

\$~8

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

+ **W.P.(C) 10206/2016 and C.M No. 4073/2017**

Date of decision: 15th September, 2017

MAHIPAL Petitioner

Through Mr.A.K. Trivedi, Adv.

versus

UNION OF INDIA & ORS Respondents

Through Mr.Ripu Daman Bhardwaj and
Mr.Sat D. Srivastav, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

The petitioner Mahipal had applied for recruitment to the post of Airman in Group 'X' and 'Y' pursuant to the advertisement dated 22.09.2014 issued by the Central Airmen Selection Board, New Delhi. On clearing the written examination, the petitioner was sent for the medical examination and declared fit in both 'X' and 'Y' Group. Accordingly, a Medical Fitness certificate was issued on 13.10.2015. Thereafter, All India Selection List was published on 31.10.2015. The Petitioner, in view of the merit positions, was recommended for selection to the post of Airman in Group 'X'.

2. Petitioner thereafter, was issued Joining letter on 21.06.2016 in the IInd Batch.
3. As there was a time gap of more than six months between the medical examination and the date of issuance of joining letter, the petitioner was subjected to fresh medical examination as prescribed by the Rules.
4. The petitioner was declared unfit on account of PILONIDAL SINUS vide Medical Unfitness certificate dated 21.06.2016.
5. The petitioner, thereafter, underwent a surgery on 28.06.2016.
6. The petitioner was subsequently examined by the Appeal Medical Board in Command Hospital on 29.07.2016 and was declared medically unfit.
7. The petitioner submits that he had got himself examined at General Hospital, Naunaul on 07.09.2016 and relying on fitness certificate issued, has filed the present writ petition.
8. By order dated 21.11.2016, notice was issued and the respondents were asked to get the petitioner medically re-examined at the Army Base Hospital, Delhi Cantt. The petitioner was accordingly re-examined at the Army Base Hospital by the Special Appeal Medical Board, and found to

be fit as there was no evidence of recurrence. The said certificate also states that this opinion was on the basis of medical examination on 18.1.2017 (sic 11.01.2017). The Special Appellate Board has observed that there was no provision for temporary unfitness.

9. The aforesaid facts would reveal that the petitioner was suffering from PILONIDAL SINUS when he was examined by the Medical Board on 21.06.2016 and was declared unfit. This is clear from the admission made by the petitioner that he had got himself operated for the said ailment on 26.07.2016. The ailment is established. The Appeal Medical Board had examined the petitioner on 29.07.2016, and had concluded that the wound of the petitioner had not healed. Medical Unfitness Certificate dated 5.08.2016 was issued. The medical condition of the petitioner on the said date has to be considered and examined, to decide whether or not the petitioner was fit. Examination on subsequent date after passage of time is immaterial. This is also clear from the notings made by the Special Medical Board on 11.01.2017 who have recorded that there was no provision for temporary unfitness.

10. Examination of the petitioner after about three weeks at the General Hospital in Naunaul on 7.09.2016 does not reflect and show the medical

condition of the petitioner on date of examination by the Appeal Medical Board on 29.07.2016. There was a gap of nearly one month. Similarly, the re-examination by the Special Appeal Medical Board on 11.01.2017 would not indicate the medical condition of the petitioner on 29.07.2016.

11. The respondents, by the last order, were asked to obtain instructions whether the petitioner in the aforesaid circumstances can be considered for enrolment. The respondents have stated that there are a number of diseases or medical conditions which are curable, but these ailments cannot be overlooked when the candidates are medically examined during the recruitment process. At that stage, one cannot be certain whether or not the ailment, when treated by medical or surgical procedure or by medication would have the necessary and desired effect. The final prognosis could vary from case to case and several factors can influence the recovery process and extent of recovery.

12. Lastly, the respondent have correctly highlighted that the All India Selection List was valid till 1.11.2016. The enlistment of the petitioner was cancelled on 1.11.2016. Inducting the petitioner at this belated stage on the basis of subsequent medical examination held in the Army Base Hospital on 11.01.2017 would be contrary to recruitment rules and policy.

We cannot also give any direction, that the petitioner should be enlisted and included in the next select list as that would be a separate selection process.

13. In view of the aforesaid discussion, we are unable to accept the prayers made by the petitioner. The writ petition along with pending applications are dismissed. We are informed that the petitioner is still eligible and not over age. The petitioner is at liberty to apply for fresh selection, if eligible and in accordance with law.

SANJIV KHANNA, J

NAVIN CHAWLA, J

SEPTEMBER 15, 2017/umang