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

Date of decision: 17th November, 2020

+ **W.P. (C) 7755/2020, C.M. Appl. No.25568/2020**

AKASH SHARMA ROLL NO.1901145499Petitioner

Through: Mr. Manoj Kumar Gupta,
Mr.Rajesh Nandal, Advocates

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC
For Respondent- UOI, with Mr.
T.P. Singh & Kushagra Kumar
Advocates with Mr. Dharmendra,
Medical Officer

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

17.11.2020

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[VIA VIDEO CONFERENCING]

ASHA MENON, J.

1. This writ petition has been filed by the petitioner Shri Akash Sharma, under Article 226/227 of the Constitution of India for directions to the respondents No.1/Union of India and the Indian Air Force through respondents No. 2, 3 and 4 to get the petitioner medically examined by a Board of Specialists/Experts and direct the reservation of vacancy till an independent and unbiased view

which was taken by the Medical Board to be constituted, to declare him fit.

2. The petitioner had, in response to the advertisement dated 6th December 2018 of the Indian Air Force inviting online applications to join as Airman in Group 'X' (Technical) and Group 'Y' (Non-Technical) grades, applied for selection to the Grade 'Y' post as per eligibility in the last week of December 2018. He successfully cleared the online test/exam and in the Phase II test, cleared the Physical Efficiency Test (PET), Adaptability Test I and Adaptability Test II on 1st December 2019 at 1 Airman Selection Centre, Air Force Station, Ambala. Subsequently, he was called for medical examination at 7 Air Force Wing, Ambala where he was declared medically unfit due to 'sub-standard vision' on 11th January 2020. As provided under the Rules, the petitioner applied for Appeal Medical Board which was held on 18th February 2020. However, he was again declared medically unfit due to 'sub-standard vision'.

3. We may note that vide our order dated 6th November 2020, we had directed the respondents to forward to us electronically the proceedings of the Medical Board as well as the Appeal Medical Board and also directed that a Medical Officer be present during the hearing. We also required that the relevant paragraphs of the Medical Manual applicable for medical examination be also made available to us.

4. Accordingly, the respondents have filed the relevant documents relating to the Primary and the Appeal Medical Board and the extract of IAP 4303 relating to the Medical standards for selection as Airman.

5. From these documents we notice that the Primary Medical Board had recorded the vision as sub-standard as the Distant Vision without Glasses in the right eye sight was 6 / 6 but in the left eye sight was 6 / 9 . In the Appeal Medical Board, once again the vision was recorded as under:

DVA	→	6 / 6	6/6 – 1.00 DS
	→	6 / 18	6/6 – 1.00 DS

6. Thus, the Appeal Medical Board also found the petitioner unfit for recruitment to the Indian Air Force on account of sub-standard vision.

7. Faced with these documents, Mr. Manoj Kumar Gupta, learned counsel for the petitioner, submitted that the petitioner had got himself examined from the Dr. Rajendra Prasad Centre for Ophthalmic Sciences of All India Institute of Medical Sciences (AIIMS), where he was found to have perfect vision. He relies on Annexure P-3 to make the submission that it was the best medical institute that had found him with no problem with his vision. It was submitted that he had also obtained opinions from other private Doctors who were eye specialists and their reports being Annexure

P-4 and Annexure P-5 also reflected that he had no problem with his vision as they had recorded his DVA as 6 / 6. The Id. Counsel pressed that in the light of such contradictory findings of the Medical Boards of the respondents and the private practitioners as well as the Doctors of All India Institute of Medical Sciences (AIIMS) this was a fit case where this Court should direct the respondents to get the petitioner re-examined by Medical Specialist/Ophthalmologist as it was the matter of employment.

8. We are unimpressed with these submissions. A perusal of Annexure P-3 would show that the doctor, who supposedly examined the petitioner at Dr. Rajendra Prasad Centre for Ophthalmic Sciences of All India Institute of Medical Sciences (AIIMS), appears to be a Junior Resident Doctor and strangely enough has recorded the DVA of the petitioner with and without glasses as 6/ 6 in both eyes! That is patently incorrect and no doctor of ordinary skills would make such a mistake as the petitioner is using glasses precisely because he has some problem with his vision. This certification from the “best institute” is not worth the paper it is written on!

9. Furthermore, the observations recorded by the private eye specialists do not support this conclusion of the Junior Resident Doctor at Dr. Rajendra Prasad Centre for Ophthalmic Sciences of All India Institute of Medical Sciences (AIIMS). In Annexure P-4, which are the records of the K.D. Eye Hospital, Jhunjhunu, the sight is recorded as VAS 6 / 6 with Glasses and 6 / 9 without

Glasses. Similarly, in Annexure P-5, the vision is recorded as Distant Vision (DV) with Glasses – RE – 6/6 and LE – 6/6 and Distant Vision (DV) without Glasses – RE – 6/6 and LE – 6/9.

10. In other words, the finding of the Primary Medical Board and the Appeal Medical Board that the petitioner suffers from sub-standard vision has been reinforced by the Private Eye Specialists relied upon by the petitioner. However, we are unable to place any reliance on these assessments for the reason that if a favourable assessment could be obtained ostensibly from AIIMS, we suspect that these assessments are also self-serving ones.

11. As rightly pointed out by Mr. Ripudaman Bharadwaj, learned counsel for the respondents, the vision standards as per the Manual of Medical Examinations and Medical Boards are not met by the petitioner. The relevant clause 4.2.7 reads as under:

“4.2.7 Visual Standards. Minimum visual standards trade wise are as follows:-

(a) Unaided visual acuity of 6 / 12 each eye correctable to 6/6 each eye with glasses not exceeding +2.00 D. Hypermetropia or 1 D of Myopia including +0.50 D astigmatism. Colour perception : CP II. Full field of vision as determined by confrontation test. This standard will be applicable for the following trades:-

- (i) Group – X: Weapon Fit. Electrical Fit, Electronic Fit, Mechanical System Fit and Automobile Fit.*
- (ii) Group – Y: Ops Asst. GTI and Auto Tech.*

(iii) *IAF (P), inter alia (S) and PJI: Unaided visual acuity of 6/6. Other visual standards as mentioned above.*”

12. We find that there is no challenge to the report of the Appeal Medical Board as being vitiated by improper constitution. We also find that the Appeal Medical Board of three doctors has relied upon the opinion of Lt. Col. P.K. Chaturvedi CI Spl (Opthal) at CH(WC). It is clear that the petitioner has been examined by a specialist in the area in which the petitioner was found deficient. This is also as per the Rules.

13. In a recent decision of this court in W.P. (C) No. 4558/2020 titled as ***Sharvan Kumar Rai vs. Union of India & Others***, decided on 27th July 2020, this Court has reiterated that the report of the Medical Board and Review Medical Board to be final decision of the Medical Board, in the following words:-

*“4. We have recently in judgment dated 15th July, 2020 in W.P.(C) 3930/2020 titled **Priti Yadav Vs. Union of India**, in the context of medical test for recruitment in the officer cadre of Indian Air Force, Rules wherein provide for examination by Medical Board, Appeal Medical Board and Review Medical Board, held as under:-*

“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.”

What has been held in the context of Air Force, equally applies here. Once the Rules provide for the report of the Medical Board and Review Medical Board to be final, every candidate declared medically

unfit, cannot, at the mere asking, be granted another opportunity as is found to be sought in innumerable cases coming up before the courts. Medical opinion, like a legal opinion, can vary from professional to professional and once the Rules provide for finality and are found in the present case to have provided for a review, to eliminate the possibility of human error, that finality has to be accepted, unless a case for interference is made out.

14. Para 7 of the same judgment :

*“7. We have in judgment dated 22nd May 2020 in W.P. (C) No. 3237/2020 titled **Dhiraj Milind Dhurve vs. UPSC**, in the context of medical examination test in Central Armed Police Forces (CAPFs) and which includes respondents CRPF, held, that the candidates found medically unfit cannot seek a change of the terms subject to which they have taken the examination and which terms uniformly apply to all candidates. It was held that the principle of ‘Rules of the Game cannot be changed after the game has begun’ applies, with only a few of all those found medically unfit, who approach the court, being permitted another round of medical test.”*

15. While, we may have sympathy for the young boy who is unable to join the Air Force as an Airman, we cannot overlook the fact that the standards of physical fitness are much higher for the Armed Forces than for civilian posts and rightly so, and we are reluctant to interfere with it. The petitioner has availed of all opportunities to get a second opinion from the specialist during the Appeal Medical Board and there is no purpose left in getting a further medical examination conducted.

16. We do not find any merit in the present petition.

17. Dismissed.

**ASHA MENON
(JUDGE)**

**RAJIV SAHAI ENDLAW
(JUDGE)**

NOVEMBER 17, 2020
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