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

% **Date of Judgment: 27th May, 2021**

+ W.P. (C) No.1341/2021 & C.Ms. No.3763/2021 (for directions) & 3764/2021 (for condonation of delay of 101 days in filing counter affidavit)

POOJA Petitioner
Through: Mr. Ram Naresh Yadav, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Jitesh Vikram Srivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The petitioner applied for the post of Sub-Inspector in Delhi Police and Central Armed Police Forces (CAPFs) and Assistant Sub-Inspector in Central Industrial Security Force (CISF) in the examination conducted by respondent no. 3 Staff Selection Commission (SSC), notified on 3rd March, 2018. Upon qualifying the written examination in Paper I, the Physical Endurance/Standard Test (PET/PST) and the written examination in Paper II, the petitioner appeared in the Detailed Medical Examination (DME) held on 17th September, 2020. The petitioner was declared unfit vide the result/order dated 18th September, 2020 of the DME on account of

“Surgeries of right breast (i) In 2007- Lymphangioma Circumscriptum (No documents available) (ii) In 2019- Breast Reconstruction at Artemis Hospital, Gurgaon (2017). Re-evaluation of patient.” She preferred an appeal against the above findings before the Review Medical Board (RMB), which on 3rd December, 2020 declared her unfit on account of having been “Operated for Breast Reconstruction in 2019 with Silicone Implant”.

2. The present petition under Articles 226 and 227 of the Constitution of India has been filed impugning the result/order dated 18th September, 2020 of the DME and that of the Review Medical Examination (RME) conducted by the RMB dated 3rd December, 2020, both holding the petitioner unfit for the aforesaid posts. The petitioner has further sought a direction from this Court restraining the respondents from declaring the final result of the recruitment for the aforesaid posts and for the respondents to constitute an independent medical board at the Army Hospital (Research and Referral) or in any other government hospital, to re-examine her. The petition first came up before this Court on 2nd February, 2021 when notice was issued to the respondents. Pursuant to that, the respondents filed a counter affidavit and a short affidavit.

3. The counsel for the petitioner has submitted that (i) the Medical Guidelines are silent on medical unfitness on account of ‘Breast Reconstruction’ or ‘Surgery of Lymphangioma Circumscriptum on right breast’; (ii) the petitioner has fulfilled all the criteria laid down by the respondents and that there is no evidence of any malignancy or deformity found in the petitioner; (iii) the RMB has not passed the order in accordance with Medical Guidelines; (iv) the RMB comprising of three doctors did not consist of any specialists in the field the petitioner was declared unfit in. It is

also the case of the petitioner that she got herself examined on 21st September, 2020 and 22nd September, 2020 at two separate hospitals, including one government hospital, both of which declared her fit for the desired posts and that the RMB did not take into consideration the certificates of fitness issued to the petitioner by the aforesaid hospitals.

4. *Per contra*, the respondents in their counter affidavit have contended that (i) the RMB was duly constituted consisting of 3 expert medical practitioners; (ii) there exists no provision in the 'Guidelines for Recruitment Medical Examination for recruitment of GOs and NGOs in the CAPFs and AR', as revised vide Office Memorandum (OM) of the MHA dated 20th May, 2015 (Medical Manual), for a candidate to be declared 'fit' for recruitment based on any fitness certificate issued by a medical practitioner; (iii) the DME and RME were held as per the guidelines provided in the Medical Manual; and (iv) the decision of the RMB is final and no appeal is permissible against the said decision. He has relied upon a number of judgments passed by this Court and the Calcutta High Court in support of his contention.

5. The respondents subsequently filed a short affidavit containing a copy of the medical opinion provided by General Surgeon, CMO(SG), Border Security Force (BSF), who has opined that the presence of implants will cause hindrance in the discharge of professional duties by the petitioner. Relying upon Clause 11(1) of the Medical Manual, the General Surgeon, CMO(SG), BSF justified the finding of the DME and the RME holding the petitioner unfit for the desired posts. Clause 11(1) of the Medical Manual provides as under-

“11 . MISCELLANEOUS CONDITIONS-

1) Any evidence of implants in situ anywhere in body will lead to rejection.”

6. The petitioner has relied upon a certificate dated 21st September, 2020 issued by Consultant Plastic Surgery, Artemis Health Institute, Gurgaon, Haryana to state that despite insertion of the implants, the petitioner can participate in all outdoor activities and trainings. To similar effect is another medical fitness certificate issued by the General Surgeon, Civil Hospital, Rewari, Haryana that has been relied upon by the petitioner. It is not in dispute that the petitioner has had surgeries in her right breast and there was a silicone implant in her breast. Once it is provided in the Medical Manual that implants anywhere in the body will lead to rejection, it is not for this Court to judge whether such condition in the Medical Manual is justified or not. It is also an admitted position that the petitioner has not challenged the Medical Manual or any part of the same.

7. It is the prerogative of the respondents, as the employer to lay down the medical requirements for employment. Unless the petitioner meets the standard prescribed in the Medical Manual, no such direction as sought in the writ petition can be issued. Reference in this regard may be made to recent decisions of this Bench in *Ishwar Singh Vs. Union of India* MANU/DE/0813/2021 (DB), *Arun Kumar Vs. Union of India* MANU/DE/1834/2020 (DB) and judgement dated 18th May, 2021 in W.P.(C) 5353/2021 titled *Madhusudhana P.S. Vs. Union of India* MANU/DE/0933/2021 (DB). It has further been held in decisions of this Court in *KM. Priyanka Vs. Union of India* W.P.(C) 10783/2020 and

Dharmraj Jat Vs. Union of India W.P.(C) 8692/2019 [Special Leave Petition (Civil) No.8543-8544/2020 preferred against which, was dismissed on 16th July, 2020], copies of which have been filed by the respondents along with their counter affidavit, that once doctors of the Forces, who are well aware of the requirements of the Forces in which the recruited personnel are 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. In fact, this Bench in its judgment dated 21st May, 2021 in W.P.(C) 4662/2021 titled ***Deepak Kumar Vs. Union of India*** MANU/DE/0944/2021 (DB) has held that the opinion of the medical experts of the respondents has to prevail unless a doubt is created against such an opinion or any error in the conduct of the medical examination is shown. No such case is made out in the present petition.

8. There is no merit in the petition.

Dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

MAY 27, 2021

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