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

% ***Date of decision: June 03, 2022***

+ **W.P.(C) 7951/2022 & CM APPL. 24211-12/2022**

RAHUL KUMAWAT Petitioner

Through: **Mr. Avadh Kaushik, Advocate**

Versus

UNION OF INDIA & ANR. Respondents

Through: **Mr. Santosh Kumar Pandey, Senior
Panel Counsel, with Mr. R.Mani
Tripathi, Advocate**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. The present petition has been preferred by the petitioner seeking quashing of Review Medical Report dated 08.03.2022, whereby he has been declared medically unfit for the post of Assistant Aircraft Mechanic in BSF. Further, quashing of letter/communication dated 10.05.2022 issued by the respondent No.2 is also sought, vide which petitioner's request for re-examination of his medical reports, has been rejected.

2. Notice issued.

3. Mr. Santosh Kumar Pandey, learned Senior Panel Counsel, accepts notice on behalf of the respondents.

4. Learned counsel for petitioner submits that petitioner had applied for the post of Assistant Aircraft Mechanic in the year 2014-15 and had cleared all examinations i.e. written, physical and documentation, however, in the

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medical examination, petitioner has been declared unfit on account of underweight by 7.5 kg, funnel chest and big operation wound on the left side of the abdomen. Petitioner had applied for review medical examination, which was allowed by the respondent vide its letter dated 06.08.2015. Accordingly, petitioner was medically re-examined on 03.09.2015 at Composite Hospital, BSF, Jodhpur and vide report dated 04.09.2015, he was declared 'Fit' for the said post. Though, for not securing high position in the final merit list, petitioner could not make his place in the select list declared in the year 2014-15.

5. Learned counsel for petitioner points out that vide Office Memorandum dated 31.05.2021, respondent No.1 has issued revised uniform guidelines for review medical examination in the Central Armed Forces, Assam Rifles for GOs and NGOs for recruitment in various armed police forces. Thereafter, in the year 2021, BSF invited application for various posts, including Assistant Aircraft Mechanic and petitioner applied for the said post and was declared successful by respondent in written examination vide result notice dated 18.01.2022. Thereafter, petitioner appeared for second phase of examination i.e. documentation, PST, PET, medical examination and review medical examination before the concerned authorities on 23.02.2022. Petitioner's medical examination was conducted on 25.02.2022, wherein he was declared 'Unfit' on the ground of having a big operation scar over left lateral middle lower abdomen and being underweight more than 10% of acceptable weight.

6. Petitioner availed the review medical facility and was referred to Chief Medical Officer of BSF Hospital at R.K. Puram, New Delhi on the same day, from where he was further referred to Safdarjung Hospital, New



Delhi for further opinion on his medical condition. Petitioner claims that after various pathological and clinical examinations, he was declared 'Fit' for the subject post and the said report was submitted to the BSF Hospital, R.K. Puram, New Delhi. However, the BSF hospital conducted yet another test, namely, Intravenous Pyelogram and vide final review Medical Examination Report dated 08.03.2022, the petitioner was declared 'Unfit' for the subject post. Thereafter, petitioner claims to have consulted a private doctor, who after necessary tests has opined that there are no medical complications for petitioner in the future.

7. Being aggrieved with the final review Medical Examination Report dated 08.03.2022 of respondent-BSF and in view of opinion of private doctor, petitioner filed a representation dated 12.04.2022 before the concerned authorities for re-examination of his medical reports. The final result of the examination was declared on 05.05.2022, wherein name of petitioner was not mentioned. Thereafter, vide reply dated 10.05.2022, respondent informed the petitioner that his representation has been considered and since he has been declared unfit, he cannot be given a chance. Hence, the present petition is filed.

8. We have heard learned counsel for the petitioner and perused the material placed on record. The petitioner claims that respondent-BSF had referred him to Safdarjung Hospital, New Delhi on 26.02.2022, where he was declared medically "Fit" and the said report was submitted to the BSF hospital, based on which respondent-BSF had directed conducting of further test of petitioner and thereafter, declared him "Unfit" for the subject post, but the said report of Safdarjung Hospital has not been placed before this Court, because it was not readily available, as pleaded. Further, the Review



Medical Examination Report dated 08.03.2022 holds “Unfit due to Sided Hydronephrosis and Focal dilation of the left mid and lower pole calyces and delayed functioning Left kidney with non-opacified Left Ureter”, which according to petitioner has been opined by the private doctor to be as swelling in natural, which would create no medical complications in future.

9. In view of aforesaid facts as well as in the interest of justice, we hereby dispose of the present writ petition by directing the respondents to facilitate the constitution of a fresh Medical Board at the Army Hospital (R&R), New Delhi for conducting fresh examination of the petitioner within two weeks from today. If the petitioner is found fit by the aforesaid Medical Board, he may be permitted to join in the further selection process. However, if the petitioner is found unfit by the aforesaid Medical Board, he will not be granted any further opportunity to get examined again.

10. It is made clear that the decision of the aforesaid Medical Board shall be final and binding.

11. Pending applications are disposed of as infructuous.

12. A copy of this order be transmitted to Incharge, R&R Hospital, New Delhi for information and necessary compliance.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

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