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

+ W.P. (C) 522/2021

JOGINDER

.....Petitioner

Through: Ms. Tanya, Advocate.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Sumit Nagpal, Advocate.

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Date of Decision: 23rd February, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. At the outset, learned counsel for petitioner prays for an adjournment on the ground that the arguing counsel Mr. Ajit Kakkar, Advocate, is not available.
2. However, keeping in view the fact that the recruitment process had concluded in August, 2019, and a senior Doctor from the Navy, at the request of the Court, has joined the proceedings today by way of a video link, request for adjournment is declined.
3. It is pertinent to mention that present writ petition has been filed challenging Medical Unfitness Certificates dated 05th August 2019 and 23rd

August 2019 issued by the respondents. Petitioner also seeks a direction to the respondents to conduct re-medical exam or alternatively, a direction to appoint the petitioner on the basis of the medical certificate issued by the Government Hospital.

4. Learned counsel for petitioner submits that the petitioner duly complied with the recruitment procedure in the initial stages and successfully cleared Phase I and Phase II of the examination, but was rejected due to an unreasonable and unjustified Medical Unfitness Certificate issued by the respondents.

5. Learned counsel for the petitioner states that the respondents should consider the Medical Certificate dated 24th September 2019 issued by PGIMS, Rohtak, wherein the petitioner was found medically fit and no refractive error was found.

6. *Per contra*, Mr. Sumit Nagpal, learned counsel for respondents, on instructions, states that the present writ petition is barred by delay and laches as the recruitment process for the job for which the petitioner had applied was over in August, 2019. He emphasises that the petitioner was medically unfit as would be apparent from the Medical Unfitness Certificates issued by the respondents. He points out that the respondents have placed on record the Medical Unfitness Certificates issued to the petitioner.

7. Upon a perusal of the paper book as well as the documents placed on record by the respondents, it is apparent that during final enrolment medical examination at INS Chilka, the petitioner was declared unfit on account of 'CSOM RT' by Recruitment Medical Officer and referred to INHS Nivardini, who also declared the petitioner unfit for 'CSOM RT' by Graded Specialist (ENT) of the Armed Force Medical Services.

8. Thereafter, the petitioner was provided an additional review at INHS Kalyani in Vishakhapatnam, where a classified Specialist (ENT) also found the petitioner to have disability '*COM(Rt) with atelectasis with Prilateral Substandard hearing*' and declared him unfit.

9. Today, Surgeon Commodore Kaushik Roy is present by way of video link. He states that in medical terms '*Atelectasis of the Right Ear*' is a sequel of Chronic Otitis Media with effusion (Long standing infection of ear with fluid collection in middle ear) causing disability of the Tympanic Membrane and/or middle ear. He states that the above-mentioned medical condition gets aggravated by:-

- (a) Abnormal pressure regulations, which are present in ships and submarines.
- (b) Swimming and firing small and large arms/ammunitions, both of which are common practices during training and life as a sailor.
- (c) The requirement of good binaural (from both ears) hearing for sonar duties, radio operator duties, etc. are impeded in this condition.
- (d) There are chances of the disability progressing to further complications as mentioned above and finally to hearing loss.

10. Since Armed Forces cannot afford to compromise on the fighting capabilities of warship/submarines by recruiting candidates who are medically unfit at the time of entry, this Court is of the view that no interference is called for in the impugned orders.

11. This Court is further of the view that as the recruitment is for Indian Navy, it is the specialist of the Armed Forces/Navy who are well conversant with the high medical standards required during training and in subsequent military operations.

12. This Court takes judicial notice of the fact that both training and military operations are extremely demanding in terms of medical fitness of the candidate and a private Doctor or a Doctor working in Government hospital may not be in a position to comment on the required medical standards for the Navy. A Coordinate Division Bench in **KM. Priyanka vs. Union of India & Ors., W.P.(C) 10783/2020** has held as under:-

“8. We have on several occasions observed that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for civilian employment. We have, 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 fact, the case of Priti Yadav (supra) also related to ‘cubital valgus’. It is also to be noted that the specialists that the petitioner had consulted had also found that the petitioner suffered from ‘cubital valgus’ and therefore, the findings by the Medical Boards were not wrong.

9. What may seem as a minor difference in the assessment of the Civil doctors in comparison to the assessment of the Medical Boards, may blow up into a serious health condition during the course of service with the CAPFs. It is not in the interest of either the Police Forces or candidates that their medical problems are brushed aside only on the plea that it was a question of employment. The general health of candidates would be

permanently impacted due to the stress, both physical and mental, on account of these medical shortcomings. On the other hand, the government would be saddled with a Police Force where such personnel would seek soft postings because of their health conditions and low medical category. This would lead to dissatisfaction amongst the personnel in the Forces as some people, who ought not to have been taken into the Forces, would always benefit, whereas the others would be mostly faced with hard postings and duties.

13. In any event, the present writ petition is infructuous as the selection of the candidates for which the petitioner had applied was over in August, 2019.

14. For the aforesaid reasons, present writ petition is dismissed.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

FEBRUARY 23, 2021

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