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

+ W.P.(C) 4743/2021 and CM 17485/2021 (for early hearing)

RISHI BHARDWAJ

..... Petitioner

Through: Ms. Bhavana Duhoon and Mr. Anshul Syal, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Harish Vaidyanathan, 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 was a candidate in the recruitment carried out by respondent No. 2 Indian Air Force in the year 2020 to join as 'Airmen' in Group 'X' (Technical Trades) for intake in January, 2021. The petitioner applied for the position of Airman and after being selected, was subjected to medical examination on 30th December, 2020. Following the medical examination, the petitioner was issued a medical unfitness certificate on the following three grounds:- (i) Varicocele left; (ii) External Haemorrhoids Grade 2; and, (iii) ECG abnormality. Aggrieved therefrom, the petitioner filed an appeal before the Appeal Medical Board, as provided for under Clause 20 of the notification for recruitment of Airmen and was directed to appear at the Station Medicare Centre on 15th January, 2021. The Appeal Medical Board also declared the petitioner unfit vide Certificate dated 1st March, 2021, on the following grounds:- (i) Varicocele left; and, (ii) ECG abnormality.

2. It is the case of the petitioner that the petitioner underwent a surgery for correction of 'Varicocele left' on 11th January, 2021 following which the same was categorised as Grade Zero. It is further the case of the petitioner that no ECG was conducted by the Appeal Medical Board upon the petitioner, when the petitioner appeared before the Appeal Medical Board. Therefore, it is the submission of the petitioner that the rejection by the Appeal Medical Board was wrong. Accordingly, it is prayed that the Medical Unfitness Certificate dated 1st March, 2021 by the Appeal Medical Board be set aside and the respondents be directed to reconsider the petitioner for the post of Airman.

3. Pursuant to the order of this Court dated 31st May, 2021, the counsel for the respondents has filed the Medical Manual along with relevant documents pertaining to the medical examination of the Petitioner. The counsel for the respondents places reliance on page 6 of the said documents, which has endorsements of examination of the petitioner by various medical officers of the respondents. He specifically places reliance on the endorsement of 8th February, 2021 wherein the doctor of the Base Hospital, Delhi Cantt., has recorded the petitioner to be unfit on account of Grade -1 'Varicocele left'. There is also an endorsement of 9th February, 2021, which records that the petitioner was declared 'unfit in absentia', as the petitioner failed to appear for conducting of the ECG. The said medical record is summarised in the Certificate dated 1st March, 2021 at page 7 of the documents filed by the respondents, wherein the opinions of various specialists, as discussed above, have been recorded/summarised. Attention of this Court is also drawn to Clause 3.6.2 (b) on internal page 103 of the 'Manual of Medical Examinations and Medical Board' (Medical Manual) of

the respondent No. 2 Indian Air Force, (page 11 of the documents filed by the respondents). The said clause provides as under-

“3.6.2 Clinical Examination...

(b) Varicocele

(i) Unfit- All grades of current varicocele

(ii) Fit- Post-operative cases of varicocele with no residual varicocele and no post op complication or testicular atrophy may be made fit after 04 weeks of surgery, for sub-inguinal varicocoelectomy.”

In the light of the above, the Appeal Medical Board declared the petitioner to be unfit.

4. The counsel for the petitioner has vehemently urged that since the petitioner has undergone the surgery to correct ‘Varicocele left’, the same should have been taken in account by the Appeal Medical Board while declaring the petitioner unfit. He further contended that the Appeal Medical Board should have been held later so that he would have been fully cured. It is further reiterated that the petitioner duly presented himself for the ECG test however the same was not conducted by the Appeal Medical Board.

5. We have considered the submissions of the parties. There is no basis to disbelieve the records of the respondents that reflect that the petitioner did not appear for conduct of the ECG. It is not the case of the petitioner that there was a bias or malafide against him. Similarly, the contention of the petitioner that by getting himself operated he got cured of ‘Varicocele left’ cannot be accepted. The fact of the matter is that at the time of the original medical examination as well as the Appeal Medical Board, he was found medically unfit. The holding of the Appeal Medical Board cannot be at the convenience of the petitioner. The fact that the petitioner would have got cured later, cannot be a ground for a fresh medical examination. In this

regard, reference may be made to ***Sonu Vs. Union of India*** MANU/DE/0584/2021.

6. In the light of the record produced by the respondents, it is a clear finding of the Appeal Medical Board that the petitioner was unfit on account of the aforesaid two grounds. The documents produced by the petitioner from other hospitals cannot be relied upon as opposed to the documents of the respondents from the hospitals of the respondents. It has been held in various pronouncements by this Court that the medical records of the respondents have to prevail over the documents produced from other hospitals by the petitioner, even if the said other hospitals happen to be government hospitals. Reference may be made to ***Vani Viswanathan Vs. Union of India*** MANU/DE/1678/2020 (DB) [Special Leave Petition (Civil) No.12682/2020 preferred against which, was dismissed on 5th January, 2021], ***Jonu Tiwari Vs. Union of India*** MANU/DE/1524/2020 (DB) [Special Leave Petition (Civil) No.13492/2020 preferred against which, was dismissed on 17th December, 2020], ***Deepak Kumar Vs. Union of India*** 2021 SCC OnLine Del 2495 and judgment dated 27th May, 2021 in W.P.(C) 1341/2021 in ***Pooja Vs. Union of India***.

7. In view of the above, there is no merit in the petition.

8. The next date scheduled in the petition stands cancelled.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JUNE 4, 2021

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