

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

%

Date of decision: 6th July, 2021.

+

W.P.(C) 6120/2021

SHIVAM KUMAR

..... Petitioner

Through: Ms. Tanya, Adv. for Mr. Ajit Kakkar,
Adv.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Nidhi Banga, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No. 19390/2021 (for exemption)

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

W.P.(C) 6120/2021

3. The petitioner was a candidate for recruitment of Airmen by the respondents Indian Air Force. The petitioner, in the medical examination conducted as part of the recruitment process, was found medically unfit on the ground of being overweight by 2 Kgs. This petition has been filed, impugning the finding of medical unfitness and seeking a mandamus to respondents Indian Air Force to conduct re-examination of the medical fitness of the petitioner and in the alternative seeking mandamus for

appointment of the petitioner as an Airman on the basis of the medical certificate of fitness of the petitioner, issued by a private hospital.

4. The counsel for the petitioner has argued that “the petitioner is overweight by 2 Kgs only, which is nothing and which is easily manageable” and on such grounds, could not, after having cleared all the earlier stages of the recruitment process, be denied recruitment.

5. The petitioner was first medically examined on 9th February, 2021, when he was declared unfit for the reason of being overweight. The petitioner availed of the remedy of appeal against the decision of the Medical Board which had examined him on 9th February, 2021. The petitioner, on 4th March, 2021, was asked to appear before the Appeal Medical Board on 8th March, 2021. However the Appeal Medical Board again found the petitioner overweight by 2 Kgs. The petitioner, instead of, on 9th February, 2021 or on 8th March, 2021 itself rushing to any other government or private hospital to have himself weighed as on the said dates, on 18th March, 2021 got issued a legal notice to the respondents Indian Air Force. The petitioner, after nearly two months of having been found to be overweight, went to a private hospital on 5th May, 2021 and which hospital found the petitioner to be weighing 59 Kgs on 5th May, 2021, as against the weight found by the Appeal Medical Board on 8th March, 2021 of 64.7 Kgs. The aforesaid facts indicate that it took the petitioner two months to bring his weight down from 64.7 Kgs to 59 Kgs. The same nullifies the argument of the counsel for the petitioner, of the excess weight of 2 Kgs only being easily manageable.

6. As far as the argument of the counsel for the petitioner, of being overweight by 2 Kgs being only a minor matter, is concerned, once there is a Rule specifying the weight for the particular height and sex and the said Rule also provides the maximum variation permitted therein, the said Rule has to be abided by and a slight variation even therein cannot be tolerated. The Court cannot dilute the said Rule by permitting violation of the Rule, in the name of being miniscule.

7. This Court in *Aman Yadav Vs. Union of India* MANU/DE/0944/2021 (DB), *Pooja Vs. Union of India* MANU/DE/1022/2021 (DB), *Ishwar Singh Vs. Union of India* MANU/DE/0813/2021 (DB), *Madhusudhana P.S. Vs. Union of India* MANU/DE/0933/2021 (DB) and *Arun Kumar Vs. Union of India* MANU/DE/1834/2020 (DB), has held that it is the prerogative of the respondents Indian Air Force, as the employer to lay down the medical requirements for employment; it is not for the Court to lay down the standards of medical fitness for recruitment as an Airman in the respondents Indian Air Force. The said standards are prescribed in the Medical Manual and no provision of the Medical Manual prescribing the standards and/or qua weight is under challenge. Unless the petitioner meets the standards prescribed in the Medical Manual, no direction for recruitment of the petitioner or for conduct of re-examination can be issued. Reference may also be made to *Amit Kumar Vs. Union of India* MANU/DE/1047/2021 (DB) wherein this Court, in light of the ideal weights prescribed in the Manual of Medical Examination and Medical Boards, 4th Edition, September, 2010, refused to interfere with the findings of the Medical Board and Appeal Medical Board and held that the weight of the petitioner therein,

as per the records produced, on the date of the examination by the Medical Board as well as by the Appeal Medical Board was way above such prescribed ideals. The petitioner therein, on the said ground alone was held not entitled to be recruited.

8. It may also be noted that the petitioner, well before participating in the recruitment process ought to have known the weight requirement and if was unable to bring his weight down to the required limits, it stands proved that the petitioner has weight gain problems and is not fit to be an Airman. Not only so, the petitioner, between 9th February, 2021, when he was first told by the Medical Board that he is overweight, and 8th March, 2021, when he appeared before the Appeal Medical Board, could not reduce his weight to fall within the prescribed standards. To direct such a person to be recruited, would amount to burdening the respondents Indian Air Force with an overweight Airman who would be unfit to do the duties required from him and would end up being a liability for the respondents Indian Air Force rather than being of any help in the defence of the country. Reference in this regard may be made to the decisions in *Nishant Kumar Vs. Union of India* MANU/DE/1486/2020 (DB) and *Akash Sharma Vs. Union of India* MANU/DE/2069/2020 (DB) wherein it has been observed 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.

9. Though not argued, the petitioner has also pleaded that, it was not indicated to the petitioner by the Medical Board which first examined him as to how much weight the petitioner was required to lose; the Appeal Medical Board weighed the petitioner with his shoes and clothes on; that copy of Appeal Medical Board findings was not supplied to the petitioner.

10. No merit is found in any of the said pleas either. The Medical Board owed no duty/obligation to the petitioner, as claimed. No *mala fides* or motives have been attributed to the Members of the Appeal Medical Board and it is not the case that while other candidates were weighed without their clothes and shoes, the petitioner was discriminated against; without such pleas, a presumption of things having been done in the regular course of business, has to be attached to the proceedings and findings of the Appeal Medical Board and re-examination cannot be ordered at the mere asking. As far as the plea of the petitioner having not been supplied the report of the Appeal Medical Board is concerned, the respondents in the reply to the legal notice have stated that the petitioner did not collect the certificate and was declared 'unfit in absentia'.

11. There is no merit in the petition.

12. Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

JULY 6, 2021
SU