitioner had approached Pt. B.D. Sharma PGIMS, Rohtak, where he underwent a graft for the right ear and as per the report of the Senior Resident of the aforesaid Hospital, a surgical procedure was done and a graft was placed on the tympanic membrane of the petitioner’s right ear.

3. Counsel for the petitioner states that the petitioner’s right ear has completely healed, whereafter he had undergone an Audiometry Test as per the documents placed at pages 24 and 25 of the paper book, which are reports from Rao Tula Ram Memorial Hospital, New Delhi and therefore, the impugned order dated 20.02.2016, whereunder the petitioner’s candidature was cancelled, ought to be set aside.

4. Counsel for the respondents, who appears on advance notice, states on instructions from the Department that from the medical condition of the petitioner, it is apparent that he had to undergo a surgical procedure of fixing a graft on the tympanic membrane of his right ear and in the course of his service as a Sailor, he would be expected to stay underwater on occasions, which could result in excessive pressure on the ears resulting in rupturing. It is in these circumstances that the petitioner’s candidature was turned down.

5. It is an undisputed position that even as per the documents placed on record by the petitioner, he had a rupture on the tympanic membrane of the right ear, which was rectified through a surgical intervention by fixing a graft. In these circumstances, we are of the opinion that the respondent/employer would be the best person to exercise their discretion with regard to the fitness of a candidature for being recruited for the post of a Sailor. The parameters of fitness and the required standards for appointment of a candidate in the Forces, have to be left to the discretion of the respondents.

6. In view of the aforesaid circumstances, we are not inclined to entertain the present petition by exercising our powers of judicial review. The petition is dismissed.

HIMA KOHLI, J

DEEPA SHARMA, J

MAY 19, 2016
rkb/mk