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

+ W.P.(C) 5717/2021

SACHIN

..... Petitioner

Through: Mr.Ajit Kakkar, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Sanjeev Sabharwal and Mr.Hem
Kumar, 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 in the recruitment undertaken by the respondents Indian Air Force, of Airmen, in the year 2018, and cleared the phase I and phase II of the recruitment/examination process. However in the medical examination conducted on 20th July, 2019, the petitioner was declared unfit for the reason of having Refractive Error in the Left Eye. The petitioner preferred an appeal but the Appeal Medical Board also, on 28th August, 2019 and 30th September, 2019, found the petitioner unfit for the reason of Sub Standard Vision of the Left Eye.

2. It is the case of the petitioner, that the Appeal Medical Board did not hand over its report to the petitioner, immediately after examination but after several days. It is argued that the said delay can lead to manipulation of the result and otherwise there is no reason for not handing over the report of the

examination on the day of the examination. It is yet further the contention of the petitioner, that there was no specialist on the Appeal Medical Board.

3. We may however notice that it is the plea of the petitioner that the Appeal Medical Board at SMC, Air Force Station, Palam, New Delhi, on 28th August, 2019 referred the petitioner to Base Hospital, Delhi Cantt., New Delhi for the opinion of an eye specialist and it was after the said opinion had been obtained, that the petitioner was declared unfit. The said pleading is contradictory to the pleading of the Appeal Medical Board not comprising of a specialist.

4. Be that as it may, it is the case of the petitioner that he got himself examined from private doctors on 26th July, 2019 and 19th August, 2019, who did not find the petitioner to be suffering from any such deformity/defect in vision, owing whereeto he was declared unfit.

5. It is yet further the case of the petitioner, that aggrieved from the findings of the Medical Board and the Appeal Medical Board, the petitioner, on 11th March, 2020 filed a petition in this Court but which was not listed owing to the restricted functioning of the Court and the petitioner, in April, 2021 filed a fresh writ petition being W.P.(C) No. 4554/2021 and which was listed before this Court on 12th April, 2021, when the same was withdrawn with liberty to file afresh and whereafter this petition has been filed.

6. The counsel for the respondents Indian Air Force appearing on advance notice has referred to the decision of this Court in ***Aman Yadav Vs. Union of India*** MANU/DE/0944/2021 (DB), to contend that it is the opinion of the medical experts of the respondents and not of the doctors of other hospitals, even if government hospitals, which has to prevail, unless some doubt is created with respect to the opinion rendered by the medical experts of

the respondents Indian Air Force or any error in the conduct of medical examination is shown and no such case is also made out in the present case.

7. The earliest petition is stated to have been filed only on 11th March, 2020, i.e. after nearly six 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, the second petition being W.P.(C) No. 4554/2021 and this petition on the same cause of action, have been filed after nearly one and a half years from the date when the petitioner was found unfit by the Appeal Medical Board. Though the counsel for the petitioner has sought to attribute the delay to the prevalent pandemic but 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 Air Force. 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, even if the petitioner has been wrongly excluded, no relief can be granted.

8. In respect of the contention of the petitioner, of not suffering from any such deformity/defect in vision, owing whereeto he was declared unfit,

reference may be made to the decisions in *Priti Yadav Vs. Union of India* 2020 SCC OnLine Del 951 (DB), *Sharvan Kumar Rai Vs. Union of India* 2020 SCC OnLine Del 924 (DB), *Jonu Tiwari Vs. Union of India* MANU/DE/1524/2020 (DB) [Special Leave Petition (Civil) No. 13492/2020 preferred whereagainst was dismissed on 17th December, 2020], *Vani Viswanathan Vs. Union of India* MANU/DE/1678/2020 (DB) [Special Leave Petition (Civil) No. 12682/2020 preferred whereagainst was dismissed on 5th January, 2021], *Akash Sharma Vs. Union of India* MANU/DE/2069/2020 (DB), *Sachin Kumar Yadav* supra and *Aman Yadav* supra, wherein we have held that once no mala fides are attributed and the doctors of the forces who are well aware of the demands of duties of the forces in the terrain in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, opinion of private or other government doctors to the contrary cannot be accepted inasmuch as the recruited personnel are required to work for the forces and not for the private doctors or the government hospitals and which medical professionals are unaware of the demands of the duties in the forces. The petitioner has not been able to make out such case of mala fides in the present case. Further it has been held that just like in the judicial process, though providing for appeals, to eliminate human error, there has to be a finality attached to the judicial decision of some Court, so is the position qua medical fitness decision making by the recruiting employer/agency; there can be no indefinite rounds of opinions. Further it has been observed in *Nishant Kumar Vs. Union of India* MANU/DE/1486/2020 (DB) and *Akash Sharma* supra that the standard of medical fitness is higher in the recruitment to the Armed Forces and the Court must be wary of interfering with or diluting such stringent standards as that would be at the cost of preparedness of the Armed Forces to meet emergent

security challenges and would ultimately imperil the sovereignty of the country.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JUNE 2, 2021
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