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

+ W.P.(C) 8690/2017

ASHWANI

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Gaurang Kanth, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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29.11.2017

1. The petitioner had applied for the post of Navik in March, 2017 in the Indian Coast Guard service. He was called for his written, physical and medical examinations and was placed on the merit-list as per the results declared on 27.04.2017. After being provisionally selected for the post of Navik, the petitioner was called upon to report for his medical examination and commencement of training on 09.08.2017 at INS Chilika. The petitioner reported at INS Chilika on the fixed date. However, he was declared unfit during the medical examination on the ground that he was suffering from, '*Acute Otitis Media (L)*', a condition wherein the middle part of the ear has an inflammation, accompanied by some infection.

2. Aggrieved by the aforesaid findings, the petitioner had applied to the respondents for a review by the Review Medical Board, which was also conducted on the very same day and the findings returned by the Medical

Board were reiterated. Aggrieved by the said decision, the petitioner has filed the present petition.

3. Mr. Chibber, learned counsel for the petitioner states that within ten days from the date of his examination, the petitioner had approached a government hospital, at Delhi, namely, Safdarjung Hospital on 19.08.2017, for his examination by a Senior ENT Specialist, who had observed that no active ENT intervention was required. The said diagnosis report has been filed with the petition as Annexure P-3. On the very same day, i.e., on 19.08.2017, the petitioner had also approached an ENT Specialist at another government hospital in Delhi i.e., Lal Bahadur Shastri Hospital, Khichripur, wherein the same observations were made again.

4. Learned counsel for the petitioner submits that after two tests were conducted on the petitioner at INS Chilika, his medical tests conducted at both, Safdarjung Hospital and Lal Bahadur Shastri Hospital in Delhi, within a span of ten days, reveal that he is medically fit and is not suffering from any ear ailment, which requires any active ENT intervention and in such circumstances, the petitioner be permitted to be re-examined by a Review Medical Board.

5. Mr. Kanth, learned counsel for the respondents hands over a set of documents relating to the petitioner's primary medical examination report, his review medical examination report and refers to the relevant Coast Guard Orders (CGO 26/2002) entitled "Medical Standards For Officers and Enrolled Personnel of the Coast Guard", to state that there is no provision for any further examination by a Review Medical Board and the petitioner has already undergone two medical check-ups at INS Chilika on 09.08.2017 itself, wherein he was declared medically unfit. Learned counsel particularly

places reliance on para 5(b)(i) of the Coast Guard Orders bearing No.CGO 26/2002 which is reproduced hereinbelow for ready reference:-

“5. Medical examination on Entry for Enrolled Personnel

xxx

xxx

xxx

(b) Appeal Medical Board.

(i) RMO will issue a review certificate (Annexure XI) to each of the Temporary or permanently unfit candidates and advise them to appeal against his findings if they so desire and appeal for a medical examination at the affiliated Armed Forces hospital within 21 days for candidates declared permanent unfit and review within 42 days for those temporarily unfit.”

6. On a perusal of the aforesaid clause, we are of the opinion that the respondents ought to have waited for a reasonable time before conducting a review of the medical condition of the petitioner, instead of doing it in such a hurry on the very same day, as has been done in the present case. Further, as per the diagnosis of the petitioner by ENT specialists of two government hospitals in Delhi, there is no medical intervention required in his case.

7. In such circumstances, we deem it appropriate to direct the respondents to approach the R&R Hospital, Delhi, with a request that a Review Medical Board be constituted in respect of the petitioner, relating to the aforesaid condition. The petitioner shall be intimated in advance as to the date and time when he would be required to present himself before the Review Medical Board. The date of appointment shall be communicated to the petitioner through his counsel within two weeks from today. The respondents shall ensure that the petitioner's medical records are forwarded to the Review Medical Board at R&R Hospital for perusal.

8. The Review Medical Board at R&R Hospital shall submit its report

directly to the respondents with a copy forwarded to the petitioner. Both the parties shall be bound by the report of the R&R Hospital, which shall be treated as final.

9. It is directed that if the Review Medical Board declares the petitioner as medically fit, then the respondents shall take steps to issue him an order of appointment within a maximum period of two weeks therefrom and the petitioner will be called to join the training as expeditiously as possible.

10. Before parting with the case, it is clarified that the aforesaid order has been passed in the peculiar facts and circumstances of the present case and shall not be treated as a precedent in any other matter.

11. The petition is disposed of.

HIMA KOHLI, J

REKHA PALLI, J

NOVEMBER 29, 2017

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