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

+ **W.P.(C) 290/2020 and CM APPL. 880/2020 (interim order)**

MEGHAJ SINGH

..... Petitioner

Through: Mr. Sanjay Kumar with Mr. Rahul
Chaudhary, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Rakesh Kumar, CGSC with
Ms. Kavindra Gill, Advocate along
with Major Arjun, Lt.Col.
U.M.Tiwari, Lt.Col.Sandep Singh and
Col.Harikrishnan.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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10.01.2020

Dr. S. Muralidhar, J.:

1. The Petitioner is aggrieved by the Respondents' rejection of his candidature both for Technical Entry Scheme-42 ('TES-42') course as well as for the National Defence Academy Course -143 ('NDA-143') on the ground of medical unfitness.

2. The Petitioner, who is just 18 years old, scored 93% marks in his Class 12 examinations, and applied both for the TES-42 as well as the NDA-143 courses. Whereas the examination for the TES-42 course was conducted by the Directorate General of Recruiting West Block III, R.K.Puram, the

examination for the NDA-143 course was conducted by the Union Public Services Commission.

3. The Petitioner qualified in the selection procedure both for the TES-42 and NDA-143 courses. As far as the TES-42 course is concerned, although in the initial medical examination by a Special Medical Board ('SMB') he was found unfit on the ground of 'Eosinophilia', in an examination by the Appellate Medical Board ('AMB') on 3rd September, 2019 he was declared 'medically fit' for TES-42.

4. As far as the NDA-143 course is concerned, he was interviewed by the Services Selection Board ('SSB') on 9th September, 2019. Thereafter, he underwent medical examination by the SMB at the Military Hospital, Bhopal. The SMB declared him unfit on 17th September, 2019 on the following grounds:

- (a) 'Underweight'
- (b) 'B/L Valgus Deformity of Second Toe'.

5. The Petitioner preferred an appeal against the above decision of the SMB. The AMB thereafter examined him on 3rd October, 2019. Although he was found fit for his underweight disability, he was found unfit on the following counts:

- (a) 'Valgus Deformity of Second Toe (B/L)'
- (b) 'Swan Neck Deformity of Index, Middle and Ring Fingers (B/L)'
- (c) 'Kirner's Deformity (Clinodactyly) of Little Fingers'.

6. The Petitioner then applied for an examination by the Review Medical Board ('RMB'). On 13th November, 2019 the RMB after examining him at the Army Hospital (Research & Recruitment) confirmed the 3 disabilities noticed by the AMB.

7. The Petitioner's detailed representation dated 29th November, 2019 against the rejection of his candidature was replied to by the Respondents on 17th December, 2019, particularly, refuting his contention that he was not required to undergo any further medical examination by an SMB after he was declared fit for the TES-42 course by the AMB on 3rd September, 2019. According to the Respondents, para 8(c) of the policy document dated 23rd March, 2018 did require him to undergo SMB again.

8. Learned counsel for the Petitioner assails the communication dated 17th December, 2019 of the Respondents rejecting his candidature on 2 grounds. First, he contends that in terms of para 8 of the policy document dated 23rd March, 2018, the Petitioner having been found fit for TES-42 course and having opted for NDA (Army), he was not expected to undergo an SMB at all as far as the NDA-143 course is concerned. If he was found fit on 3rd September, 2019 by the AMB for the TES-42 course, he ought to have been inducted for that course. Secondly, it is submitted that there are several other candidates, the details of which have been set out in the tabular form as Annexure 'P12' to the petition, who have been found unfit for Army, Navy and even IAF, but have been subsequently inducted in the TES courses. Therefore, he submits that the Petitioner has been singled out for

discriminatory treatment.

9. As far as the first ground is concerned, it requires to be noted that the policy document dated 23rd March, 2018 sets out the parameters for examination of candidates by SMBs. Para 8 thereof reads as under:

“8. Applicability of SMB for various entries

SMB is Service specific and not ‘Entry’ specific. A candidate declared ‘FIT for Army’ is fit for induction into any entry in any Pre Commission Trg Academy of the IA, except for the fwg variations:-

(a) SMB conducted for undergraduate entries (NDA and TES) is not valid for graduate / post graduate level entries.

(b) Any SMB declaring a candidate 'FIT for NDA (Army)' is 'FIT for TES (Army)'.

(c) Candidates already declared ‘FIT for TES (Army)’ and also selected for parallel NDA & Naval Academy course , need not undergo SMB again, if NDA (Army) is their only preference. However such candidates have to undergo fresh SMB again, if NDA Navy or Naval Academy is in their preferences. Such candidates if qualified on Computerised Pilot Selection System (CPSS) also need to undergo the complete Air Force medical examination at the designated centre.”

10. A careful perusal of sub-para 8(c) reveals that the candidate already declared ‘fit’ for TES course need not undergo SMB again “if NDA(Army) is their only” preference”. It is further clarified that such candidates would have to undergo fresh SMB again “if NDA Navy or Naval Academy is in their preferences”.

11. As far as the Petitioner is concerned, on his own showing, it is seen that while applying for the NDA-143 course he indicated NDA (Army), as his first preference, NDA Navy and Naval Academy in the second and third preferences. In other words, the Petitioner did not opt for NDA (Army) as his “only” preference.

12. That being the position, the Respondents cannot be faulted for making the Petitioner undergo an SMB again although he may have been declared medically fit for the TES-42 course by the AMB on 3rd September, 2019. The Court is, therefore, unable to accept the first ground on which the Petitioner seeks to assail the decision of the Respondents rejecting his candidature.

13. A pointed query was posed to counsel for the Respondents whether the Petitioner could be inducted for the TES-42 course for which he was found medically fit, notwithstanding that he may have been found medically unfit for the NDA-143 course. Counsel for the Respondents explained that the medical conditions detected during the examination of the Petitioner by the AMB after he was found unfit by the SMB for the NDA-143 course was not easily detectable and therefore, went unnoticed when the Petitioner was medically examined for the TES-42 course. He states that the said medical condition was revealed when the Petitioner was subjected to a full body scan after the ‘Valgus (B/L)’ deformity was noticed during the medical examination conducted by the AMB on 3rd October, 2019. The RMB too confirmed the 3 deformities detected by the AMB. Once the Petitioner was found to have the aforementioned deformities during the medical

examination for the NDA-143 course, there was no question of thereafter offering him entry to the TES-42 course.

14. In matters of recruitment to any defence establishment, the parameters for medical fitness are required to be strictly observed. The Court cannot possibly have the expertise to adjudge whether a particular deformity is ‘minor’ one which can be overlooked as not hampering the functioning of the candidate, given the nature of the duties required to be performed. It must be remembered that every candidate whether for the TES or the NDA courses, is subjected to rigorous physical training and there is every possibility that what might seem ‘minor’ deformity at the initial stage, can actually develop into a complicated one for such candidate who undergoes rigorous physical exercises. For this reason, it is prudent to leave the question of medical fitness to be decided by expert bodies, without the Court entering that arena and sitting in appeal over such opinion.

15. Specific to the case on hand, the Court would like to refer to para 8 of the impugned communication dated 17th December, 2019 of the Respondents which reads as under:

“8 You have undergone three, medical boards i.e. Special Medical Board, Appeal Medical Board and Review Medical Board. All three medical boards have found you unfit. During the process of your medical examination for NDA 143 course, you have been examined/opined on by two Senior Advisors in Orthopaedics, who on basis of objective evidence had given out your disabilities and their findings.”

16. Accordingly, there is no scope to interfere with the aforementioned

decision of the Respondents rejecting the Petitioner's candidature.

17. As far as the second ground urged is concerned, namely, that there are certain other candidates who despite being found medically unfit for the recruitment to the Army, Navy and even Air Force were still inducted to TES course, learned counsel for the Respondents on instructions informs the Court that corrective action is being taken in those cases as well by subjecting those candidates to a fresh medical examination.

18. Be that as it may, there is no question of invoking the principle of negative equality and requiring the Respondents to accommodate the Petitioner only because they have erroneously inducted certain other candidates into the TES course, notwithstanding that they have been found medically unfit for induction into the Army, Navy and Air Force.

19. For all of the above aforementioned reasons, the Court finds no reason to interfere. The petition is dismissed. The pending application is also disposed of.

CM APPL. 881/2020 (exemption)

20. Allowed, subject to all just exceptions.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 10, 2020

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