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

+ **W.P.(C) 104/2018 & CM No. 445/2018**

DEEPAK KUMAR

..... Petitioner

Through: Mr. Siddharth Mittal, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Kirtiman Singh, Advocate along
with Mr. Vikramaditya Singh, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **22.10.2018**

1. The Petitioner is aggrieved by his non-selection as Airman in Group X (Technical) Trades or Group Y (Non-Technical) of the Indian Air Force (IAF), for which the Respondents had invited applications by an advertisement published on 3rd September 2016.

2. The Petitioner was disqualified on the ground that he was declared medically unfit, having undergone medical examination at the Medical Boarding Centre, Air Force Station, Palam on 25th July 2017. A 'Medical Unfitness Certificate' was issued to the Petitioner indicating his unfitness on account of Hyperhydrosis and Haemorrhoids.

3. The Petitioner then preferred an appeal before the Appeal Medical Board ('AMB'). On 11th September 2017, the Petitioner was re-evaluated by the Classified Specialist (Dermatology) and continued to be found "unfit" with regard to Hyperhydrosis. On the very next date, i.e. 12th September 2017, he was evaluated by the Graded Specialist (Surgical) and was found to be "surgically fit" as regards Haemorrhoids. According to the Respondents, on the basis of the findings of the AMB, the Petitioner was finally declared unfit on 4th October 2017.

4. Learned counsel for the Petitioner has a two-fold grievance. First, he seeks to contend that the Petitioner does not suffer at all from Hyperhydrosis and, therefore, the very basis for disqualifying him is erroneous. As far as this issue is concerned, the Court finds that in his rejoinder affidavit filed in response to the counter affidavit filed by the Respondents, the Petitioner has virtually admitted to suffering from the said disability but is aggrieved only to the extent that his disability is not found to be 'significant'. The basis for this submission is the Manual of the Respondents which *inter alia* sets out the different kinds of disabilities which might disqualify a potential candidate for recruitment in the IAF. The relevant portion of the said Manual states that 'Significant Palmoplantar Hyperhydrosis' should be considered "unfit".

5. Learned counsel for the Petitioner contends that since the requirement for disqualification is only "significant" Hyperhydrosis and the Medical Unfitness Certificate of the Petitioner does not prefix the disability with the word

‘significant’, the Respondents were not justified in disqualifying him. His further submission in this regard is that he should be asked to be again evaluated medically at the Research and Referral (R&R) Unit of the Army. According to the Petitioner, the AMB did not, in fact, actually examine him and have simply given a certificate declaring him ‘unfit’ on the basis of his suffering from Hyperhydrosis.

6. The Court is unable to accept the above submissions for more than one reason. What the Petitioner is raising is a disputed question of fact. In a writ petition under Article 226 of the Constitution, this Court would ordinarily be disinclined to examine a disputed question of fact. For demonstrating arbitrariness of the impugned action of the Respondents, the Petitioner must lay some factual foundation. The Petitioner bases his case on a Medical Certificate dated 25th November 2017 (Annexure P-6) issued by the Medical Officer, General Hospital, Rohtak, broadly stating that the Petitioner is ‘medically fit’. By the date on which such certificate was issued, the Petitioner was aware that his disqualification was on account of a specific disability viz., ‘Hyperhydrosis’. The least the Petitioner could have done is to get the certificate of a Dermatologist in that regard.

7. However, in the considered view of the Court, even this might not have helped the Petitioner since he has already been evaluated twice by the Respondents. In the initial medical examination, he was stated to be suffering from two disabilities, viz., Hyperhydrosis and Haemorrhoids. For the second

time, he went before the AMB. Here, it is significant that while he was declared 'surgically fit' as regards Haemorrhoids, he was again declared unfit on account of Hyperhydrosis. The exercise before the AMB, was plainly not an empty formality as sought to be made out by the Petitioner. It is clear both from the counter affidavit of the Respondents as well as the documents attached thereto that it was only after a physical examination of the Petitioner, that the AMB declared him surgically fit as regards Haemorrhoids and unfit as regards Hyperhydrosis. So, the mere absence of the prefix 'significant' to describe the Hyperhydrosis that the Petitioner is suffering from would not, in the considered view of this Court, imply that the Petitioner did not suffer from a degree of Hyperhydrosis that would render him unfit for selection as an Airman in the IAF.

8. No case is made out for interference by this Court.

9. The petition is dismissed. The application is disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 22, 2018

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