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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 4741/2021 and CM Mo. 17463/2021 (for early hearing)
AMIT KUMAR Petitioner
Through: Ms.Bhavana Duhoon, Adv

versus

UNION OF INDIA & ANR. Respondents
Through: Mr.Sanjeev Kumar Baliyan, 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]

1. The petitioner, a candidate in the recruitment of November, 2020 of Airmen, filed this petition impugning the findings of the Medical Board and the Appeal Medical Board, of the petitioner being 'unfit' for appointment.
2. Vide order dated 31st May, 2021, the records of medical examination of the petitioner as well as the concerned Medical Manual were directed to be produced.
3. The counsel for the respondents states that the requisite documents have been filed in the Court.
4. The same have been perused by us.
5. The petitioner, after examination on 30th December, 2020, was declared 'unfit' by the Medical Board, on three grounds i.e. (i) being overweight; (ii) being unable to squat; and, (iii) suffering from *Hyperbilirubinemia*.

6. The petitioner preferred an appeal and as per the documents produced by the respondents, the Appeal Medical Board reported, that (i) the weight of the petitioner was 80 kgs as against the standard body weight corresponding to the age and height of the petitioner, of 63 kgs; (ii) that the *bilirubin* count of the petitioner was 2.2 mg and that the petitioner, on 5th February, 2021 failed to appear before the expert for the test of squatting.

7. The contention of the counsel for the petitioner is, that the Appeal Medical Board only conducted the blood test of the petitioner and did not take the weight of the petitioner and did not make the petitioner squat. With respect to the *bilirubin* count of the petitioner, the counsel for the petitioner has drawn attention to the reports of the blood test got done by the petitioner on 4th March, 2021 from Maharishi Valmiki Hospital Pooth Khurd and on 8th March, 2021 from Health Care Diagnostics Centre, Bawana, Delhi, showing the *bilirubin* count of the petitioner to be 0.6 mg/dl i.e., within the permissible limits.

8. Having not found the petitioner, in the petition to have pleaded, what according to him his weight was on the date of the examination by the Medical Board and/or on the date of examination by the Appeal Medical Board, we have enquired from the counsel for the petitioner about the same and also asked the counsel for the petitioner, whether the petitioner got his weight measured at any hospital, at the contemporaneous time.

9. The counsel for the petitioner confirms that there is no pleading or document in this respect and states that she will have to take instructions.

10. Once the petition concerning recruitment has been filed and does not make a material plea and/or does not controvert the reason given by the Medical Board and the Appeal Medical Board, the inference is that the

petitioner is not controverting the said finding of the Medical Board/Appeal Medical Board. The petitioner is thus not found to be controverting the finding of the Appeal Medical Board, that the weight of the petitioner on 30th December, 2020 was 83 kgs and on 1st March, 2021 was 80 kgs.

11. The counsel for the respondents has also drawn our attention to the ideal weights prescribed in the Manual of Medical Examination and Medical Boards, 4th Edition, September, 2010, in which, for the height of the petitioner of 178 cm and age of the petitioner of 19 years, the ideal body weight prescribed is of 63 kgs with a margin of 6.3 kgs. Thus the petitioner could have been found 'fit', had his weight been up to a maximum of 69.3 kgs. However the weight of the petitioner, as per the records produced, on the date of the examination by the Medical Board as well as by the Appeal Medical Board was way above i.e., 83 kgs and 80 kgs respectively. The petitioner on the said ground alone was not entitled to be recruited.

12. Since one ground is enough for this petition to be dismissed, we are not opting to go into other two grounds of rejection. Suffice it to say that, (i) the petitioner, without imputing any *mala fides* to the Officers constituting the Medical Board/Appeal Medical Board, cannot controvert their findings as to having weighed the petitioner; reference in this regard can be made to ***Hari Kumar Vs. Union of India*** 2012 SCC OnLine Del 2464, ***Priti Yadav Vs. Union of India*** 2020 SCC OnLine Del 951 (DB), Order/Judgment dated 2nd June, 2021 in W.P.(C)5717/2021 titled ***Sachin Vs. Union of India*** and ***Aman Yadav Vs. Union of India*** MANU/DE/0944/2021, and, (ii) once the Medical Board as well as the Appeal Medical Board, on examination of the blood sample of the petitioner have found the *bilirubin* count to be above that prescribed, merely because another hospital has found the count to be

otherwise, again cannot be a ground for referring the petitioner to another round of examination; reference in this regard may be made to *Priti Yadav* supra, *Sharvan Kumar Rai Vs. Union of India* 2020 SCC OnLine Del 924, *Nishant Kumar Vs. Union of India* MANU/DE/1486/2020, *Jonu Tiwari Vs Union of India* MANU/DE/1524/2020 [Special Leave Petition (Civil) No. 13492/2020 preferred thereagainst dismissed on 17th December, 2020], *Vani Vishwanathan Vs Union of India* MANU/DE/1678/2020 [Special Leave Petition (Civil) No. 12682/2020 preferred thereagainst dismissed on 5th January, 2021], *Nishant Vs. Union of India* MANU/DE/2022/2020, *Akash Sharma Vs. Union of India* MANU/DE/2069/2020, *Paridhi Chauhan Vs. Union of India* MANU/DE/2288/2020 and *Aman Yadav* supra.

13. There is no merit in the writ petition.
14. Dismissed.
15. The next date scheduled in the petition stands cancelled.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JUNE 4, 2021
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