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

+ **W.P.(C) 5847/2021**

ASHISH KUMAR PANDEY

..... Petitioner

Through: Ms. Tanya, Adv. for Mr. Ajit Kakkar,
Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Shiva Lakshmi, Mr. Himanshu
Pathak & Mr. Siddharth Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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04.06.2021

[VIA VIDEO CONFERENCING]

CM No.18312/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) 5847/2021

3. This petition has been filed, impugning the findings of the Medical Board and the Appeal Medical Board and seeking mandamus, directing the respondent no.1 Union of India (UOI) and respondent no.2 Directorate General of Recruiting, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence, to convene a Review Medical Board for examination of the petitioner and to appoint the petitioner on the basis of medical certificates issued by the government hospitals.

4. It is the case of the petitioner, (a) that pursuant to the Notification dated 7th August, 2019 inviting applications for admission to the Army, Navy and Air Force wings of the National Defence Academy for the 144th Course, and for the 106th Indian Naval Academy Course, the petitioner participated and cleared the Phase-I and Phase-II of the recruitment process/examination; (b) however in the medical examination conducted on 17th July, 2020, the petitioner was declared unfit; (c) the petitioner appealed and was examined by the Appeal Medical Board on 24th August, 2020, which declared the petitioner unfit for the reason of having substandard unaided vision in both the eyes and also for the reason of refractive error beyond permissible limit and issued a certificate dated 28th August, 2020 in this regard; and, (d) the petitioner got himself examined at the All India Institute of Medical Sciences, Jodhpur as well as from other government hospitals at Jodhpur, on 13th and 14th October, 2020, which found the petitioner to be fit and the petitioner, on 15th October, 2020 protested against the said finding of the Appeal Medical Board declaring him medically unfit and sought examination by a Review Medical Board. Pleading, that no response has been received to the communication dated 15th October, 2020, this petition has been filed.

5. The petitioner, in the petition has also pleaded that the Appeal Medical Board at Bangalore, which examined the petitioner, was not aware that the examination was also for vacancies in Indian Air Force (Ground Duty); therefore the petitioner was not examined for Indian Air Force, whose criteria in relation to vision is wider. It is further pleaded that the petitioner is also fit for Army, Navy and other branches of Air Force and the

petitioner can be considered for branches for which he is medically fit.

6. A perusal of Annexure P-1 to the petition, being titled “Instructions to Candidates Found Unfit by Appeal Medical Board” shows the same to be instructing the petitioner, *inter alia* as under:

“2. You may choose to seek a review of the above decision of the AMB by submitting a written application addressed to the DGAFMS, Ministry of Defence, M Block, DHQ P.O. New Delhi – 110001 and to be handed over to the undersigned (i.e. President Appeal Medical Board within one calendar day of completion of AMB, duly specifying the name of any one of the following two AFMS establishments where you would like to undergo a Review Medical Board, if granted by the competent authority:-

(a) Army Hospital (Research & Referral), New Delhi

(b) AFMS Pune

3. You are hereby informed that RMB is granted at the discretion of the DGAFMS, based on merits of the case and that RMB is not a matter of right.

4. Should your request seeking review of the decision of AMB as per procedure specified above, be accepted by the competent authority, you have to report for Review Medical Board at the selected establishment under your own arrangements on the date intimated to you by the DGAFMS/DG-3A. In case you do not reporting on the specified date, you will be declared as ‘UNFIT in Absentia’ and no further requests to undergo examination by a Review Medical Board will be entertained at any level.

5. Please note that the Review Medical Board will examine you only for the medical conditions as listed at Para 1 above. However,

in case of any incidental detection of any other medical condition rendering you medically UNFIT for service in the Armed Forces, the same will be taken cognizance of.

6. *If you do not submit an application seeking review of the decision of the Appeal Medical Board as mentioned at Para 1 above within the specified one calendar day after your AMB or your request for grant of RMB is not approved by office of DGAFMS. Your medical status will remain 'UNFIT for ARMY/NAVY/ARMY & NAVY' (as applicable). The same will be communicated to Directorate General of Recruiting (Rtg 'A') Adjutant General's Branch, Integrated HQ of MoD (Army)/DMPR, Integrated HQ of MoD (Navy) as applicable."*

7. The petitioner, though has pleaded that he applied for examination by the Review Medical Board but without giving any particulars thereof. Major Katoch present on behalf of respondents during the hearing, informs that the petitioner applied for Review Medical Board on 24th August, 2020 but which request was rejected vide letter dated 9th October, 2020.

8. With reference to the pleading of the petitioner, that the petitioner was not examined for fitness for other branches for which he may have been fit, we have enquired from the counsel for the petitioner, what options were filled by the petitioner in the application made for joining the course.

9. The counsel for the petitioner is not aware thereof.

10. The counsel for the respondents appearing on advance notice states, that (i) the first option of the petitioner was for Army, for which the petitioner was not found fit; and, (ii) the petitioner was not considered for the Indian Air Force (Ground Duty), since the petitioner had given his

unwillingness to undergo Computerized Pilot Selection System and which made the petitioner ineligible qua Indian Air Force (Ground Duty).

11. On enquiry, Major Katoch of the respondents also states that the petitioner, as per the findings of the Medical Board and the Appeal Medical Board, was not found fit for Indian Navy either.

12. The counsel for the respondents also states that the course for which the petitioner had applied, commenced in November, 2020 and the petitioner has approached this Court after much delay.

13. We may record that this petition has come up before this Court for the first time today, though bears the date of 25th November, 2020. However the petitioner signed the affidavit only on 2nd June, 2021.

14. Merit is found in the contention, of the petitioner being not entitled to any relief for the reason of delay alone. The petitioner, as aforesaid was found unfit by the Medical Board, on 24th / 28th August, 2019. Though the petitioner, in accordance with the option given to him applied for Review Medical Board and there was indeed considerable delay on the part of the respondents in responding to the said request which was ultimately rejected on 9th October, 2020 but the fact remains that the petitioner has brought this challenge before this Court after nearly seven months therefrom. The said delay is fatal, when the course was to commence from and commenced in November, 2020. Moreover it is obvious that the petition was prepared on 25th November, 2020 but the petitioner chose to sign and affirm the affidavit in support thereof, after seven months, on 2nd June, 2021. Once the course has begun, even if there were to be any merit in the petition, the petitioner cannot be granted any relief. Reference in regard to the delay in filing the

petition disentitling the petitioner from the relief as prayed for, may be made to *Aman Yadav Vs. Union of India* MANU/DE/0944/2021 (DB), the order dated 21st December, 2020 in W.P.(C) 10144/2020 titled *Sachin Kumar Yadav Vs. Union of India & Ors.* and the decision dated 2nd June, 2021 in W.P.(C) 5712/2021 titled *Vipin Vs. Union of India & Ors.*, wherein we have held that when the matter concerns recruitment, a candidate who feels that he has been wrongly excluded, is required to act earnestly, preferably before the recruitment process is concluded; it cannot be lost sight of, that once the vacancies are filled up, even if the petitioner has been wrongly excluded, no relief can be granted.

15. The counsel for the petitioner states that though the petitioner cannot be granted relief of admission to the subject course but if succeeds in the petition, can be directed to be admitted to the next course.

16. We are unable to agree. The petitioner, to be entitled to admission to the next course, has to compete with the admission seekers thereto and not on the basis of his success in the admission process of the previous batch of the course. Though undoubtedly the Courts, at times, on finding a petitioner, inspite of being in the right having been denied admission and further finding themselves unable to grant relief for the reason of delay etc. in adjudication not attributable to the petitioner, have granted the relief of admission to the next batch/course but if the delay is found attributable to the petitioner himself, such a petitioner cannot be granted such equitable relief.

17. With respect to the question on merits also, we may refer to the decisions in *Priti Yadav Vs. Union of India* 2020 SCC OnLine Del 951

(DB), *Sharvan Kumar Rai Vs. Union of India* 2020 SCC OnLine Del 924 (DB), *Jonu Tiwari Vs. Union of India* MANU/DE/1524/2020 (DB) [Special Leave Petition (Civil) No. 13492/2020 preferred whereagainst was dismissed on 17th December, 2020], *Vani Viswanathan Vs. Union of India* MANU/DE/1678/2020 (DB) [Special Leave Petition (Civil) No. 12682/2020 preferred whereagainst was dismissed on 5th January, 2021], *Akash Sharma Vs. Union of India* MANU/DE/2069/2020 (DB), *Sachin Kumar Yadav* supra, *Aman Yadav* supra and the decision dated 2nd June, 2021 in W.P.(C) 5717/2021 titled *Sachin Vs. Union of India & Anr.*, wherein we have 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. The petitioner has not been able to make out such case of mala fides in the present case. Further it has been 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. Further it has been observed in *Nishant Kumar Vs. Union of India* MANU/DE/1486/2020 (DB) and *Akash Sharma* supra 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.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JUNE 4, 2021
'gsr'..