

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

% **Date of decision: 18th May, 2021.**

+ **W.P.(C) 5353/2021**

MADHUSUDHANA P.S. Petitioner

Through: Mr. Aniket Jain, Adv.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Rajesh Kumar, Mr. Syed Husain
Adil Taqvi and Mr. Ravi Rai, Adv.
with Mr. Arjun Ghatoch, OIC, Legal
Cell, Army.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.16512/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.
2. The application is disposed of.

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3. The petitioner was a candidate for admission to 150th (DE) Course of the Indian Military Academy, Dehradun, pursuant to the Combined Defence Services Examination-I, 2020, of which notification was issued on 30th October, 2019.

4. It is the case of the petitioner, (i) that his name figured in the list of 50 candidates selected/qualified for admission to the 100 seats; (ii) however in the examination by the Special Medical Board (SMB) at Allahabad, conducted on 16th October, 2020, the petitioner was declared "unfit", for the reason of suffering from (a) Acute Rhinosinusitis, (b) Flat Feet and (c) Hallux Valgus (Left); (iii) that the petitioner applied for and was granted examination by the Appeal Medical Board (AMB) at Delhi on 26th November, 2020; (iv) however the AMB also declared the petitioner "unfit" for the reason of "hallux valgus with 1st metatarsophalangeal clinical angle more than 20⁰ and callosity and bunion (l) foot and hallux interphalangeus"; (v) that the petitioner sought review examination by the Review Medical Board (RMB) but which has been declined; (vi) that the petitioner has got himself examined from Government Combined Hospital, Premnagar, Dehradun and which has opined that "Hallax Valgus Left will not interfere in day to day activities of Army. He is physically fit."; and, (vii) that pursuant to the rejection on 12th January, 2021 of the application for RMB, the petitioner approached the Armed Forces Tribunal (AFT), Lucknow, Uttar Pradesh, before which the matter was listed on 17th March, 2021 but was dismissed as not pressed with liberty to the petitioner to file afresh before appropriate forum. Hence, this petition, impugning the rejection dated 12th January, 2021 seeking RMB and, seeking mandamus directing the respondents to hold a RMB, comprising of specialist orthopaedic surgeons, to review the findings of the AMB.

5. Finding, that the doctor of the choice of the petitioner i.e. at Government Combined Hospital, Premnagar, Dehradun also has not disputed the finding of the SMB and the AMB that the petitioner is suffering

from 'Hallux Valgus' and has only opined that the severity thereof is not such as to hamper with the day to day life of the petitioner, we have enquired from the counsel for the petitioner, whether the Medical Manual, as per which the medical examination is to be conducted, permits any degree of 'Hallux Valgus'.

6. It is obvious that the counsel for the petitioner herein also has filed this petition without adverting to the Medical Manual prescribing medical standards and which guides the medical examination for entry into Army, Training Academies and Military Schools.

7. We have recently in *Ishwar Singh Vs. Union of India* MANU/DE/0813/2021 held, that such petitions come to be filed, on account of counsels filing the same without familiarising themselves with the Medical Manual in accordance wherewith the Medical Boards are to conduct the medical examination and that, if before filing the petitions, such study is made, it would not only enable a better and composite challenge being made but would also save the time of the Court.

8. We have enquired from the counsel for the petitioner, whether the plethora of recent judgments on, in which circumstances the findings of the Medical Boards are to be interfered with, were studied before filing this petition.

9. The counsel for the petitioner states that he has only studied the administrative law; it is argued that the respondents have not properly exercised the discretion vested in them, to constitute or not to constitute the RMB. It is contended that no prejudice would be suffered by the respondents if RMB is constituted.

10. Once examination by the RMB is not a matter of right, as per the petitioner also, the petitioner, to approach a Court of law for the purposes of seeking a mandamus, has to disclose a right in the petitioner to the relief sought and cannot be entitled to the relief merely on the ground that the grant thereof will not cause any prejudice to the respondents. The petitioner has not shown any right to be examined by RMB. The petitioner has also not shown any error in the exercise of discretion by the respondents while rejecting the request of the petitioner for examination by RMB.

11. As aforesaid, once it is not in dispute that the petitioner suffers from the deformity which the Medical Boards of the respondents have found the petitioner to be suffering from, unless the petitioner shows from the Medical Manual that the petitioner has been wrongly declared unfit, the petitioner cannot be granted any relief.

12. The counsel for the respondents, on our request, has forwarded to us the relevant extract of the Medical Manual as on 16th July, 2019 and which is found to prescribe,

"Hallux valgus with angle more than 20 degrees and first-second inter-metatarsal angle of more than 10 degrees is unfit. Hallux valgus of any degree with bunion, corns or callosities is unfit".

13. The AMB has unequivocally found the petitioner to be suffering from "hallux valgus with 1st metatarsophalangeal clinical angle more than 20⁰ and callosity and bunion (l) foot and hallux interphalangeus". The petitioner, nowhere in the petition has controverted the said fact. The doctor of the

choice of the petitioner also, though obviously after referring to the report of AMB, has shied from controverting that the degree of 'Hallux Valgus' in the case of the petitioner is more than 20 degrees. Moreover, the finding of AMB, of the petitioner also having 'bunion', has also not been controverted, neither in the petition nor by the doctor of the choice of the petitioner.

14. It is thus obvious that as per the admitted case of the petitioner, the petitioner has 'Hallux Valgus' with angle more than 20 degrees with bunion and which, as per the prescribed medical standards, disqualifies the petitioner from admission.

15. In the face of such admitted position, there is no degree of doubt whatsoever as to the correctness of the report of AMB, for RMB to be constituted or for issuing a direction for RMB to be constituted.

16. We may also record, that the application of the petitioner for RMB was dismissed/rejected on 12th January, 2021. This petition has been filed after more than four months therefrom. The petitioner thereagainst approached the AFT but after a delay of more than two months, only on 17th March, 2021 and has again allowed nearly two months to lapse after withdrawing the petition from AFT. The counsel for the respondents appearing on advance notice states that the subject course commenced on 22nd March, 2021 and no late entry/admission thereto is permitted.

17. It is also not very clear from the order of AFT, why the petitioner withdrew the application filed before it. All that the order says is that it was withdrawn to approach the appropriate forum. Though the counsel for the petitioner has pleaded that it was withdrawn on the AFT expressing doubt as to the entitlement of the petitioner, who was still not in service, to approach

the AFT but the order can also be read as, the petitioner having withdrawn, to approach AFT at Delhi.

18. Be that as it may, since there is no iota of doubt as to the medical condition of the petitioner, the need for seeking the opinion of the RMB, does not arise.

19. Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MAY 18, 2021

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