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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: September 6, 2022

+ W.P.(C) 2460/2020 & CM APPL. 8590/2020

RATNESH PATEL

..... Petitioner

Through: None.

versus

THE UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Siddharth Khatana, Advocate
with Major Partho Katyayan for UOI.**CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE SAURABH BANERJEE****J U D G M E N T** (oral)

1. Vide order dated 03.03.2020, this Court observed as under:-

“3. The Petitioner has preferred the present writ petition to assail the order dated 23.12.2019 issued by the Respondents conveying the decision of the Competent Authority not to grant a Review Medical Board (RMB) to the Petitioner as per the existing policy. The Petitioner also seeks a mandamus to the Respondents to grant the RMB for entry into the 143rd NDA Course at Khadakwasala, Pune. He seeks a direction to the Respondents to allow the Petitioner to join the said 143 NDA Course at Khadakwasala, Pune.

4. The Petitioner who is a young man of nineteen years of age, applied for the National Defence Academy and Naval Academy Examination (1/2019) conducted by



UPSC, Delhi. He appeared in the examination on 21.04.2019. He qualified in the written examination and was called for Service Selection Board interview on 18.08.2019. The Petitioner was recommended from SSB Bhopal on 23.08.2019 after he qualified various tasks and stages of the SSB interview conducted over a period of five days. On 21.08.2019, he was sent for medical examination before the Special Medical Board at Military Hospital Bhopal. Petitioner was rejected/declared unfit upon his medical examination on two issues and was granted right of appeal against the finding of the Special Medical Board. Accordingly, he appeared before the Appeal Medical Board at Base Hospital Camp, Delhi, on 10.10.2019, but was found to be medically unfit on account of Renal Calculus (L1), meaning that he had a stone in his left kidney. The communication dated 19.10.2019 was issued to the Petitioner after his examination by the Appeal Medical Board. The said communication inter alia stated that when a candidate is declared unfit by Appeal Medical Board, there is a provision to hold Review Medical Board (RMB) in case the candidate desires to challenge the findings of the Appeal Medical Board. It was also stipulated that the candidate may do so within a period of 1 day from the date of AMB by submitting an application for RMB addressed to Integrated Headquarters of MoD (Army), Adjutant General's Branch, Dte General Medical Service (Army)/DGMS- 5(A) 'L' Block, New Delhi with a copy to the president of the AMB.

5. The Petitioner, accordingly, applied for holding of the Review Medical Board which was declined by the impugned communication dated 23.12.2019. In this background, the Petitioner has preferred the present writ petition which appears to be filed for the first time on 27.02.2020.

6. The grievance of the Petitioner primarily is that the Respondents have not permitted the conduct of the



Review Medical Board despite the Petitioner having a right for convening of the RMB. Further, the submission of learned counsel for the Petitioner is that the medical condition of the Petitioner, namely Renal Calculus (Lt.), is not a medical condition which justifies the Petitioner being declared medically unfit since the Petitioner is not having any stones in either of his kidneys, and by surgical intervention conducted on 26.09.2019, the stone in the left kidney of the Petitioner had been removed. Petitioner has placed on record a medical certificate issued to him by the Golcha Hospital and Urological Research Centre, Jabalpur on 17.02.2020 as well as Medical Certificate by Department of Radiodiagnosis Super Speciality Hospital, NSCB Medical College & Hospital, Jabalpur on 13.02.2020.

7. Learned counsel for the Respondents puts in appearance on advance notice and he is assisted by Lt. Col. Kapil Pandya. The first submission of learned counsel for the Respondents is that the impugned communication was issued on 23.12.2019 but the petition has been preferred only at the end of February, 2020. In the meantime, the concerned course has already commenced on 02.01.2020. The petition is therefore barred by delay and laches. Learned counsel for the Respondents further submits that a RMB cannot be claimed as a matter of right and it is convened only in rare and exceptional cases. Learned counsel for the Respondents further submits that RMB is convened at the discretion of the Respondents and cannot be claimed as a matter of right. He has placed before us the original record of Petitioner's case, dealing with his request to convene RMB for consideration of his case. As per the record shown, the RMB is not recommended.

8. Lt. Colonel Kapil Pandya, who is also a doctor states that as a matter of policy, candidates with Renal Calculus are not recruited to the Armed Forces since the chances of recurrence of the disease are very high. He submits



that looking at the arduous nature of duties and responsibilities that the recruits are expected to perform, as a matter of policy, the Armed Forces do not take candidates who have suffered from Renal Calculus, even if they have been cured by surgical intervention.

*9. Learned counsel for the Petitioner has himself placed before us a decision of the Division Bench of this Court in **Cadet Vivek Boora Minor Represented By Raghbir Singh Boora v. Union of India** in W.P.(C) 1280/2015 decided on 21.05.2015. In the said case as well, the candidate who was suffering from Renal Calculus with spina-bifida, was declared medically unfit. This Court dismissed the writ petition. While doing so, the Court referred to an Article published in the Indian Journal of Endocrinology and Metabolism, 2012 March-April which contained an article by an expert on the subject, based on empirical data, on the topic, Protocol-based metabolic evaluation in high-risk patients with renal stones in North India". The Court referred to the said article which reveals that the Renal Calculus disease has a lifetime recurrence rate of 80 percent. In that case, the Court found that the candidate was also suffering spina bifida and in such type of cases, the chances of recurrence are even higher. Consequently, the Division Bench dismissed the writ petition. In any event, even if the candidate is not suffering from spina bifida, the chances of recurrence is 80 percent and therefore the policy of practice of the Respondents in rejecting candidates with Renal Calculus cannot be called in question.*

10. We are therefore of the view that the Petitioner really has no justifiable grievance with regard to the rejection of his candidature.

11. Learned counsel for the Petitioner has lastly drawn our attention to para 31 of the writ petition wherein the Petitioner has cited the ease of another candidate namely, Mr. Kate Abhishek Shekhar, Roll No. 1314616 who was similarly declared medically unfit at Military



Hospital, Allahabad in the same batch as that of the Petitioner, for the same medical condition namely. Renal Calculus. He underwent an operation for kidney stone and thereafter he was declared medically fit by command Hospital Pune and he joined the National Defense Academy on 143rd Post with AIR 61. Limited to the aforesaid aspect, we issue notice while making it clear that even if there has been an infraction on the part of the Respondents in not adhering to their policy, the same may not vest the Petitioner with right to claim a similar infraction in his case as well. The Respondents are directed to file their reply limited to the aforesaid aspect within two weeks.

2. Pursuant to said order, an affidavit is stated to have been filed by the respondents, however, the same is not on record. Learned counsel for the respondents has produced the same, wherein it is stated as under:-

“2 That it is submitted that Mr. Abhishek Shekhar was declared unfit in SMB by the Surgical Specialist at MH Allahabad based on the ultrasound report of “Small Bilateral Calculus” dated 26th August, 2019. During the appeal the medical Board of the candidate at CH (SC) Pune, on being examined by the Senior Advisor Surgery, the said candidate neither offered any past history of urolithiasis nor did he proffer history of undergoing any surgical procedure for treatment. The declaration to this effect by the candidate was made on AFMSF-2. The copy of the same is annexed as Annexure R-1.

3. The senior advisor, on clinically examining the patient found no evidence of urolithiasis or evidence of a surgical treatment having been carried out for the same. To confirm clinical findings, the candidate was subjected o ultrasound abdomen using an advanced machine and performed by a Senior Radiologist (Officiating Head of the Dept. Of Radiology, Command Hospital, Pune). Since the investigation revealed no evidence of Renal Calculus



as corroborated by the history given by the candidate in conjunction with clinical examination, he was declared fit in AMB.

4. That in order to enquire into the averments/allegations ad made by the petitioner a Board of officers was convinced at Hospital on 20th March, 2020. The board comprised of specialist senior doctors namely Col. Samir Gupta, Sr. Adv (Surg) & Onco. Surg., Lt. Col. Deepak Kumar CI Spl (Surg) & Uro. And Lt. Col. V.K. Singh, CI Spl (Surg) & Paedsu. The copy of the convening order is annexed as Annexure R-2.

5. That pursuant to the order, the board proceeded to investigate the circumstances under which candidate Mr. Kate Abhishek Shekar who was unfit in SMB for diagnosis Bilateral Renal Calculus and late was declared fit in AMB held at CH (SC), Pune. During the proceedings the statements of witnesses namely Col. R. Gopi, Sr. Adv. (Surg) & Reconstructive Surgery, CH (SC), Pune, Lt. Col. Kavita Manrai, HOD. Dept. Of Radiodiagnosis, CH (SC), Pune and Lt. Col. Ranveer Singh, President Medical Board, CH (SC) at Pune were obtained. The relevant record/documents were also examined. The statements of above witnesses are annexed as Annexure R3 (Colly.).

6. That after examining the witnesses and the relevant record the board was of the opinion that no derivations from the existing laid down policy have been observed in declaring Mr. Kate Abhishek Shekhar medically fit during the Appeal Medical Board. The copy of the findings of the Board and the opinion of the Board are annexed as Annexure R4 and Annexure R5 respectively.”

3. In view of the above, it is evident that the case of Mr. Kate Abhishek Shekhar and the petitioner is totally different and there has been no infraction on the part of the respondents. Thus the observation vide order



dated 03.03.2020 that the Petitioner really has no justifiable grievance with regard to the rejection of his candidature stands fortified.

4. In view of the above, there is no merit in the present petition.
5. The petition alongwith pending application is accordingly dismissed.

SURESH KUMAR KAIT, J

SAURABH BANERJEE, J

SEPTEMBER 6, 2022/So

