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

Date of Decision: 03.09.2021

+ **W.P.(C) 4992/2021 & CM No.15302/2021**

KSHEM KUMAR Petitioner
Through Mr.D.S. Kauntae, Adv.

versus

UNION OF INDIA AND ORS Respondents
Through Mr.Vikrant N. Goyal, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner praying for a writ of mandamus directing the respondent no. 1 to constitute a Review Medical Board to examine the petitioner for his recruitment as a Sailor [AA], Sailor [SSR]-08/2020 Batch.

2. The respondent no. 2 invited applications online for recruitment as a Sailor [AA], Sailor [SSR]-08/2020 Batch. The petitioner applied against the same and on clearing written examination, underwent a medical examination at the Recruiting Medical Office at INS Chilka. The petitioner was declared medically unfit vide referral order dated 03.02.2021 for Naval Service due to '2nd Toe Deformity Both Legs'. It is the case of the petitioner that the petitioner was examined by the

Appeal Medical Board on 23.02.2021, however, was orally declared unfit. The petitioner filed a representation dated 06.03.2021 against the same seeking the constitution of a Review Medical Board, however, received no reply.

3. The learned counsel for the petitioner places reliance on Regulation 482 of the Defence Services Regulations, Regulations for the Medical Services of the Armed Forces 1983, to contend that the respondent no. 1 was under a duty to constitute a Review Medical Board at the request of the petitioner.

4. On 26.04.2021, this petition was first listed before this Court. As the learned counsel for the petitioner expressed urgency for hearing the petition and as none appeared for the respondent on advance notice, notice was issued on the petition and the learned counsel for the petitioner was given liberty to serve a copy of the petition on the standing counsel for the respondent. The petition was directed to be listed on 27.04.2021.

5. On 27.04.2021, again none appeared for the respondents. This Court, therefore, passed the following order:-

“3. Given these circumstances, and the fact that the petitioner has already moved the concerned authority for convening the appeal medical board to review his medical fitness, the concerned authority is directed to have the petitioner examined by the appeal medical board and ascertain, as to whether the impugned medical report needs to be revised.

4. It is made clear that this will be without prejudice to the rights and contentions of the parties.

4.1. These directions are being issued as we are informed that the final list concerning the selected candidates will be published on 30.04.2021.

5. We may also note, in support of his plea, that the review can be carried out by respondent no. 1, Mr. Kauntae has referred to Regulation No. 482 of the Regulations for the Medical Services of the Armed Forces, 1983.

6. The appeal medical board will ensure that its decision is rendered before the publication of the final list.”

6. The respondent has filed a counter affidavit to the petition explaining that the petitioner had been duly examined at INS Chilka and was found medically unfit for Naval Services due to ‘2nd Toe Deformity Both Legs’ and was further granted referral to seek an Appeal Medical Examination to be held at INHS Kalyani on 24.02.2021. The petitioner was thereafter examined by the Appeal Medical Board held at INHS Kalyani, Vishakhapatnam on 23.02.2021 and was again declared unfit on the following reasons:-

“B/L 2nd toe clawing present with secondary nail changes due to friction with footwear.

UNFIT for referred disability.”

7. The learned counsel for the respondents submits that the above report of the Appeal Medical Board could not be pointed out to this Court when the order dated 27.04.2021 was passed by this Court. He further submits that in terms of the Navy Order (SPL) 01/2008, no further review/appeal against the finding of the Appeal Medical Board

is permissible. He submits that Regulation 482 of the Defence Services Regulations, Regulations for the Medical Services of the Armed Forces 1983, is not applicable to the Indian Navy personnel.

8. This petition was listed before this Court on 20.07.2021, on which day the petitioner sought time to file a rejoinder to the counter affidavit. As the matter was being adjourned at the request of the petitioner, taking into account the position explained in the counter affidavit, the order dated 27.04.2021 was modified by this Court and it was clarified that there is no stay on the publication of the final list of AA/SSR pursuant to the recruitment/admission process in which the petitioner had participated. The relevant extract from the order is as under:-

“4. In view of the position explained in the counter affidavit of the respondents Indian Navy, the order dated 27th April, 2021 is also modified and it is clarified that there is no stay on publication of the final list of AA/SSR pursuant to the recruitment/admission process in which the petitioner had participated.”

9. Today again, when the matter was called in the morning, the learned counsel for the petitioner sought an adjournment for filing the rejoinder. At the pass over stage, however, he argued the petition finally making the submissions as have been recorded hereinabove.

10. We have considered the submissions made by the learned counsel for the parties. As is evident, the petitioner has been duly examined by the Medical Board as also by the Appeal Medical Board and was found unfit for appointment.

11. This Court in its judgment dated 21.12.2020 in ***K.M. Priyanka v. Union of India & Ors***, W.P.(C) 10783/2020, has held that once no *mala fide* is attributed and the doctors of the Forces, who are well aware of the demands of duties of the Forces in the terrains in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, the opinion of private or other government doctors to the contrary cannot be accepted.

12. In ***Joginder v. Union of India & Ors***, W.P.(C) 522/2021, this Court has held that training and military operations are extremely demanding in terms of the medical fitness of a candidate and a private doctor or a doctor working in a Government hospital may not be in a position to comment on the required medical standards for the Force.

13. As far as the claim for a Review Medical Board is concerned, in view of the concurrent finding of the Medical Board and the Appeal Medical Board, we do not find any merit in the said prayer as well.

14. In view of the above, we find no merit in the present petition. The same is dismissed.

NAVIN CHAWLA, J

MANMOHAN, J

SEPTEMBER 3, 2021/rv