

\$~1 (Spl. Bench)

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

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Date of decision: 29.04.2022

REV.PET. 122/2022 in

+ W.P.(C) 2333/2020

VIKASH

..... Petitioner

Through: Mr.M.D. Jangra, Adv.

Versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mrs.Abha Malhotra with Mr.J. Karaa
Malhotra, Advs. For Respondent
Nos.1 & 2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T (oral)

CM APPL. 20796/2022 (exemption)

1. The application is allowed, subject to just exceptions.
2. The application is accordingly disposed of.

CM APPL. 20795/2022 (condonation of delay)

3. By way of the present application, petitioner is seeking condonation of delay of 88 days in filing the review petition in W.P.(C) No.2333/2020.

4. In view of the reasons stated in the application and various orders passed by this Court and the Hon'ble Supreme Court, we hereby condone the delay of 88 days in filing the review petition.

5. Application is allowed and disposed of.

REV. PET. 122/2022

6. Present review petition has been filed under Order XLVII Rules 1 & 2 CPC seeking review of order dated 10.11.2020 passed in W.P.(C) 2333/2020 as the said petition was dismissed on delay and latches but not on merit.

7. The case of the review petitioner is that he was found medically unfit by the Medical Board of the respondents initially on account of "*GROSS DNS*" i.e. deviated nasal septum. Thereafter petitioner sought second opinion from a Government Hospital namely Chaudhary Bansilal Hospital, Bhiwani (Haryana) and was declared fit. On submission of the aforesaid reports to the respondents, petitioner was again called for review medical examination on 31.03.2018 where he was again declared unfit on account of "*Gran-DNB*" and Mucous Retention Cyst.

8. Learned counsel for the review petitioner further submitted that it is quite strange that he was found unfit for different reason in the review

medical examination, therefore, this Court omitted to notice that petitioner was declared unfit for one reason for first time and another reason for the second time, which is contrary stand of the medical board, therefore, finding of the review board is erroneous and liable to be quashed and set aside by this Court.

9. We have heard the learned counsel for the petitioner and perused the material placed on record.

10. On perusal of the order dated 10.11.2020 passed in W.P.(C) No.2333/2020, this Court did not find any merit therein as observed in para 4 of said order which reads as under:

“4. On a reading of the petition we did not find any merit therein and have thus heard the counsel for the petitioner at length, on admission.”

11. However, case of the petitioner was noted in para 5 of the order as under:

“5. It is the pleaded case of the petitioner, (i) that he was a candidate for recruitment to the Group-C Non Gazetted (Combatised) posts in the respondents SSB, pursuant to the advertisement issued in the year 2016; (ii) that he is a domicile of Haryana and belongs to OBC category; (iii) that the recruitment comprised of Physical Efficiency Test (PET), Physical Standard Test (PST), Verification of Documents, Written Examination / Assessment and detailed Medical Examination; (iv) the petitioner cleared all the successive stages and undertook the Medical

Examination at SSB Gorakhpur Uttar Pradesh on 5th December, 2017; (v) in the said Medical Examination, the petitioner was declared unfit on the ground of “GROSS DNS” i.e. deviated nasal septum; (vi) the petitioner got himself medically examined at a Government hospital namely Chaudhary Bansilal Hospital, Bhiwani, Haryana, on 7th December, 2017, where the Medical Officer, ENT found the petitioner fit and opined error in the judgment of the Medical Test conducted by SSB on account of DNS to Rfide; (vii) the petitioner, in order to get a second opinion, got himself admitted on 18th December, 2017 at Pandit B.D. Sharma Post Graduate Institute of Medical Sciences, Rohtak, Haryana and on 19th December, 2017 was successfully operated upon for Septoplasty LA and was discharged on 21st December, 2017; (viii) the petitioner thereafter appealed against the decision of the Medical Board of the respondents SSB and was called for Review Medical Examination on 31st March, 2018, where he was again declared unfit on account of “Gran-DNB” and the Review Medical Board further found the petitioner to be having a Mucous Retention Cyst;”

12. It is not in dispute that petitioner was found medically unfit by the Medical Board initially on account of “GROSS DNS” and by subsequent Board, he was declared unfit on account of “Gran-DNB” and the Review Medical Board further found him to be having a Mucous Retention Cyst which was developed due to the surgery underwent by the petitioner as noted above.

13. It is pertinent to mention that since the two Medical Boards have already been conducted by the respondents, the present petition is amount to

reargue the case. Therefore, we find no ground to interfere in the order dated 10.11.2020 passed in W.P.(C) 2333/2020.

14. Petition is, accordingly, dismissed.

(SURESH KUMAR KAIT)
JUDGE

(ASHA MENON)
JUDGE

APRIL 29, 2022/ab

