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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1599/2017

Date of decision: 8th September, 2017

CHAND KUMAR Petitioner

Through: Mr.L.B.Rai, Mr.Sumit Nagpal, Mr.Mohit Sharma, Advs.

versus

UNION OF INDIA AND ORS Respondents

Through: Ms.Barkha Babbar, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE I.S.MEHTA

SANJIV KHANNA, J. (Oral)

Chand Kumar had applied for selection to the post of Airman Group-Y ST (non-technical) in the Indian Air Force advertised vide notification dated 8th May, 2014.

2. All India Select List of Group-Y was published on 31st October, 2014. The list consists of two parts; (i) the main list (ii) wait list.

3. On the basis of merit position, the petitioner was wait listed at serial no.143.

4. Joining letter was not issued to the petitioner.

5. The petitioner in present writ petition has prayed for direction to the Central Airmen Selection Board for enrolment of the petitioner as Airman

in Group-Y ST (non-technical).

6. The first contention of the petitioner is that three others who were on the wait list namely P.K. Ram, Ravi Shankar Gupta, and Harsh Khushwaha were issued enrolment and joining letters. Our attention was drawn to Annexure P-4, which is the All India Select List. It was submitted that the petitioner is listed/shown at serial ASC No.2, whereas P. Kumar Ram, Ravi Shankar Gupta and Harsh Khushwaha figure at serial ASC no.10. Thus, the petitioner has been ignored and three others who were his juniors have been selected and issued appointment letters.

7. The respondents in the counter affidavit have submitted that the list enclosed as Annexure P-4 is not the seniority list, but roll number wise list of all candidates.

8. In terms of the Court order dated 14th July, 2017, the respondents have produced All India Select List before us in a sealed cover. The petitioner's name appears at serial no.143 of the wait listed candidates as per seniority or merit, based on the marks secured and obtained.

9. The respondents have affirmed and stated that wait listed candidates till serial no.81 were issued enrolment or joining letters. Those below the said serial number, including the petitioner at serial no.143, were not issued joining letters and were not enrolled.

10. The contention of the respondents that the list, Annexure P-4, is not the merit list, it is obvious is correct. We have seen the All India Select List. The first contention fails.

11. All India Select List published on 31st October, 2014 was valid up to 31st October, 2015 and ceased to be operative thereafter.

12. The petitioner however submits that several candidates were

appointed after 31st October, 2015. Our attention has been drawn to Annexure P-4. This list under the heading 'medical disposal' records whether the candidate was declared fit/unfit/partially fit, and in case medical fitness was examined by Appellate Medical Board, whether the candidate was declared fit/unfit by the said Board. Only those who were fit were included and listed in the All India Select List.

13. Reference was made to instruction at serial number 3 of Annexure P-4 in the instructions for candidates. Instruction number 3 states that enrolment would be strictly as per merit position in the All India Select List subject to ;

- a) availability of vacancies;
- b) medical fitness;
- c) candidate should not be over-age, i.e. not more than 21 years on the date of enrolment; and
- d) validity period of the List.

Serial No. 8 records that medical disposal, fit/unfit, of the candidates was only provisional. Candidature of the candidates declared unfit/found to be absent in the Appellate Medical Board would be automatically cancelled.

14. The list, Annexure P-4, would not show and establish whether a joining letter to a particular candidate was issued after 31st October, 2015. Further where and when there was a time gap of more than six months between the medical examination/appraisal and the date of joining, the candidate was required to undergo a fresh medical examination. Those

declared 'unfit' had the right to file an appeal. Only those declared fit in the fresh medical examination or by the Appellate Medical Board were allowed to join. These candidates were appointed.

15. Reference was made to sub-paras (a), (b), and (c) of para 8 of the writ petition, alleging discrepancy in specified cases. We would reject this contention as the petitioner has not impleaded the candidates mentioned in sub-paras a, b, and c of para 8. Petitioner has not prayed for cancellation of candidature of candidates mentioned in sub-paras a, b, and c of para 8. Even otherwise, we do not think that the contentions of the petitioners have any merit in view of the explanation given by the respondents in the counter affidavit.

16. Sub-para (a), relates to 15 candidates mentioned therein. Two wait listed candidates were declared 'unfit' during initial medical examination and also Appeal Board Examination. However, on examination of documents, the Medical Advisor had noticed irregularities, as laid down procedure was not followed by the Appeal Medical Board. These two candidates were re-examined by the Appeal Medical Board and declared 'fit'. However, in the absence of vacancies, the two candidates could not be enrolled. 12 other candidates from the main list were declared 'unfit' by the Appeal Medical Board. However, the Medical Advisor had noticed irregularities and failure to follow the prescribed medical procedure by the Appeal Medical Board. These candidates were re-examined and declared 'fit' by the Appeal Medical Board. These candidates were, therefore, offered enrolment, within the validity period of the list. One candidate was found to be medically 'unfit' and was not enrolled in the second intake in July, 2015. However, this candidate was

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declared 'fit' by the Appeal Medical Board on 13th August, 2015. Therefore, he was offered enrolment in the next intake in January, 2016. These are special and extraordinary cases which were dealt with to ensure that no injustice was caused and suffered for want of lapses and fault of the authorities. The petitioner cannot claim parity with them. We are not ~~also~~ impressed with the argument that the Medical Advisor should not have directed re-examination by the Appeal Medical Board even if he felt that there were lapses and failure in following the procedure prescribed. This would be unjust and unfair. Of course, giving undue or uncalled for advantage to any candidate would be unacceptable and would be frowned upon, but no such assumption and presumption can be made. These grounds obviously would not warrant and cannot be a ground to issue Mandamus or direction in favour of the petitioner.

17. The respondents have also clarified that the waitlisted candidate, who was subsequently declared medically 'fit' by the Appeal Medical Board as per the instructions (Annexure R-1) dated 20th March, 2006 could be granted enrolment after expiry of the select list or even on becoming overage, after approval from the Competent Authority. Approval from the Competent Authority was taken in case of the waitlisted candidate, who was declared medically 'fit' by the Appeal Medical Board. Approval has been enclosed as Annexure P-2.

18. Sub-para (b) does not relate to candidates who had participated in the selection process in question and were not members of the All India Select List, May, 2015. We do not understand how the petitioner, can claim any benefit on the assertions made in paragraph 8(b). These candidates belonged to main list of All India Selected Candidates of

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Group-Y (non-technical) in rallies held in January-March, 2014.

19. Respondents in the counter affidavit have clarified that several candidates mentioned in sub-para (b) were initially declared medically 'unfit' and subsequently declared 'fit' by the Appeal Medical Board. Hence, they were called for enrolment after being declared medically 'fit' as per Annexure R-1 dated 20th March, 2006 after approval of the Competent Authority.

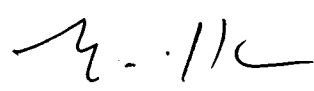
20. With reference to para 8(c), it is submitted that the candidates mentioned therein were from the main list of All India Selected Candidates published in September, 2011. They were governed by the extant policy, which was applicable till 30th April, 2013. The earlier policy did not specify validity or time limit for enrolment of candidates in the main Select List. The wait list was, however, valid for a period of 18 months from the date of publication. In some cases, the candidates declared medically 'unfit' were declared medically 'fit' by the Appeal Medical Board. In such cases, approval was taken from the Competent Authority before enrolment. Explanation has been given by the respondents in respect of each candidate.

21. The primary submission of the petitioner is that irregularities and illegalities were committed in other cases. The petitioner is being discriminated as the respondents are insisting on strict compliance of the terms in his case. Negative equality cannot be pleaded and cannot be a ground to grant relief to the petitioner. Even if we assume that the respondents were guilty of irregularities and illegalities in another case, the petitioner cannot derive any benefit. We cannot issue directions contrary to law. As noticed above, the petitioner was waitlisted at Sr.

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No.143. Candidates up to Sr. No.81 in the wait list have been issued enrolment or joining letters. The wait list cannot be acted upon and has ceased to be operative after 31st October, 2016.

22. In view of the aforesaid, we do not find any merit in the writ petition and the same is dismissed. There would be no order as to costs.


SANJIV KHANNA, J


I.S.MEHTA, J

SEPTEMBER 08, 2017
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