

\$~VC-S-2

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

Date of decision: 17th November, 2020

+ W.P. (C) 8560/2020

SHRIPAL SINGH

..... Petitioner

Through: Mr. Ved Prakash, Advocate

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a candidate for recruitment to the post of MR (Hygienist) in the respondents Indian Navy of April, 2020 batch, has filed this petition seeking mandamus to the respondents Indian Navy to enroll the petitioner in the respondents Indian Navy as MR (Hygienist) in April, 2020 batch with all consequential benefits.

2. It is the case of the petitioner, (i) that pursuant to his application for the said post, he cleared the written examination, medical examination and his name was included in the final merit list; (ii) that the petitioner was provisionally selected for the post and was called for enrollment at INS Chilka vide call letter dated 18th September, 2020; (iii) that when the petitioner reported at INS Chilka, as per

Appendix 'E' of Joining Instructions, was tested for Covid-19, before the medical examination and there was also a requirement to undergo institutional quarantine for 14 days or specific period as decided, prior to induction at INS Chilka; (iv) that the petitioner was found Covid positive; (v) that the petitioner was badly treated and was not quarantined for 14 days while the other candidates who were found Covid negative were quarantined for 14 days; (vi) that the petitioner's signature were obtained on some papers and he was told that he is medically unfit for joining the respondents Indian Navy; (vii) that the petitioner was pressurized to give in writing that he did not want to join the respondents Indian Navy and that he will not challenge the wrongful and illegal action of the respondents Indian Navy before any court of law; and, (viii) that the petitioner, under pressure signed the same and was sent back home.

3. The petition came up first before this Court on 2nd November, 2020, when none appeared for the respondents Indian Navy. We accordingly adjourned the matter to today with a direction to the Court Master to inform Mr. Harish Vaidyanathan Shankar, Advocate, who otherwise appears for the respondents Indian Navy, of the next date of hearing in this matter and to also forward to him a copy of the electronic paper book, to enable him to obtain instructions. It was further directed that the file relating to the petitioner, including the documents on which signatures of the petitioner were obtained when the petitioner reported for joining, be also brought to the court on that date.

4. Mr. Harish Vaidyanathan Shankar, Advocate for the respondents Indian Navy has E-mailed to us two documents, both dated 8th October, 2020. The first document is in a standard format and in which name etc. of the petitioner is filled up in hand and, according to the counsel for the respondents Indian Navy, in the handwriting of the petitioner. Vide the said document, the petitioner voluntarily withdrew his candidature for the post of MR (Hygienist) of April, 2020 and requested that his candidature be treated as cancelled. The second document is written in Hindi, in hand, and again according to the counsel for the respondents Indian Navy, in the handwriting of the petitioner, where again the petitioner has stated that he was leaving of his own volition and that there was no pressure on him and that he did not want to join the respondents Indian Navy.

5. The counsel for the respondents Indian Navy, on instructions states that though the petitioner reported at INS Chilka but on being found Covid positive, withdrew his candidature for the post of MR (Hygienist) and decided not to join the respondents Indian Navy and returned. It is further stated that no pressure was applied on the petitioner.

6. Counsel for the respondents Indian Navy, on inquiry states that as far as he has been instructed, the recruitment process comprises of judging the prospective candidates on several parameters and thereafter making them undertake their training and if they pass/clear the training, then they are recruited.

7. The counsel for the petitioner, on inquiry as to the job profile of MR (Hygienist), states that they are employed to clean rooms, cabins and toilets etc.

8. The counsel for the petitioner further states that the recruitment process includes the written examination and Physical Fitness Test and thereafter a medical examination. Both counsels are *ad idem* that the medical examination of the petitioner was not conducted owing to the petitioner, when reported at INS Chilka, having been found Covid positive.

9. The petitioner, along with the petition has not filed the advertisement or any other notification pursuant to which the petitioner applied. The petitioner however along with the petition has filed a copy of the “Call Letter for Final Medical Examination for Enrollment in the Indian Navy” dated 18th September, 2020 sent to the petitioner informing the petitioner that he had been provisionally selected for recruitment and that his enrollment will be subject to his clearing “the final medical examination and various tests (Screening, Entry Behaviour test etc.) being conducted for the particular entry as applicable, on arrival at INS Chilka”. Therefrom it appears that it is not as if only the medical test remained to be done; the petitioner was still to undergo screening, entry behaviour test or any other test laid out for induction as MR (Hygienist).

10. The counsel for the respondents Indian Navy states that the petitioner can participate in the process for recruitment in April, 2021.

11. The counsel for the petitioner states that since the petitioner has already cleared the initial tests and was provisionally selected, the petitioner should not be deprived of the benefit thereof.

12. At this stage, the counsel for the respondents Indian Navy states that he has received instructions and has also emailed to us the advertisement inviting online applications for enrolment as Sailors for Metric Recruit (MR) – April 2020 Batch for course commencing April 2020. A perusal of the said advertisement shows (a) eligibility condition of being a unmarried male; (b) educational qualification of having passed matriculate examination; (c) age qualification of being born between 1st April 2000 and 31st March 2003; and, (d) job specifications as Chef, Steward and Hygienist (who will be required to clean washrooms, shower spaces and other areas and in addition, the allotted other duties as per service requirements). As per the said advertisement, the selection criteria comprised of (i) a qualifying physical fitness test; (ii) qualifying fitness in medical examination; (iii) computer based examination in English and Hindi language in objective type multiple choice questions on the subject of Science and Mathematics and General Knowledge of the standard of Class X, of 30 minutes duration; (iv) Medical Standards; (v) Preliminary Medical Examination; and, (vi) Visual Standards.

13. The pleas of force and coercion, pleading which the petition has been filed, cannot be adjudicated in writ jurisdiction and in any case are vague and without any particulars. We are however of the view that taking judicial notice of the fear which the prevalent pandemic

has caused, the possibility of the petitioner, who is but a young lad about 20 years of age and possibly had travelled alone, far from home for the first time, when tested positive for Covid, having panicked and having wanted to be with his family, is real and which in these unprecedented times has to be given due weightage. Since the petitioner has already successfully undertaken several stages of the enrolment/recruitment process and was very close to his goal, it is deemed apposite to dispose of this petition with a direction to the respondents Indian Navy to, on the basis of the stages of recruitment already successfully undertaken by the petitioner in the recruitment process of April, 2020, consider the candidature of the petitioner for the recruitment process of April, 2021, by subjecting the petitioner to only further tests as may be prescribed.

14. The counsel for the respondent states that the petitioner, besides being required to undergo medical examination be also be permitted to undergo physical fitness test inasmuch as in the interregnum, the petitioner may have lost his physical fitness.

15. The same is allowed.

16. The petition is disposed of, directing the respondents Indian Navy to consider the application already made by the petitioner for the course commencing April 2020, for the course commencing April 2021 and to give benefit of stages of selection/recruitment already successfully undertaken by the petitioner for the course commencing April 2020 for the course commencing April 2021 and if the

petitioner clears the remaining stages of selection/recruitment including the physical fitness test, by directing the respondent Indian Navy to enroll/recruit the petitioner in the course commencing April 2021 for the post of MR Hygienist in the respondent Indian Navy.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

NOVEMBER 17, 2020
mw/pkb