

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

% **Date of decision: 21st May, 2021.**

+ **W.P.(C) 4557/2021**

AMAN YADAV

..... Petitioner

Through: Mr. Ajit Kakkar, Advocate.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Anil Dabas, Sr. Panel Counsel
with Mr. Akshat Singh, GP.

AND

+ **W.P.(C) 4662/2021**

DEEPAK KUMAR

..... Petitioner

Through: Mr. Ajit Kakkar, Advocate.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Rishabh Sahu, CGSC with Mr.
Sameer Sinha, GP.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

(A) These petitions, though by different petitioners but filed through the same advocate, have some similarity in facts and are being listed together and have today also been heard together and are disposed of by this common judgment. However for the sake of clarity of facts, first the narrative of

W.P.(C) 4557/2021 is given herein below and thereafter under W.P.(C) 4662/2021, only the facts which are different therein are highlighted.

W.P.(C) 4557/2021

1. The petitioner, being a candidate for recruitment as an Airman in the respondents Indian Air Force, during the recruitment drive of the year 2019, has filed this petition impugning the decision of the Appeal Medical Board finding the petitioner unfit for serving in the respondents Indian Air Force.
2. This petition, impugning the finding dated 22nd August, 2019, of the Appeal Medical Board, is dated 8th April, 2021 and came up first before this Court on 15th April, 2021, i.e. after nearly twenty months of the date when the Appeal Medical Board found the petitioner unfit. We have thus, at the outset enquired from the counsel for the petitioner, why the petition, claiming the relief of recruitment, should not be dismissed as barred by delay laches and acquiescence.
3. The counsel for the petitioner states that the petitioner, after having been found medically unfit by the Appeal Medical Board on 22nd August, 2019, in or about March, 2020 filed a writ petition in this Court but which did not get listed and thus this petition was again filed and got listed.
4. The aforesaid is no explanation for the long delay especially considering that the matter relates to recruitment of the year 2019 and which recruitment, by now would have been long over. The petitioner, when had been declared medically unfit on 22nd August, 2019, if really desirous of joining the respondents Indian Air Force and if dissatisfied with the finding of the Appeal Medical Board, should have taken steps immediately. The

first petition also, is stated to have been filed after seven months therefrom, in March, 2020, and which was also not pursued. Though on account of the prevalent pandemic, the functioning of this Court was restricted with effect from mid-March 2020, but urgent matters were being taken up. The petitioner, if felt any urgency, could have got the petition listed and the fact that the petitioner waited for one year, speaks volumes of the laxity on the part of the petitioner.

5. The counsel for the petitioner then states that the petitioner is still of eligible age.

6. We have enquired from the counsel for the petitioner, that if the petitioner as per the age is still eligible, whether the petitioner participated in the recruitment drive of the years 2020 and 2021.

7. The counsel for the petitioner states that the petitioner participated in the said drives, but could not qualify and did not reach the stage of Medical Examination even.

8. That explains the delay on the part of the petitioner. The petitioner, though decided to take a chance of recruitment in the following years but after being unsuccessful therein, has decided to challenge the finding of the Appeal Medical Board in the recruitment drive of the year 2019.

9. Be that as it may, we have examined the merits also. The Appeal Medical Board found the petitioner medically unfit on account of "Portwine Stain (Vascular Nevus)".

10. The counsel for the respondents Indian Air Force, pursuant to the directions in the earlier order, has produced before us an extract of the Manual of Medical Examination and Medical Boards, published under the authority of the Chief of Air Staff, as on 4th September, 2010 and as per Clause 3.8.7 of which, *“Naevus depigmentosus and Beckers naevus may be considered fit. Intradermal naevus, vascular naevi may be considered unfit”*.

11. The Appeal Medical Board having found the petitioner to be suffering from “Vascular Nevus”, the petitioner, as per the medical standards prescribed for recruitment and in accordance wherewith the Medical Boards are to examine the candidates, does not qualify for recruitment.

12. The counsel for the petitioner draws attention to the certificate dated 28th August, 2019 of All India Institute of Medical Sciences (AIIMS) where the petitioner got himself examined on account of “concerns about Air Force Medical”. AIIMS has diagnosed the petitioner as suffering from “Portwine Stain” since birth with no unusual abnormalities.

13. The diagnosis of AIIMS is no different from that of the Appeal Medical Board of the respondents Indian Air Force.

14. The counsel for the petitioner however states that AIIMS has only found the petitioner to be suffering from “Portwine Stain”, which is a birth mark and not for “Vascular Nevus”.

15. It was for the petitioner, if relying upon the certificate of AIIMS, to seek the opinion of AIIMS on whether the petitioner was suffering from “Vascular Nevus” or not. AIIMS, in its certificate has nowhere controverted

the finding of the Appeal Medical Board, of the “Portwine Stain” amounting to “Vascular Nevus”. The counsel for the petitioner has also not drawn attention to any part of the Medical Manual aforesaid, which permits recruitment, even if suffering from “Portwine Stain”.

16. Thus, not only on account of delay, even on merits, no ground for interference with the finding of the Appeal Medical Board of the respondents Indian Air Force is made out.

Dismissed.

W.P.(C) 4662/2021

17. The petitioner herein was also a candidate for recruitment as an Airman in the drive of the year 2019 and was found unfit by the Medical Board, for the reasons of (i) X-Ray Abnormality - Cardiomegaly; (ii) Refractive Error Both Eyes; and, (iii) Hypertrophic Scar Right Forearm Measuring 3.5 X 0.5 cm.

18. The petitioner sought examination by the Appeal Medical Board and appeared before the Appeal Medical Board on 29th August, 2019. It is the case of the petitioner, that the Appeal Medical Board also informed the petitioner that he had been found medically unfit and asked the petitioner to collect the report on 1st October, 2019 but which was never furnished and on the contrary the Appeal Medical Board vide communication dated 4th October, 2019 declared the petitioner “Unfit in Absentia”.

19. Pursuant to the directions in an earlier order, the respondents Indian Air Force have filed documents and which documents show that, (i) the

Appeal Medical Board, on 29th August, 2019 referred the petitioner to Medical, Eye and Skin Specialist; (ii) the Skin Specialist, after examining the petitioner on 5th September, 2019, declared the petitioner unfit for the reason of “multiple keloids”; (iii) the petitioner appeared before the Eye Specialist on 9th September, 2019, who declared the petitioner fit in suitable category; and (iv) the petitioner appeared before the Medical Specialist on 11th September, 2019 and 16th September, 2019 and who, after conducting the tests of the petitioner, declared the petitioner fit from the “Cardiomegaly”.

20. The counsel for the petitioner states that the “Hypertrophic Scar Right Forearm Measuring 3.5 x 0.5 cm” is not an abnormality for declaring the petitioner unfit.

21. The counsel for the respondents, as per direction in the earlier order, has emailed an extract of the aforesaid Medical Manual and as per Clause 3.8.3(e) thereof “*candidates having any keloid should be considered unfit*”. The Skin Specialist of the Appeal Medical Board, as aforesaid, after examining the petitioner on 5th September, 2019 declared the petitioner unfit for the reason of “Multiple Keloids”. However since the petitioner thereafter did not appear before the Appeal Medical Board on 1st October, 2019, he was declared unfit in absentia.

22. It is not for the Court to lay down the standards of medical fitness for recruitment as an Airman in the respondents Indian Air Force. The said standards are prescribed in the Medical Manual, which Medical Manual or any part whereof is not under challenge. Unless the petitioner is able to satisfy, and which the petitioner has failed to do, that in spite of the

petitioner having hypertrophic scar measuring 3.5 x 0.5 cm on the right-forearm, the petitioner meets the standards prescribed in the Medical Manual, no direction for recruitment of the petitioner can be issued. Reference in this regard may be made to ***Ishwar Singh Vs. Union of India*** MANU/DE/0813/2021 (DB), ***Arun Kumar Vs. Union of India*** MANU/DE/1834/2020 (DB) and the decision of this Court dated 18th May, 2021 in W.P.(C) 5353/2021 titled ***Madhusudhana P.S. Vs. Union of India***. We may further add that in ***Priti Yadav v. Union of India*** 2020 SCC OnLine Del 951 (DB), ***Sharvan Kumar Rai v. Union of India*** 2020 SCC OnLine Del 924 (DB), ***Nishant Kumar Vs. Union of India*** MANU/DE/1486/2020 (DB), ***Jonu Tiwari Vs. Union of India*** MANU/DE/1524/2020 (DB), ***Vani Viswanathan Vs. Union of India*** MANU/DE/1678/2020 (DB), ***Akash Sharma Vs. Union of India*** MANU/DE/2069/2020 (DB), holding that it is the opinion of the medical experts of the respondents and not of the doctors of other hospitals, even of government hospitals, which has to prevail, unless some doubt is created with respect to the opinion rendered by the medical experts of the respondents or any error in the conduct of medical examination is shown. No such case is also made out in the present case.

23. The petitioner in this petition also has thus been rightly declared unfit and has failed to make any dent to the findings of Medical Board of the respondents Indian Air Force.

24. Else, this petition also, like the earlier one, suffers from the malady of delay laches and acquiescence and the facts in this regard are identical to that of the earlier petition.

25. Thus, in the present case also, not only on account of delay, also on merits, the petitioner is not found to have any case.

Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

May 21, 2021
‘sr’

