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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 15th July, 2020

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W.P. (C) 3930/2020

PRITI YADAV

.....Petitioner

Through: Mr. Ved Prakash, Advocate

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Vikrant N. Goyal, Advocate
alongwith Wg. Cdr. Shailesh
Sharma & Wg. Cdr. Dinesh Sirpal.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

W.P. (C) 3930/2020

1. On 6th July, 2020, when this petition had come up first before us, the following order was passed :

“3. The petitioner, an applicant for recruitment as cadet with the respondents Air Force and having been denied recruitment owing to being found medically unfit for the reason of ‘cubitus valgus’, has filed this petition impugning the decision/declaration of her medical unfitness.

4. The petitioner, in accordance with the rules of the respondents Air Force, has already availed of appeal against the decision of the Medical Board as well as

of review of the decision of the Appellate Medical Board.

5. The petitioner now seeks independent evaluation of her medical fitness.

6. We have enquired from the counsel for the petitioner, that once three successive medical boards constituted by the respondents Air Force have found the petitioner medically unfit, how the petitioner can be granted yet another chance. It cannot be lost sight of that fitness for serving requisite duties in the respondents Air Force is a matter of opinion and if in the opinion of the authorities constituted under the rules of the respondents Air Force the petitioner is unfit, merely a report of another medical practitioner in whose organisation the petitioner is not to work, of medical fitness of the petitioner, cannot be a ground for interfering with the decisions of the Medical Board. It cannot also be lost sight of that to eliminate the scope of human error in the matter, the rules of the respondents Air Force provide for appeal against the decision of the Medical Board as well as for review of the decision of the Appellate Medical Board and there ought not to be more than three opportunities available to the petitioner. Even the process of adjudication in the Courts provides for limited number of appeals and the process cannot be endless.

7. Though the counsel for the petitioner along with the petition has filed a judgment of the Punjab and Haryana High Court in which the petitioner w(t)herein was referred for independent medical examination as well as referenced another such matter, also of the Punjab and Haryana High Court, in the petition, but it appears that none of them qualify as precedent.

8. Be that as it may, it is the case of the petitioner that the Review Medical Board did not even examine the petitioner.

9. It is also the case of the counsel for the petitioner that no decision of the Review Medical Board has been made available to the petitioner.

10. The counsel for the respondents Air Force to obtain the record of the Medical Board, Appellate Medical Board as well as Review Medical Board and produce the same before us on the next date.

11. It is also the case of the counsel for the petitioner that deviation in carrying angle of up to 18 degrees in the case of 'cubitus valgus' is permissible in the defence forces.

12. The counsel for the respondents Air Force to also obtain instructions whether any latitude in the carrying angle is permissible in the defence services and in Air Force and if so, what are the rules therefor.

13. The counsel for the petitioner, on enquiry states that the course for commissioning wherein the petitioner had applied, is due to commence on 16th July, 2020.

14. List on 15th July, 2020."

2. The counsel for respondents has today, at the outset contended that the petitioner, during the hearing on 6th July, 2020, falsely stated that she was not examined by the Review Medical Board and that the decision of the Review Medical Board was not communicated to the petitioner.

3. The counsel for the petitioner states that after 6th July, 2020, a letter dated 20th May, 2020 has been received by the petitioner, intimating to her that the Review Medical Board had found her unfit for disability of ‘bilateral cubitus valgus more than 18°’ and that the final medical status of the petitioner was “unfit”.

4. The counsel for the respondent has shared the said communication with us on the screen.

5. The counsel for the petitioner has also shared on the screen, the other documents sought for by us vide the last order.

6. The counsel for the petitioner has argued, (i) that the Medical Board which had first examined the petitioner, though declared her medically unfit owing to ‘cubitus valgus’ but without recording the particulars; however the petitioner was verbally informed that the carrying angle of her right arm was 22° and of her left arm was 24° and which was more than 18°, till which it is permitted as per the Rules; (ii) that on appeal being preferred by the petitioner, the Appeal Board found the right arm of the petitioner to be within the permissible limit and the left arm to be having carrying angle of 19°, which was more than the permissible limit, and thus found the petitioner medically unfit; (iii) that now the Review Medical Board has found the carrying angle of the right arm of the petitioner to be 20° and the left arm of the petitioner to be 22°; (iv) that there is thus huge variation in the findings of the Medical Board, Appeal Medical Board and the Review Medical

Board; (v) that the petitioner got herself examined in Safadarjung Hospital, Delhi, which has reported the carrying angle of the right arm of the petitioner to be of 11° and of the left arm of the petitioner to be of 12°; (vi) that the report of the Safadarjung Hospital is also at variance with the reports of the Medical Boards of the respondents and this is thus a fit case where this court should obtain another opinion; and, (vii) that this is a matter of career of the petitioner; the petitioner prepared very hard for induction in the Air Force and has cleared all the stages of recruitment and is being denied recruitment only for medical reasons and with respect where to also, there is no definite finding.

7. As per the documents shared by the counsel for the respondents on the screen also, carrying angles of the arms of the petitioner, as reported by the successive Medical Boards, were as stated by the counsel for the petitioner. However the counsel for the respondents states that the findings of the Appellate Board were on the basis of visual examination and the Appellate Board did not conduct any mechanical examination. It is argued that it was owing to the difference between the findings of the Medical Board and the Appellate Medical Board only that, review was permitted, from the best institution of the Armed Forces, i.e. at the Research & Referral Hospital at New Delhi, and the petitioner was examined by the senior most radiologist of the said institution, who after carrying out the visual as well as mechanical and manual examinations has found the right arm of the petitioner to be having carrying angle of

20° and the left arm of the petitioner to be having carrying angle of 22° and as per which, the petitioner is unfit for recruitment in the Air Force.

8. We have today again considered whether the petitioner is entitled to yet another chance and are unable to find any justification for the same. We have already in the order dated 6th July, 2020 observed that fitness for serving requisite duties in the Air Force is a matter of opinion and if in the opinion of the authorities constituted under the Rules of the Air Force the petitioner is unfit, a report of a medical practitioner of another organization which does not intend to recruit the petitioner and which will not be affected by the medical unfitness of the petitioner, cannot be the basis for interfering with the assessment by the Air Force. It cannot be lost sight of that just as in justice delivery, appeal provisions are provided to eliminate the possibility of human error, so have a sufficient number of opportunities of preferring an appeal and thereafter preferring a review have been provided in the matter of medical examination and just like the decision making before the Courts cannot be indefinite, so can the decision making with respect to medical fitness in the Air Force, cannot be indefinite. There has to be a finality in decision making, as is there in the justice delivery system. It cannot be lost sight of that no *mala fides* are attributed with respect to any of the medical examinations or to the team of medical professionals conducting the medical examination. It is the medical practitioners of the Air

Force and Defence Services, who have themselves undergone the requisite trainings and discharge the functions of the organization, who are best suited to form an opinion as to the medical fitness of the candidates to be recruited and once they have so formed their opinion, there can be no interference therewith, at the mere asking of a rejected/disgruntled candidate.

9. We also find sufficient explanation in the record produced by the counsel for the respondents, for the differences highlighted by the counsel for the petitioner in the successive medical reports and are satisfied that no doubt remains with respect to the finding of medical unfitness of the petitioner. It cannot also be lost sight of, that it is not a case where any of the three successive Medical Boards found the petitioner medically fit for recruitment in the Air Force; all the three Medical Boards have found the petitioner unfit with the difference only in extent of unfitness.

10. We thus do not find any ground for interference being made out.

Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JULY 15, 2020
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