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

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Date of Decision : July 21, 2016

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W.P.(C) 5356/2015

CDT MOHIT JAYAS

..... Petitioner

Represented by: Mr.Ajit Kakkar, Advocate

versus

UNION OF INDIA AND ANR.

..... Respondents

Represented by: Mr.Sanjay Jain, ASG instructed
by Mr.Anil Gautam, Ms.Rhea Verma
and Ms.Bani Dikshit, Advocates
Lt.Vikrant Singh, AJA

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Clearing the selection process to be inducted firstly as a cadet and upon successful clearing of the training, to be commissioned in the Indian Navy as an officer, the petitioner joined Indian Naval Academy Ezhimala (Kerala) for training and undergoing the requisite course. Petitioner claims that his seniors ragged him and subjected him to torture and as a result he lost his voice. Apprehending he being sent back from the Academy the petitioner got drafted the writ petition on May 20, 2015 and filed the same in this Court on May 22, 2015. Listed for hearing on May 25, 2015 notice was issued in the writ petition.

2. But in the interregnum a show cause notice was issued to the petitioner on May 22, 2015, requiring petitioner to submit a response within

15 days to the fact disclosed in the show cause notice i.e. the Medical Board opining that the petitioner was suffering from Dysphonia and was found permanently unfit for future military service and thus to show cause as to why he should not be invalidated out of military service.

3. Till date the petitioner has not responded to the show cause notice for the reason the petitioner filed the writ petition before the show cause notice was issued. On July 20, 2015 noting that proceeding on leave pending withdrawal on medical invalidment dated July 17, 2015, it was recorded that the petitioner would be struck off from victualling strength.

4. In the counter affidavit allegations of ragging are denied. It is stated that senior cadets were empowered to enforce minimal disciplinary directions, and as regards the petitioner it is stated that he was found weak in swimming and used to absent himself from practical sessions and it was a case where the senior cadets, in their enthusiasm to tone up the petitioner, inflicted a punishment which was probably a lot too harsh.

5. There is reference to the fact that at the contemporaneous time the petitioner never made any allegations of ragging.

6. Be that as it may, this fact is noted by us to set the tune of the final direction which we would be passing.

7. It is impossible for this Court to find out as to what actually transpired. Whether it was a case of ragging or senior cadets duly empowered to levy an appropriate punishment over did what was required to be done. What appears to have happened is this. To improve the breathing power of the petitioner the senior cadets made him put his head in a bucket of water, hold his breath and thereafter exhale. The petitioner claims this to be an act of ragging.

8. Medical papers concerning opinion formed by the Medical Board that

the petitioner has been detected with Dysphonia are already with the petitioner. Learned counsel for the petitioner does not dispute that the petitioner forwarded to him the show cause notice dated May 22, 2015 and expresses regret for not bringing said fact to the notice of this Court. Had this been done, the writ petition could have been disposed of there and then as premature requiring petitioner to submit a response to the show cause notice.

9. Needless to state, said response had to be considered and a reasoned decision had to be passed.

10. But on account of pendency of the writ petition the petitioner thought that he was not to respond to the show cause notice.

11. Sh.Sanjay Jain learned ASG very fairly concedes on instructions that fairness would require the writ petition to be disposed of permitting the petitioner to file a response to the show cause notice dated May 22, 2015 within 15 days from today. Learned ASG assures that a reasoned decision would be taken with a fair and an open mind. Needless to state if the response of the petitioner is accepted that would be the end of the matter and the petitioner would regain his status as a cadet. How the intervening period has to be reckoned would be decided by the competent authority. If the response is rejected, the petitioner would be entitled to remedy as per law.

12. Since the petitioner is present in Court along with his father we have explained to him that it would be advisable for him to show the medical papers, on the strength of which the medical board of the Indian Navy has opined that the petitioner suffers from Dysphonia, to a reputed government hospital and take an opinion. If the petitioner is armed with an opinion which challenges the opinion formed by the doctors of the Indian Navy, annexing that opinion with his response the petitioner should file the

response to the show cause notice. Such points, with reference to medical jurisprudence, on which the petitioner would rely to challenge the opinion of the medical board should be highlighted in the reply so that the respondent can look into the material which challenges the opinion of the medical board comprising doctors of the Indian Navy.

13. The writ petition is disposed of issuing aforementioned directions corresponding to the concessions recorded with its consequence in para 11 above.

14. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 21, 2016
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