

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

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Reserved on: 05th March, 2021

Pronounced on: 23rd March, 2021

+ **W.P. (C) 9669/2020 & CM APPL. No. 30953/2020**

SONU

.....Petitioner

Through: Mr. Yashvardhan S. Soam & Mr.
Sanjay Singh, Advocates.

Versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Anil Dabas with Mr. Praveen
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

ASHA MENON, J:

1. The petition has been filed for the issuance of a writ of mandamus and directions to the respondents with the following prayers:

“(a) to issue writ of mandamus/certiorari or other appropriate writ/order or directions to the respondents by:

(i) for a direction to the respondents IAF to produce complete record of the case;

(ii) seeking quashing of the proceedings and

findings dated 12th August 2020 of the Appeal Medical Board, dated 1st July, 2020 of Medical Board;

(iii) seeking mandamus to the respondents IAF to conduct medical examination of the petitioner or reference to the specialist at any designated military hospital;

(iv) seeking directions to amend the Medical Documents including Manual of Medical Examination & Boards documents pertaining to medical examination (manual of medical Examination and medical boards, IAP 4303 (4th edition: September 2010), any 'Medical Directive', rules, procedure and conditions;

(v) seeking mandamus for selection of the petitioner as Airmen, if found medically fit;

(vi) further, during the pendency of the Writ Petition Respondents may be directed to keep one post of airmen Vacant; and/or

(b) pass any such order as this Hon'ble court may deems and proper in the facts and circumstances of the case to meet the ends of justice."

2. The relevant facts are that the petitioner had applied in the recruitment of Airmen in Group X and Y Trade pursuant to the advertisement dated 1st July, 2019. He appeared for the Phase-1 written examination at Agra in which he was declared successful. Thereafter, he appeared in the Phase-2 Examination which consisted of Physical Fitness, Group Discussion, Psychological and Medical Examination on 27th November, 2019. On his full body physical examination, the petitioner

was found with “ECG abnormality and CBS review” and was referred to the Appeal Medical Board Bagdogra at 06 Wing, ASC where he was declared fit on both the points, after undergoing ECG on 6th December, 2020. The fitness certificate dated 18th February, 2020 was issued to him.

3. After having been so declared fit the petitioner was positioned at 24th rank in the provisional merit list out of 4382 candidates. He received the final call letter to report for enrolment in the IAF, at Airmen Training Station (ATS) Belgavi on 5th June, 2020. At the physical pre-enrolment medical examination at ATS, Belgavi, the petitioner was found to be suffering from ‘*Pilonidal Sinus*’ and ‘*Perianal Fistula*’ on 1st July, 2020. Therefore, he was not cleared and was asked to report at the Appeal Medical Board at SMC, AMB, Bagdogra on 10th August, 2020.

4. On receipt of this “Red Card”, on 1st July, 2020, the petitioner claims to have consulted a specialist doctor, who opined that he was suffering only from ‘*Pilonidal Sinus*’ and not ‘*Perianal Fistula*’ which could be effectively treated and which had a low recurrence rate and which would, according to the petitioner have no impact on efficient discharge of military service. The petitioner underwent ‘non-invasive Endoscopic *Pilonidal Sinus* Treatment with LASER’ on 12th July, 2020 and also had, prior to that, undergone an ‘MRI Fistulagram’ on 8th July, 2020. He was issued a fitness certificate after treatment on 4th August, 2020 by the specialist. However, when he was examined by the Appeal Medical Board at SMC, 20-Wing, Bagdogra on 12th August, 2020 he was again declared medically unfit on account of ‘*Pilonidal Sinus*’ and ‘*Perianal Fistula*’. In order to be satisfied that he had no re-occurrence

after the wound had healed the petitioner got himself medically examined on 2nd November, 2020 and was declared absolutely fit.

5. The learned counsel for the petitioner laid emphasis on one fact, and that was that his batchmates had been permitted to come for the Appeal Medical Board in November, 2020 in view of the Covid conditions prevailing. The hospitals where the Appeal Medical Boards were to be constituted for the purposes of the present recruitment had all been so intimated by the respondents that the medical examinations stood postponed, despite which, the Appeal Medical Board at SMC, 20-Wing Bagdogra unlawfully conducted the petitioner's examination and declared him unfit. Hence, the petitioner had been unfairly treated and, therefore, he was entitled to be examined by a new Medical Board.

6. Vide order dated 2nd December, 2020 this Court had enquired whether according to the Manual of Medical Examination and Medical Boards, a person was eligible for recruitment immediately after surgery or after a period of six months or more. It has been informed by the learned counsel for the respondents that such a time period has not been prescribed for the Armed Forces. Pursuant to the same order, the respondents have filed the records of the Medical Examination and extracts of the Medical Manual. The respondents have also placed on record the medical case sheet which reflects that the petitioner had been referred to the specialist for surgical opinion.

7. We have perused the records and have heard submissions of learned counsel.

8. All facts stand admitted in the present case. While the first medical

examination of the petitioner declared the petitioner unfit on account of “ECG abnormality” and also a “CBS review”, but the Appeal Medical Board had declared him medically fit. This was at the recruitment stage. However, as per rules, the petitioner was required to be medically examined prior to the commencement of the training programme and he underwent this medical examination on 1st July, 2020 when he was found with ‘*Pilonidal Sinus*’ and ‘*Perianal Fistula*’.

9. The very fact that the petitioner underwent a surgical procedure for ‘*Pilonidal Sinus*’ is confirmatory of the findings of the medical examination on 1st July, 2020 (Annexure P-9). This surgical procedure was undergone by him at Bhandari Hospital and Research Centre Jaipur (Annexure P-12). The diagnosis was clearly “*Pilonidal Sinus with Left Gluteal Abscess with Pus discharge from the left Gluteal region for a month prior thereto*”. Both these conditions were operated upon and the petitioner was discharged on 12th July, 2020 advising a follow up/review on 20th July, 2020. In the certificate (Annexure P-16) dated 4th August, 2020 Dr. K.M. Bhandari had certified that the petitioner had been operated for ‘*Pilonidal Sinus with Left Gluteal Abscess*’ on 10th July, 2020. It is important to note that he had recorded ‘*at present his wound is healing*’. In other words, it cannot be ruled out that on 12th August, 2020 when the petitioner was examined by the Appeal Medical Board, he had not fully recovered from the surgical procedure and was therefore rightly declared unfit.

10. The grievance of the petitioner appears to be that had he also availed the opportunity of the Appeal Medical Board on 2nd November,

2020 his wound would have been healed as certified by Dr. K.M. Bhandari on 2nd November, 2020 and the Appeal Medical Board would not have disqualified him. However, even though the petitioner had received the email intimation dated 11th August, 2020 that he was not required to report at the Appeal Medical Centre due to Covid-19 pandemic and the reporting date had been deferred and he was specifically advised to withhold “*your movement and not report at the Appeal Medical Centre as per schedule*”, the petitioner himself appeared before the Appeal Medical Centre on 12th August, 2020. Now having exercised the right to an Appeal Medical Board of his free will and choice on 12th August, 2020, he cannot claim victimhood to seek a further medical examination to suit his convenience. There is no scope for a third Review Medical Examination once the petitioner has availed of this right of the Appeal Medical Board.

11. In the case of ***Nishant Kumar v. Union of India & Ors., W.P. (C) 3626/2020*** decided on 29th July, 2020 which was a similar case of *Perianal Fistula* and *Pilonidal Sinus* it was recorded as following:

“14. We specifically sought clarification from Wing Commander Waghle whether any of these conditions would interfere in the discharge of duties of an Airman and she categorically affirmed that it would, as they involve fluid discharge.”

12. The assessment of medical fitness must be the same in the present case also. Though the learned counsel for the petitioner contended that ‘*Pilonidal Sinus*’ has not been declared to be a ground for rejection as per the Manual of Medical Examinations and Medical Board placed on

record as (Annexure R-1/2) by the respondents, in view of the explanation given by Wing Commander Waghle as recorded in the case of *Nishant Kumar (supra)*, the reason for not taking any candidates found suffering from this condition in the *praesenti* cannot be questioned. Moreover, the fact remains that an unhealed wound had been presented by the petitioner before the Appeal Medical Board which disqualified him from being selected. Merely because that condition stands healed now cannot be ground to permit the petitioner a further medical examination.

13. We may also note and as pointed out by the respondents in their counter affidavit, that during the Appeal Medical Board, the petitioner had been referred to the graded specialist in surgery for opinion on the disability, i.e. '*Pilonidal Sinus*' and '*Perianal Fistula*' and after examination by such graded specialist in surgery, he was found to be unfit. Thus, neither in the procedure nor in the conclusions of the Appeal Medical Board do we find any irregularity.

14. There is no merit in the present petition. The same is dismissed along with the pending application.

ASHA MENON, J

MANMOHAN, J

MARCH 23, 2021/ak