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

% **Date of decision: 7th July, 2021**

+ **W.P.(C) 6163/2021**

NITIN JAKHAR

..... Petitioner

Through: Ms. Tanya, Proxy Counsel for
Mr. Ajit Kakkar, Advocate.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ruchir Mishra with Mr. Sanjiv
Kumar Saxena, Mr. Mukesh Kumar
Tiwari & Mr. Ramneek Mishra,
Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

C.M. No. 19541/2021(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, an applicant of the year 2019 for admission to the National Defence Academy (NDA), has filed this petition impugning the findings dated 7th February, 2020 and 3rd March, 2020 of the Medical Board

and the Appeal Medical Board respectively of the respondents, finding the petitioner medically unfit for admission on the grounds of Chest Deformity and Pectus Excavatum.

4. It is the pleading of the petitioner, (i) that the petitioner, on 3rd March, 2020 applied for Review Medical Board and which application was rejected on 17th July, 2020; (ii) that the petitioner got himself medically examined from several hospitals and which have issued certificates dated 21st February, 2020, 28th July, 2020, 16th February, 2020, 23rd February, 2021 and 25th February, 2021 of the petitioner being medically fit; (iii) that the petitioner, on 2nd March, 2021 also got issued a legal notice to the respondents; and, (iv) that the deformity of the petitioner is within the normal range.

5. We have in *Ishwar Singh Vs. Union of India* MANU/DE/0813/2021 (DB) and *Madhusudhana P.S. Vs. Union of India* MANU/DE/0933/2021 (DB) observed that most of such petitions are filed without the counsel for the petitioner even advertng to the medical standards prescribed for admission/recruitment in such forces/bodies and which results in claims of medical fitness supported by certificates of government/private doctors being made but which are *dehors* the standards prescribed for employment/admission in such forces/bodies. We have in the judgments aforesaid further observed that if before filing the petition, such study of the medical standards is made, it would not only enable a better and composite challenge being made but would also save the time of the Court. The counsel today appearing for the petitioner also, in several other matters in the past, has been requested to, before filing the petition, study the said

standards. In spite thereof, in this petition, pleading has been made, that the deformity of the petitioner (which is admitted), is within normal range, without any reference to the prescribed standards and it is not pleaded how the deformity is within the prescribed range.

6. The counsel for the petitioner fairly admits that before filing this petition also she has not studied the relevant manual.

7. In the absence thereof, merely because some doctors of private hospitals or even government hospitals may have found the petitioner medically fit to perform day-to-day tasks, the same cannot make the petitioner meet the medical standards prescribed for joining the subject institution, the demands whereof are far more rigorous than the demands of the day-to-day life of a civilian. Reference in this regard may be made to the decisions of this Court 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), ***Aman Yadav Vs. Union of India*** MANU/DE/0944/2021 (DB), ***Sachin Vs. Union of India*** MANU/DE/1041/2021 (DB), ***Pooja Vs. Union of India*** MANU/DE/1022/2021 (DB) and the order dated 21st December, 2020 in W.P.(C) 10144/2020 titled ***Sachin Kumar Yadav Vs. Union of India & Ors.***, wherein we have held that once no malafides 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. 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. Yet 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.

8. We have also enquired from the counsel for the petitioner, whether the medical standards prescribed for admission to NDA were disclosed to the doctors from whom certificates have been obtained and whether the said doctors have opined the petitioner to be medically fit in accordance therewith.

9. The counsel for the petitioner, again fairly admits that the doctors were also not apprised of or aware of the prescribed medical standards.

10. In the aforesaid circumstances, no purpose will be served in entertaining such a petition, which is lacking even in cause of action therefor. Only when a case of the findings of the Medical Board being contrary to the medical standards prescribed are *prima facie* made out, can such a petition be entertained.

11. Not only so, the petition also suffers from delay, laches and acquiescence. The candidature of the petitioner was rejected nearly one year and four months ago. Considering that such admissions are time-bound, legal recourse thereto ought to have been taken immediately thereafter. There was no occasion for the petitioner to apply for Review Medical Board, which is not a matter of right or to issue a legal notice. It is evident that the petitioner, who has admitted the deformity, after having accepted the same, has now as an afterthought filed this petition.

12. The counsel for the respondents appearing on advance notice states that the batch of NDA for which the petitioner had applied, commenced training in November, 2020 i.e. nearly 8 months prior to today when this petition has come up first before this Court. The counsel for the respondents also rightly refers us to our order dated 4th June, 2021 in W.P.(C) 5847/2021 titled ***Ashish Kumar Pandey Vs. Union of India & Ors.*** wherein while referring to our decisions in ***Aman Yadav*** supra, ***Sachin Kumar Yadav*** supra and the decision dated 2nd June, 2021 in W.P.(C) 5712/2021 titled ***Vipin Vs. Union of India & Ors.***, we have held that 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. Reference in regard to delay in filing the petition disentitling the petitioner from relief as may be prayed for, may also be made to our decision in *Sachin* supra.

13. There are no merits in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JULY 7, 2021

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