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

+ **W.P.(C) 5712/2021**

VIPIN

..... Petitioner

Through: Mr.Ajit Kakkar, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Farman Ali, Mr.Akshat Singh and
Mr.Athar Raza, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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02.06.2021

[VIA VIDEO CONFERENCING]

1. The petitioner was a candidate for recruitment undertaken by the respondents Indian Navy, as far back as in June, 2018, of Artificer Apprentices and Senior Secondary Recruits and cleared the phase I and phase II of the recruitment process/examination but in the medical examination held on 10th August, 2019, was declared unfit for the reason of suffering from Left Ear Tympano Sclerosis. The petitioner appealed but the Appeal Medical Board, which examined the petitioner, vide its report dated 30th August, 2019, also declared the petitioner unfit on the same ground.

2. It is the case of the petitioner, that he got himself examined and operated at Dr. Shroff's Charity Eye Hospital at Delhi on 19th September, 2019 and the disability on account of which the petitioner was declared unfit, was cured by the said surgery. It is further the case of the petitioner, that he, on 11th March, 2020 filed a petition in this Court challenging the rejection of his candidature

but which petition could not be listed owing to the restricted functioning of the Court because of the prevalent pandemic and thus the petitioner has now filed this fresh petition impugning the rejection of his candidature.

3. The counsel for the respondents appearing on advance notice, at the outset contends that the recruitment process in which the petitioner had participated, stands concluded in September-October, 2019 and the petitioner, who has come today before this Court for the first time, after more than one and a half years, for this reason alone cannot be granted any relief. Reliance is placed on order dated 21st December, 2020 in W.P.(C) 10144/2020 titled ***Sachin Kumar Yadav Vs. Union of India & Ors.***

4. The counsel for the petitioner states that he had earlier filed the petition as already pleaded and the delay is on account of the prevalent pandemic.

5. We are unable to agree. The earlier petition is stated to have been filed only on 11th March, 2020, that is after nearly seven months from the date when the petitioner was found unfit by the Appeal Medical Board. There was thus a delay in filing the said petition also. Not only so, though the petitioner claims to have got himself cured from the disability on 19th September, 2019, but still waited for six months to file the petition. Moreover, it is not as if this Court was closed altogether. The Court was functioning normally till 15th March, 2020 and even if the petition was filed on 11th March, 2020, had the counsel for the petitioner been diligent, it could have been got listed. Though the Courts remained closed during the lock down, for about one month but thereafter have again been functioning from April/May, 2020 and all matters in which any urgency was expressed, were being listed and taken up for hearing. What the petitioner has done now, i.e. of ignoring the earlier physical filing and filing afresh, could have been done then also, had the petitioner any anxiety to join the respondents Indian Navy. The conduct of the petitioner clearly shows that

the filing of this petition is an afterthought. When the matter concerns recruitment, a candidate who feels that he has been wrongly excluded, is required to act earnestly, preferably before the recruitment process is concluded. It cannot be lost sight of that once the vacancies are filled up, even if the petitioner has been wrongly excluded, no relief can be granted. The counsel for the respondents has rightly placed reliance on the decision in ***Sachin Kumar Yadav*** supra and reference in the same regard may also be made to the decision of this Court in ***Aman Yadav Vs. Union of India*** MANU/DE/0944/2021 (DB).

6. Not only so, on merits also the petitioner is not found entitled to the relief. The petitioner admits that he was suffering from the disability on the date of the examination by the Medical Board as well as by the Appeal Medical Board. Merely because the petitioner may have subsequently got the disability cured, would not entitle the petitioner to impugn the findings of the Medical Board and the Appeal Medical Board and seek a further medical examination. Reference in this regard may be made to the decision of this Court in ***Sonu Vs. Union of India*** MANU/DE/0584/2021, wherein it was observed that merely because the condition of the petitioner therein stood healed, the same could not be a ground to permit the said petitioner to get a further medical examination.

7. The counsel for the petitioner then contends that the disability was not such which would have affected the performance by the petitioner of the duties of the post for which he was seeking recruitment.

8. We may however notice that neither is there any challenge to the finding of the petitioner suffering from the disability on the ground of which he was declared unfit nor has the petitioner controverted that the said disability, as per the medical standards prescribed for recruitment, was a disqualification for

recruitment. Once it is so, no error can be found with the findings of the Medical Board and the Appeal Medical Board declaring the petitioner unfit.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JUNE 2, 2021
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