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

% **Date of Decision: 29th July, 2020**

\+ **W.P. (C) 3626/2020**

NISHANT KUMAR **.....Petitioner**

Through: Mr. Manjeet Singh and Ms. Samvedna Verma, Advocates

versus

UNION OF INDIA & ORS **....Respondents**

Through: Mr.Nirvikar Verma and Mr. Syed Husain Adil Taqvi, Advocates

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

ASHA MENON, J.

W.P. (C) 3626/2020, C.M. Appl. No.12918/2020 (for ad-interim ex-parte direction)

1. This petition has been filed seeking a mandamus to the respondents/Central Airmen Selection Board to conduct a fresh medical examination of the petitioner and to direct his appointment to the post of "Airman ('X' & 'Y' Group)", with all consequential benefits.

2. The brief facts of the case are that the petitioner had applied for recruitment to the post of Group 'X' and Group 'Y' Airmen, in response

to the Advertisement (Annexure P-2) of the respondent Indian Air Force and had cleared the Phase-I exam as also the Phase-II exam and was required to take the medical tests before being appointed. The petitioner was examined by the Medical Board on 8th January, 2020 and was issued a 'Medical Unfitness Certificate' (Annexure P-5) as he was found with *"Fistula in Ano"*. Aggrieved by these observations, the petitioner preferred an appeal and the Appeal Medical Board examined him at 14, Air Force Hospital, Hyderabad, on 8th January, 2020 (sic) and also declared him 'unfit', but allegedly refused to issue a medical certificate to him. However, subsequently, the petitioner learnt that the Appeal Medical Board had opined that he was suffering from *"Pilonidal Sinus"*.

3. The petitioner got himself diagnosed at Siwach Hospital, Rohtak where Dr.Vikash Siwach opined that the MRI showed no medical condition requiring surgical intervention. Further, the petitioner got himself examined at Bhagat Phool Singh Government Medical College, Sonipat, Haryana, who seconded this opinion that there was only a small dimple in the *"gluteal cleft"* and no medical condition requiring surgery. On the basis of these medical opinions, the petitioner claims that he had applied to the respondents on 26th February, 2020 (Annexure P-9) for the constitution of a fresh Medical Board to re-examine him, but till the filing of the petition, no such Medical Board was constituted. A response was, however, sent to the petitioner by the respondents to the effect that the Appeal Medical Board documents had not been received till 4th March, 2020 (Annexure P-10). The petitioner then dispatched yet another request for re-examination by another Medical Board on 12th May, 2020 .The petitioner is aggrieved that without acceding to his just request, in the

provisional Select Lists for Group 'X' & Group 'Y' (Annexures P-12 & P-13), published on 31st May, 2020, he was shown as "unfit". In these circumstances, the petitioner was compelled to seek the help of the court as, according to him, he had been denied an opportunity to seek employment in the Indian Air Force.

4. Mr. Manjeet Singh, learned counsel for the petitioner, contended that there was a clear difference of opinion between the first Medical Board and the Appeal Medical Board, as the first Medical Board had opined that the petitioner was found with *"Fistula in Ano"* whereas the second Medical Board opined that he was suffering from *"Pilonidal Sinus"*, which were two different diagnoses.

5. Relying on the judgement of the Rajasthan High Court in ***Manish Kumar Jain versus Bharat Sanchar Nigam Ltd and Others***, RLW 2008 (2) Raj 941, it was urged by learned counsel for the petitioner that it was a very reasonable request of the petitioner that the respondents take a third opinion in the matter. The learned counsel also relied upon the judgement of the Division Bench of the Punjab and Haryana High Court in the appeal filed by the Union of India (*Union of India versus Vikrant L.P.A.No 2123 of 2017*) against the judgement of the Single Judge in the case titled ***Vikrant versus Union of India*** reported as MANU/PH/1144/2017, who had directed the appointment of a candidate, who, having undergone surgery for the condition that had caused the Air Force to reject him, was declared fit by PGI Chandigarh subsequent to the surgery, to seek the appointment of the petitioner on the basis of the opinions of Dr. Siwach and the doctor at the Government Hospital, Sonipat.

6. *Per contra*, Mr. Nirvikar Verma, learned counsel for the respondents submitted that the Rules did not provide for a third medical examination and the opinion of the Appeal Medical Board was to be treated as final in the matter. The learned counsel submitted that the medical condition was found in the same area as both, Fistula and Pilonidal Sinus, exist in the anal region and are prone to discharge. It was on account of the similarity of the two that on physical examination one could be mistaken for the other. He pointed out that the second opinion was given by a specialist in Surgery and carried weight.

7. Learned counsel has placed on record the *Manual of Medical Examinations and Medical Boards* (Annexure R-1) as also the *Guidelines for Medical Board of Candidates for Cadet Entries Including Women Entry Scheme* (Annexure R-4), to submit that the examination of the petitioner was conducted fairly and once he had availed of the medical review by the Appeal Medical Board, there was no possibility of a third examination by another Medical Board. It was submitted that the reason that the petitioner was declared *"unfit in absentia"* was not because he was not physically examined by the Appeal Medical Board, as sought to be suggested by the learned counsel for the petitioner, but because of the fact that after his physical examination by the doctor on 1st February, (not 8th January), 2020, he had failed to appear before the Appeal Medical Board Centre for finalization of the AMB proceedings and such declaration was as per the prescribed procedure.

8. Learned counsel also submitted that the respondents had already moved the Supreme Court against the judgement of the Punjab and

Haryana High Court in ***Vikrant*** **(supra)** and the judgement relied upon by the petitioner had been stayed. Hence no parity could be claimed.

9. We had occasion to deal with a petition [**W.P.(C) No.3930/2020** titled ***Priti Yadav Vs. Union of India***] filed by a candidate, who was hoping to join the Indian Air Force but stood medically disqualified, but had also been granted an opportunity to appear before a Review Medical Board. Further, it appeared to us that "*Fistula in Ano*" and "*Pilonidal Sinus*" were two different things. Vide order dated 16th July, 2020, we had directed the Rules regarding a Review Medical Board to be produced before us. Pursuant thereto on 27th July, 2020, it was informed to us that a Review Medical Board was to be constituted for Officer cadre and not for Airmen cadre.

10. It was also elaborated that though "*Fistula in Ano"* was different from "*Pilonidal Sinus*", as the two are situated in the same region, they are often confused for each other. In order to understand it better, we requested the respondents to connect a medical personnel via video conferencing on the next date of hearing, i.e.29th July, 2020. Wing Commander Waghle has attended the court hearing today and has explained that the two conditions would appear to be similar during a visual examination and could be mistaken for each other. Reference was made to Bailey & Love's "Short Practice of Surgery". The relevant extract at page 1244 of the book has been filed by learned counsel for the respondents electronically. A written explanation has also been filed on 27th July, 2020 as Annexure R-2.

11. We have heard both counsel and considered the material on record. At the outset, we make it clear that the declaration of the petitioner *"Unfit*

in Absentia" does not indicate that the petitioner was not physically examined by the Appeal Medical Board. Annexure 'C' to the Counter-Affidavit filed by the respondents establishes that the petitioner had been physically examined by the doctor Lt.Col. Aditya Jha on 1st February, 2020. The petitioner was found to be suffering from *"Pilondal Sinus"* and thus declared 'unfit'. In fact, as rightly pointed out by the learned counsel for the respondents, the petitioner has himself admitted in his representation dated 26th February, 2020 (Annexure P-9) to having been medically examined a second time, the result of which was "orally" told to him. This "oral" information seems to have been given as per the Central Airmen Selection Board Medical Directive: 2017 [See: (b)(ii) in Annexure 'F' to the Counter-Affidavit of the respondents]. The Directive No.27(c) deals with *"Unfit in Absentia"* and such an event occurs when a candidate appears for the medical but fails to "remain present till finalization stage" to collect his medical disposal certificate. Nowhere has the petitioner claimed that he had waited to collect his medical certification. Thus, there is nothing to point out that the petitioner was wrongly described as *"Unfit in Absentia"*. Even if the petitioner was so declared without adherence to the prescribed procedure, it could by no stretch be inferred that the petitioner was medically fit.

12. No doubt, the petitioner applied once again on 26th February, 2020 for a re-examination by another medical Board. But it is clear from the Manual of Medical Examinations And Medical Boards (Annexure R-1 filed on 27th July, 2020) that a Review Medical Board is allowed at the discretion of the office of the DGAFMS (Director General Armed Forces Medical Services) in the case of Air Wing NDA and is provided so under

5.4.25 Section V, whereas the medical assessment of candidates for enrolment in IAF: Airmen and Non-Combatants (enrolled) is regulated under Section IV, wherein only an application for an Appeal Medical Board has been provided for under 4.1.3.1. Even in the Appointment Letter sent to the petitioner for his Appeal Medical Board (AMB) to be conducted at Secunderabad, it was clearly informed that "the opinion of the AMB would be final" and that "if declared unfit by the AMB no further appeal will be permitted". We are, therefore, satisfied that the case of ***Priti Yadav (supra)*** is very different from the petitioner's case and he has no right available to him to seek a Review Medical Board after having been examined by the Appeal Medical Board and found to be unfit medically for recruitment to the Indian Air Force.

13. The Manual of Medical Examinations and Medical Boards (Annexure R-1 filed on 27th July, 2020) also provides in detail as to the medical conditions which would render the candidate unfit for recruitment and the method of examination for determining the existence of any disability. The examination of the Gastrointestinal system is dealt with in Chapter 4. In 2.4.6, the method of examining the anal area is laid down and it is directed that the examiner "should look for abnormalities, such as *"external haemorrhoids"*, "*sinuses*, *"fistula"* and *"hairy individuals look for pilonidal sinuses"*.

14. We specifically sought clarification from Wing Commander Waghle whether any of these conditions would interfere in the discharge of duties of an Airman and she categorically affirmed that it would, as they involve fluid discharge.

15. We are satisfied with the explanation given by Wing Commander Waghle as to how two different conditions were diagnosed by the two Medical Boards. The explanation offered in Annexure R-2 filed on 27th July, 2020, is that *"although both the disabilities are different from each other, they are located around the anal region and have sinuses which show presence of discharge and hence can commonly be misdiagnosed by a less experienced GDMO who is not a Surgical specialist*." It is informed that it was a Surgical specialist who had examined the petitioner at the Appeal Medical Board. We are thus satisfied that there are no contradictions in the conclusions drawn by the first Medical Board and the Appeal Medical Board that the condition from which the petitioner suffered was "*Pilonidal Sinus"* and not "*Fistula in Ano"*.

16. The Medical Examination at Siwach Hospital (Annexure P-7) was on 15th January, 2020 and preceded the Appeal Medical Board, which was conducted thereafter on 1st February, 2020. The Government Hospital at Sonipat has merely relied on the opinion of the private hospital while giving its opinion on 8th February, 2020 (Annexure P-8). On the basis of such an opinion, no further medical examination needs to be directed. We are of the considered opinion that the standard of medical fitness is higher in the recruitment to the Armed Forces and the court must be wary of interfering with or diluting such stringent standards as that would be at the cost of preparedness of the Armed Forces to meet emergent security challenges and would ultimately imperil the sovereignty of the country. While one can empathize with a young boy's disappointment, it cannot suffice for us to find any merit in the present petition. We may note that the judgement of the Punjab and Haryana

High Court in ***Vikrant (supra)*** relied upon by the learned counsel for the petitioner is not available to him to claim parity in treatment since the same has been stayed by the Supreme Court.

17. The present petition is accordingly dismissed.

ASHA MENON, J.

RAJIV SAHAI ENDLAW, J.

JULY 29, 2020

HIGH COURT OF DELHI
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