

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

% **Date of decision: 9th November, 2020.**

+ **W.P.(C) 8838/2020**

NISHANT

..... Petitioner

Through: Mr. Ankur Chhibber, Mr. H.S.
Tiwari, Mr. Anshuman Mehrotra and
Mr. Nikunj Arora, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Dev P. Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.28404/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) No.8838/2020 & CM No.28403/2020 (for directions)

3. The petitioner has filed this petition, pleading (i) that he was the applicant pursuant to the advertisement dated 7th August, 2019, for admission to National Defence Academy (NDA) and the Indian Naval Academy; (ii) that in accordance with the requirements, he in his application form filled up the options with respect to the force desired to be joined as under:

- "a) Air Force
 - i. Flying Branch
 - ii. Ground duty
- b) Army
- c) Navy
- d) Naval Academy";

(iii) that he cleared the written examination, Physical Standard Test (PST)/Physical Efficiency Test (PET) as well as flying test for the Indian Air Force; (iv) however in the medical examination done on 10th August, 2020, he was found unfit because of (a) having cardiac murmurs, (b) having over standard sitting height and, (c) having substandard vision; (v) that he applied for Appeal Medical Board, which examined him on 14th September, 2020; (vi) that the Appeal Medical Board rejected the candidature of the petitioner for the flying branch of the Indian Air Force due to substandard vision but mentioned to the petitioner that he was fit for Indian Army and Indian Air Force Ground Duty; (vii) that subsequently on 21st September, 2020 the petitioner was informed that he was not medically fit for any of the forces and that the findings of the Medical Board were correct on all three counts; and, (viii) that the petitioner thereafter applied for examination by the Review Medical Board but which request has been rejected vide communication dated 13th October, 2020.

4. The counsel for the petitioner has drawn our attention to page 76 of the electronic file, being part of the advertisement aforesaid pursuant to which the petitioner had applied, to contend that the same provides that

"candidates declared unfit during Appeal Medical Board will be intimated about the provision of Review Medical Board"

and has contended that the request of the petitioner for Review Medical Board has been arbitrarily rejected.

5. Per contra, the counsel for the respondents appearing on advance notice has drawn our attention to page 40 of the electronic file, being the findings of the Appeal Medical Board held at Air Headquarter R.K. Puram, where the petitioner has been informed that "if he desires he can challenge the findings of the Appeal Medical Board within 24 hours with a request for Review Medical Board" but clarifying, that "the grant of a Review Medical Board is at the discretion of the Director General, Armed Forces Medical Services, after considering the merits of the case".

6. The counsel for the petitioner has drawn attention to the reports of the examination undertaken by the petitioner at G.B. Pant Hospital, New Delhi, at Fortis-Escorts Heart Institute, New Delhi and at Post Graduate Institute of Medical Sciences, Rohtak, Haryana, to contend that all of them have found the petitioner to be having a normal ECG and not having any abnormal murmurs and fit for NDA. It is contended that though on account of over standard sitting height and substandard vision, the petitioner may not be fit for the Indian Air Force but does not have murmurs and is fit for the Indian Army.

7. The counsel for the petitioner has drawn our attention to the order dated 1st February, 2019 in W.P.(C) No.11547/2018 titled ***Ankush Vs. Union of India & Ors.*** and to ***Kartikeya Arora Vs. Union of India & Ors.*** 2020 SCC OnLine Del 1112 (DB), filed as Annexures P-9 and P-10 to the

petition, to contend that once there is a provision for a Review Medical Board, the respondents ought not to have exercised the discretion to reject the request of the petitioner for Review Medical Board without disclosing any reasons. It is argued that the petitioner, on the basis of opinion of as many as three other hospitals/specialists, is challenging the finding of the Medical Board and the Appeal Medical Board, of the petitioner having murmurs in the heart and the exercise of discretion without giving any reasons, is arbitrary.

8. On enquiry, whether not the Director General, Armed Forces Medical Services cannot be expected to give reasons like in the orders/judgments of the Court, while considering an application for Review Medical Board, the counsel for the petitioner contends that in the absence of reasons, the order is bound to be interfered with and does not disclose why, in a particular case, discretion was exercised in a particular manner.

9. Per contra, the counsel for the respondents has drawn our attention to the order dated 18th December, 2019 in W.P.(C) No.12676/2019 titled ***Ajay Singh Vs. Union of India & Ors.*** and order dated 18th December, 2019 in W.P.(C) No.11199/2019 titled ***Rahul Vs. Union of India & Ors.***

10. It is also the contention of the counsel for the petitioner that the petitioner, is not seeking a direction to the respondents to admit the petitioner but only seeking consideration by another Medical Board. It is contended that in a large number of matters coming up before this Court, the opinions of the Medical Board and/or Appeal Medical Board, on further examination being ordered, have been found to be erroneous.

11. We have considered the contentions. The advertisement for recruitment, under the heading "Medical Standards for NDA (Flying & Ground Duty Branches)" in Clause 13 titled "Cardio Vascular System" in sub-clause (d) provides "Evidence of organic cardiovascular disease will be cause for rejection. Diastolic murmurs are invariably organic. Short systolic murmurs of ejection systolic nature and not associated with thrill and which diminish on standing, especially if associated with a normal ECG and chest radiograph, are most often functional. However, an echocardiogram will be done to exclude organic heart disease. In case of any doubt the case will be referred to cardiologist for opinion". The Appeal Medical Board in its findings qua the petitioner, has recorded "Cardiac Murmur (Mid Systolic Murmur)" and opined the petitioner "Unfit for 144 NDA [Air Force-Flying/Army/Navy/NA]". The said findings are on examination in terms of the criteria of medical condition for admission, as disclosed in the advertisement inviting the application for admission itself. The petitioner has not found fault with the competence of those in the Medical Board and the Appeal Medical Board who examined the petitioner. While the Medical Board was headed by a Doctor the rank of Group Captain, the Appeal Medical Board was headed a Doctor holding the rank of Air Commodore.

12. As far as the reliance by the counsel for the petitioner, on opinion of the Doctors of three other hospitals is concerned, we have enquired from the counsel for the petitioner, whether on the petitioner approaching the said hospitals for a certificate with respect to his medical status, an independent board was constituted by the Medical Superintendent of the Hospital or the petitioner, while approaching the said hospitals of his choice, also choose

the Doctor from the several available in the said hospitals, from whom to seek an opinion.

13. The counsel for the petitioner states that the Hospitals or the Medical Superintendent of the Hospitals, on such private request, do not constitute a Medical Board and the Doctor has to be chosen by the person seeking the opinion.

14. We are of the view that merely on the basis of an opinion taken by the petitioner of a Doctor of his choice, even if from a Government Hospital, the findings of the Medical Board and the Appeal Medical Board of the Defence Forces in which the petitioner seeks recruitment. We cannot be unmindful of the fact that the petitioner, once recruited, even if after a short time turns out to be medically unfit, becomes a liability, not only on the Armed Forces in which he/she has been recruited but also on other personnel of the Armed Forces. It is often found that personnel of the Armed Forces, within ten years of recruitment, on account of medical reasons, avoid hard postings and on medical grounds are successful in doing so, leading to other personnel being compelled to spend extended time at hard postings rather than the load of bearing the hard postings being uniformly borne by all. We are thus of the view that the opinion of the medical experts of the Defence Forces which the petitioner is to serve for the next several decades of his life and which Forces become liable to pay emoluments to the petitioner till his lifetime, cannot be easily shaken merely on the basis of the opinion of the Doctors of the choice of the petitioner. The petitioner has been unable to show any other error in the findings of the Medical Board or the Appeal Medical Board. The qualifications of the Doctors who examined the

petitioner or their competence to examine and render findings is not under challenge. Moreover, as opined by us in *Jonu Tiwari Vs. Union of India* MANU/DE/1524/2020, *Nishant Kumar Vs Union of India* MANU/DE/1486/2020, *Pavnesh Kumar Vs. Union of India* MANU/DE/1790/2020, *Priti Yadav Vs Union of India* 2020 SCC OnLine Del 951 and *Vani Vishwanathan Vs. Union of India* MANU/DE/1678/2020 medical opinion to some extent is akin to judicial opinion and though may vary from expert to expert but in the case of variance, the opinion of the recruiting agency has to be given the precedence.

15. As far as the contention of the counsel for the petitioner of the petitioner only seeking a third opportunity is concerned, once the Rules for recruitment provided that only examination by the Appeal Medical Board is as a matter of right and examination by the Review Medical Board is in the discretion of the respondents, in the absence of anything to show that the discretion has been irregularly exercised, the Court would not be swayed to grant a third opportunity also to the petitioner. We are thus not inclined to entertain the petition.

16. Dismissed.

17. The counsel for the respondents also states that the concerned course commenced on 4th November, 2020.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

NOVEMBER 9, 2020/'bs'