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

+ W.P.(C) 7667/2016

VISHNU YADAV

..... Petitioner

Through: Major K. Ramesh, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Manish Mohan, CGSC along
with Debajyoti Behuria, G.P.
Lt. Vikrant Singh (AJA) Surgeon
Commander Mr. Anand N, Joint
Director, Medical Services (CSL).

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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14.09.2016

1. In this writ petition, the petitioner has sought orders from the respondent authorities to refer the petitioner for re-examination at Army Hospital (Research and Referral) at Delhi Cantonment, hereinafter referred to as the R&R Hospital.
2. The petitioner had applied for appointment as a Sailor in the Indian Navy.
3. The petitioner had to undergo Recruitment Tests including Medical Tests at the Air Force Centre at Ambala on 18.03.2016. The report of the Medical Test at Ambala produced by the Respondent Authorities indicates

that the Surgeon Lieutenant of the Indian Navy made a remark declaring that the petitioner was unfit on account of 'Deviated Nasal Septum' (Right). The aforesaid report being a provisional one; as no review was done within the time stipulated, the petitioner was sent for training and subjected to Pre Enrolment Medical Examination by the Surgeon Lieutenant, the Principal Medical Officer at INS Chilka. The diagnosis again indicated 'Deviated Nasal Septum' (Right). Thereafter, the petitioner was referred to an ENT (Ear, Nose, Throat) Specialist who also opined that the petitioner had 'Deviated Nasal Septum'. The petitioner was declared unfit by Lieutenant Colonel G.M. Raghav. The opinion of Lieutenant Colonel G.M. Raghav was certified by Surgeon Captain Commanding Officer, in-charge of the INHS (Indian Navy Hospital Ship 'Nivarini').

4. The petitioner had provisionally been selected by a letter dated 24th June, 2016 on the specific condition of his clearing the final examination and various tests on arrival at INS Chilka. The petitioner was clearly informed that his selection would stand cancelled, and that he would have no claim to enrolment in the Indian Navy if inter alia he was found medically unfit. As observed above the petitioner was found medically unfit at INS Chilka. The petitioner has referred to a medical prescription/medical certificate of the All India Institute of Medical Sciences at Delhi, which also indicates a nasal deviation. The notings of AIIMS are set out herein below for convenience.

- (i) No fresh complain.
- (ii) Patient rejected from Navy Selection
- (iii) No complain of Nasal obstruction
- (iv) No ear complaints
- (v) No complain of I one
- (vi) No throat complain

- (vii) QE Right and Left
- (viii) **Septal spur on the Right side**
- (ix) CST-B/L equal fogging
- (x) Advice Steam Inhalation.

5. This Court does not ordinarily interfere with medical opinion formed by a medical team upon medical examination of candidates. However, in exceptional cases where there are inherent contradictions in the medical opinions or the medical opinions are totally contradictory to diagnostic test reports of specialised hospitals or materials are available on record, which gives rise to doubts about the impartiality or fairness of the medical examination, this Court refers candidates for re-examination to the R&R Hospital or to other independent Medical Boards.

6. However, medical re-examination cannot be directed simply for the asking, and not in a case like this, where different reports of different authorities including the authorities of All India Institute of Medical Sciences do indicate some sort of nasal deviation.

7. Considering the peculiarities of naval life on board vessels in the high seas in different climatic zones, under different weather conditions, under conditions of rolling, pitching and the like, optimum fitness of health is absolutely essential. May be, deviated nasal septum can be totally ignored for ordinary desk jobs. However, the same defect may render a person unfit for naval duty which involves months of stay on the high seas in difficult conditions, and in war time.

8. Our observations are not to be construed as any finding with regard to the effect of 'Deviated Nasal Septum'. We do not have the requisite

expertise to arrive at any such finding. We, however, conclude that no materials have been disclosed in the writ petition or otherwise to warrant interference with the opinion given by the experts who have examined the petitioner. It is unfortunate that the writ petitioner who was eligible and duly selected, could not clear the medical examination. However, it is not for the writ court to interfere with the medical reports for the asking. No cogent grounds have been made out for interference. Our attention has been drawn to certain judgments of this Court where medically disqualified candidates have been referred to the R&R Hospital. The orders were delivered having regard to the particular facts and circumstances of those cases and can have no application in this case. A judgment is a precedent for issue of law which is raised and decided. An order issued in the particular facts and circumstances of the case is not binding on subsequent benches, in cases where the facts and circumstances are different.

9. The writ petition is, therefore, fails and the same is rejected.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

SEPTEMBER 14, 2016

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