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

+ W.P.(C) 3188/2017

PRAMOD SINGH PARIHAR

..... Petitioner

Through: Mr. Randhir Singh Kalkal, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Rajesh Kumar, Advocate with
Surg.Cdr Narayan S., Medical Officer.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **13.02.2018**

1. The present petition has been filed by the petitioner being aggrieved by the rejection of his candidature to the post of a Sailor on the ground that he was found to be medically unfit.
2. A brief glance at the facts of the case is considered necessary. In November, 2015, the respondents/Indian Navy issued an advertisement inviting applications from the public at large for enrolment to the post of a Sailor. The petitioner had responded to the said advertisement by submitting an application. After qualifying in the written examination, on 08.04.2016, the petitioner underwent a primary medical examination at the Recruitment Centre at Almora, where he was declared temporary unfit on two counts, namely, (i) *Sclerotic Tympanic Membrane Both Ears* and (ii) *Convergence Deficiency Left Side*. Thereafter, the petitioner was presented before the Review Medical Board at the Command Hospital, Lucknow on 10.05.2016

and was declared fit for both the above diseases. On 16.08.2016, the petitioner's final medical examination took place at INS Chilika, where he was again declared temporarily unfit for *Otomycosis Right Ear*. On the same date, the petitioner was made to appear before an ENT Specialist at INHS Nivarini, at Chilika and he was declared unfit on account of (i) *chronic otitis media effects bilateral* 1. *Tympanosclerosis Bilateral* 2. *Retracted TM Bilateral* (ii) *Bilateral Otomycosis*.

3. Aggrieved by the aforesaid decision, the petitioner had on his own presented himself before the AIIMS Hospital, New Delhi on 27.08.2016 and 03.09.2016 and the ENT Specialist had given a finding in terms of a report enclosed with the petition as Annexure P-5 (colly). In the said report, the Senior Resident, ENT at AIIMS Hospital had observed that the petitioner did not have any hearing complaint or discharge from his ear, on evaluation, his Tympanic Membrane was found to be intact and on audiogram evaluation, hearing was found to be within normal limits. Thereafter, the petitioner had approached the respondents under the RTI Act to gather necessary documents relating to his medical examination and served a legal notice on the respondents on 19.09.2016, which was duly responded to vide reply dated 26.10.2016, wherein the respondents had stated that the petitioner had been examined by Specialists before he was declared unfit and no review was permissible thereafter. Hence, the present petition.

4. Counsel for the petitioner submits that the petitioner was earlier declared unfit at Almora in April, 2016, declared fit at the Command Hospital, Lucknow and yet again declared unfit at INS Chilika and INS Nivarini, which shows that the respondents have been vacillating with regard to the petitioner's medical condition, whereas the Specialist at AIIMS

Hospital, New Delhi has declared him fit.

5. Counsel for the respondents is accompanied by Surg.Cdr Narayan S., Medical Officer, who has clarified to us that the condition of “*Sclerotic Tympanic Membrane*” can be a recurring problem and indicates perforation in the ear drum, which condition as in the case of the petitioner, does heal, but leaves a scar. He states that if the petitioner’s candidature would have been accepted, then as a Sailor, he is expected to excel in swimming and have frequent contact with water, that can cause a recurrence of the same fungal infection and this is what has been noticed during the petitioner’s medical examinations, as noted above.

6. Counsel for the respondents has also drawn our attention to the report of the ENT Specialist at AIIMS Hospital, which Dr. Narayan has clarified, states that the petitioner does suffer from “*Myringosclerosis*”. He submits that the condition, “*Myringosclerosis patch*” is the same as “*Tympanosclerosis*”, as mentioned in the Medical Report of the petitioner prepared by the Review Medical Board. He further points out that even the doctor at AIIMS Hospital had noticed that the petitioner has white patches in both his ears, which is in consonance with the report of the Review Medical Examination. In such circumstances, it is submitted that it is not advisable to recruit the petitioner to the post of a Sailor, since it entails regular contact with water and in view of his medical history, the fungal infection can reoccur and likely to escalate the disability/defect.

7. Having heard the submissions of the counsels for the parties and on going through the records, it is an undisputed position that out of four medical examinations conducted in respect of the petitioner, the first one at the Recruitment Centre at Almora, the second one at the Command Hospital,

Lucknow, the third one at INS Chilika and the fourth one at INHS Nivarini also at Chilika, he was declared fit only on one occasion on 10.05.2016. Thereafter, he has been declared unfit having found to be suffering from “*Sclerotic Tympanic Membrane*” of both ears, which position has been confirmed by the ENT Specialist at AIIMS Hospital.

8. Having regard to the fact that the job of a sailor for which the petitioner has applied requires absolute physical fitness and he would be expected to be an excellent swimmer which would bring him into frequent contact with water, it's likely to aggravate the condition of his ear. The respondents cannot be faulted for declaring the petitioner medically unfit as the standard of fitness in this case is much higher than one required for a civil post.

9. Accordingly, the present petition is dismissed, while leaving the parties to bear their own costs.

HIMA KOHLI, J

PRATIBHA RANI, J

FEBRUARY 13, 2018

rkb/ap