

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

% **Date of decision: 4th September, 2020.**

+ **W.P.(C) 5969/2020 & CM No.21577/2020 (for interim relief)**

DR. VANI VISWANATHAN **Petitioner**
Through: Mr. Vinay Mathew, Adv.

Versus

UNION OF INDIA & ORS. **Respondents**
Through: Mr. Sumit Nagpal & Mr. Sahaj Garg,
Advts. with Major Arjun Katoch.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a candidate for recruitment in the Army Dental Corps, in the recruitment process initiated in the year 2019 and having been medically disqualified on account of being found to be suffering from scoliosis, by the Medical Board, Appeal Medical Board as well as the Review Medical Board, has filed this petition seeking examination of the petitioner by an impartial third party, preferably from Kerala, to determine whether the degree of scoliosis from which the petitioner suffers, is beyond the permissible level of 10 degrees.

2. The contention of the counsel for the petitioner is that all i.e. the Medical Board, the Appeal Medical Board and the Review Medical Board have found the petitioner to be suffering from varying degrees of scoliosis

and thus a case for examination by an impartial third party is made out. It is also contended that a retired doctor from the Indian Army has informed the petitioner that though in the manual of the Indian Army, of medical standards for recruitment, there is no degree prescribed, beyond which those suffering from curvature of the spine cannot be recruited, but the Indian Army follows the rule of not recruiting those suffering from more than 10 degrees of curvature of the spine and only above which the candidate is said to be suffering from scoliosis. It is also stated that the said doctor has found the petitioner to be not suffering from scoliosis as the curvature of her spine is of 5 degrees only.

3. The petitioner had earlier filed W.P.(C) No.1415/2020 seeking constitution of a Review Medical Board and in which writ petition, the petitioner was ordered to be given the benefit of review medical examination. Post such review medical examination of the petitioner, W.P.(C) No.1415/2020 had come up before this Court on 11th March, 2020 when the counsel for the petitioner stated that the petitioner had filed CM No.9420/2020 seeking examination of the medical records of the petitioner by an impartial third party such as a government hospital doctor or the resident doctor of the High Court or such medical authority as the Court may designate, to prove her medical fitness. It was contended during the hearing of W.P.(C) No.1415/2020 on 11th March, 2020 that owing to the varying degree of scoliosis from which the petitioner was found to be suffering, by the Medical Board, Appeal Medical Board, the Review Medical Board and the retired Army Doctor consulted by the petitioner, there was a need for opinion of another authority.

4. The said W.P.(C) No.1415/2020, on 11th March, 2020, was disposed of *inter alia* observing as under:

“7. Once the petitioner, seeking appointment in the Army Dental Corps, was found medically unfit to perform the tasks required and the Review Medical Board has also found her medically unfit, no case for directing yet further medical examination of the petitioner is made out. No mala fides are attributed to the doctors who have reported on the medical status of the petitioner.”

5. We are of the view that after the aforesaid reasoning, the present petition is not even maintainable and is liable to be dismissed on this ground alone. The petitioner is clearly, as an afterthought, is wanting a second chance at the Courts for the same relief and which is not permissible in law. Though the counsel for the petitioner has contended that the earlier writ petition was only for the relief of having the petitioner examined by a Review Medical Board and did not challenge the findings of the Review Medical Board but a perusal of the aforesaid paragraph of the order disposing of the earlier writ petition, shows otherwise. Such an attempt to take a second chance, that too belatedly, after nearly six months, constitutes an abuse of the process of the Court.

6. We have otherwise also, in ***Priti Yadav Vs. Union of India*** 2020 SCC OnLine Del 951, ***Jonu Tiwari Vs. Union of India*** 2020 SCC OnLine Del 855, ***Nishant Kumar Vs. Union of India*** 2020 SCC OnLine Del 808 and ***Sharvan Kumar Rai Vs. Union of India*** 2020 SCC OnLine Del 924 held that once no *mala fides* are attributed and the doctors of the forces who are well aware of the demands of duties of the forces in the terrain in which the

recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, opinion of private or other government doctors to the contrary cannot be accepted inasmuch as the recruited personnel are required to work for the forces and not for the private doctors or the government hospitals and which medical professionals are unaware of the demands of the duties in the forces. In the present case also no *mala fides* are attributed and the petitioner has had sufficient opportunities and is not entitled to yet another opportunity. We have in the judgments aforesaid cited, also held that just like in the judicial process, though providing for appeals, to eliminate human error, there has to be a finality attached to the judicial decision of some Court, so is the position qua medical fitness decision making by the recruiting employer/agency; there can be no indefinite rounds of opinions. We may mention that all the three Medical Boards have consistently found the petitioner to be suffering from scoliosis and the respondents Indian Army cannot be forced to recruit a candidate who, over the period of service, would be not physically fit to do the duties required to be done, thereby unnecessarily burdening and depriving the Army of the presence of a competent dental surgeon/dentist who can be posted wheresoever the service exigencies require.

7. The counsel for the petitioner next contends that the performance of the petitioner, as a dentist/dental surgeon, would not be affected by the excess curvature even if any in her spine.

8. We are unable to agree. A dentist/dental surgeon, even in cities where all modern equipment is available, is required to remain bent while attending to the patients; the position is likely to be more acute at places

where the petitioner if recruited may be required to serve, where all the modern equipment is not even available.

9. Be that as it may, we have also examined the “Manual on Medical Examination and Medical Standards for Various Entries into Army, TRG Academies and MIL Schools” applicable to all types of entries into army irrespective of age and gender and find the same, (A) in Section 1 titled “General Considerations and Principles of Medical Examinations” to be providing (i) all armed forces personnel regardless of occupational specialty should have a basic level of general physical and medical fitness, when inducted into the service; (ii) the primary responsibility of armed forces is to defend territorial integrity of the nation and to also assist civil authorities in case of disasters/calamities; (iii) armed forces personnel undergo rigorous physical and mental training to stand mental and physical stresses of service conditions to perform their military duties in any terrain, climate, season including in remote areas, in austere conditions; to carry out such tasks, armed forces require candidates with robust physical and medical health; (iv) primary medical examination is carried out to select only those candidates who can withstand rigorous mental and physical stresses of military service, in all types of terrains, climatic and geographical conditions and to preclude acceptance of those who are likely to break down on exposure to various stresses; (v) it must be borne in mind that a candidate once selected as medically fit, if found unfit at a later stage due to disability which could have been discovered during initial medical examination, causes considerable embarrassment and avoidable financial burden to State; (vi) in case of any doubt about any disease/disability/injury/genetic disorder etc. noticed during enrollment/commissioning, the benefit of doubt will be

given to the State; (vii) the disabilities described in the Manual are not exhaustive due to development of scientific knowledge and due to introduction of new trades/categories of entries into armed forces; (viii) to be deemed medically fit to perform military duties, a candidate *inter alia* should be, free of medical conditions or physical defects that would entail excessive absence from duty for treatment and hospitalization and capable of performing high demanding training and duty and free of any disability, and adaptable to military environment without the necessity of geographical area limitations; (B) in Section 2 titled “Anthropometric Standards” to be *inter alia* providing (i) that the medical examination should cover body built and posture; (ii) candidates with abnormal curvature of spine should be rejected; (iii) under heading “Standards for Spine” that cobb’s angle more than 10 degrees for scoliosis or any other abnormality of spine is not acceptable; (C) in Section 5 titled “Detailed Methodology of Examination” to be *inter alia* providing (i) that defects in formation/segmentation/structure of spine are usually congenital and not usually picked up on routine clinical examination; (ii) scoliosis is a condition in which a person’s spine is curved from side to side; although it is a complex three dimensional deformity with the spine of an individual with scoliosis looking more like an ‘S’ or a ‘C’ than a straight line; (iii) describing the manner of examination *inter alia* as, making a candidate bend forward, with excessive prominence of the rib cage on either side being strongly suggestive of scoliosis of the spine; (iv) a candidate with cobb’s angle of more than 10 degrees to be declared unfit; (v) the cobb’s method to measure scoliosis as the angle of deviation of the perpendicular lines from a straight line; and, (vi) scoliosis is unfit if

deformity persists on full flexion of spine with restriction of range of movements or due to organic defect causing structural deformity.

10. It would thus be seen that the Manual aforesaid prescribes the method also of determining scoliosis and cobb's angle. A perusal of the certificate issued to the petitioner by SURG CDR S Prakash Nair (Retd.) though certifies the petitioner as orthopedically fit to join armed forces with cobb's angle of less than 5 degrees but without stating that she has been examined adopting the method prescribed in the Manual. No credence thus can be given thereto. The same is the position of the medical certificate of the District Hospital Palakkad produced by the petitioner. No error, in following the procedure prescribed in the Manual is otherwise pleaded or proved.

11. There is no merit in the petition. Dismissed.

12. On request of the counsel for the petitioner and for ensuring that this order does not affect chances of employment elsewhere of the petitioner, we clarify that the observations herein are confined to the subject recruitment process.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 4, 2020

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