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

Date of Decision: 16.02.2022

\+ W.P.(C) 11212/2021

AKASH SHARMA ..... Petitioner

Through Mr.Ajit Kakkar, Adv.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr.Farman Ali, Adv.
Wing Commander (Dr)
Prashant Rudra, Air Hq (RKP).

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

1. The present petition has been filed praying for bringing on record and setting aside the impugned medical certificates dated 13.05.2021 and 13.08.2021. The petitioner further prays for a direction to the respondents to conduct the medical re-examination of the petitioner at a hospital of their choice or appoint the petitioner on the basis of the medical certificates issued by various civil hospitals.

2. It is the case of the petitioner that pursuant to the notification issued by the respondents, the petitioner applied in the Indian Air Force through the Armed Force Common Admission Test (hereinafter

referred to as 'AFCAT'). On and after clearing the AFCAT, the petitioner was directed to appear for the SSB at Dehradun wherein the petitioner cleared all tests with respect to the prescribed criteria of physical efficiency. The petitioner was then recommended to join the training academy and was AIR 1 holder in his branch in the merit list.

3. The petitioner thereafter appeared for his Detailed Medical Examination (in short, 'DME') and on 13.05.2021, was declared to be medically unfit on the ground of *'retinal periphlebitis both eyes'*. Aggrieved by the same, the petitioner applied for his Appeal Medical Examination (in short, 'AME') and appeared for the same at Base Hospital, Delhi Cantonment. The petitioner, at the stage of the AME, was again declared to be medically unfit on the ground of *'retinal periphlebitis both eyes*.'

4. The petitioner made a representation on 13.08.2021 itself seeking the constitution of a Review Medical Board (in short, 'RMB'), however, the same was rejected vide impugned communication dated 13.09.2021 and he was declared to be unfit for AFCAT on the ground of *'retinal periphlebitis both eyes.'*

5. The learned counsel for the petitioner submits that the petitioner was not examined properly for retinal periphlebitis at both stages of the medical examination. He submits that at the DME stage, the petitioner was solely examined with the help of an ophthalmoscope. He further submits that at the AME stage, the petitioner was not made to undergo a fluorescein angiography, which is a more intrinsic test as

compared to the ophthalmoscopy, which was conducted on the petitioner.

6. The learned counsel for the petitioner finally places reliance on the reports of Nutema Hospital, Meerut; Dr. Ram Manohar Lohiya Hospital, New Delhi (hereinafter referred to as 'Dr. RML Hospital') and All India Institute of Medical Sciences, New Delhi (hereinafter referred to as 'AIIMS') to submit that the petitioner was found to have healed from retinal periphlebitis and is thus medically fit to be inducted in the Indian Air Force.

7. Vide order dated 01.10.2021, this Court had directed the respondents to produce the medical record of the petitioner. This Court had further directed a doctor from the respondents' side to be present and explain as to how the petitioner was medically examined during the DME as well as the AME stages.

8. In pursuance to the same, the respondents produced the medical record of the petitioner before the Court. Perusal of the same shows that vide report of the DME dated 13.05.2021, the petitioner was declared to be medically unfit on the ground of *'gynecomastia bilaterally'* by a Classified Specialist (Surgery) and *'retinal periphlebitis both eyes'* by a Graded Specialist (Opthal). Upon the petitioner's request for an AME, the petitioner was referred to Base Hospital, Delhi Cantt. for a specialist opinion. Based on the opinion of the concerned specialist, the petitioner, vide report dated 18.08.2021, was declared 'Unfit' for '*retinal periphlebitis both eyes.'*

9. Wing Commander (Dr) Prashant Rudra, who joined the proceedings today by way of online video link, submitted that the petitioner was examined by Graded Specialist (Ophthalmology) at AFCME during the DME and by Senior Advisor (Ophthalmology) at Base Hospital, Delhi Cantt, during his AME and was declared to be medically unfit on account of *'retinal periphlebitis both eyes'* based on the clinical examination (fundoscopy) using ophthalmoscopy as per the provision of para 3.12.9 of IAP 4303 (4th Edition). He submits that both the specialists at AFCME and Base Hospital are experts in their area and have diagnosed the case based on the observation and years of experience gained. He submits that any retinal changes may be systemic disease and entails rejection as per Para 2.11.38 and Para 3.12.9 of IAP 4303 (4th Edition). He submits that retinal periphlebitis is an inflammation on the retina which may be associated with tuberculosis, for which he refers to some medical literature. He submits that the diagnosis is made by clinical examination/fundoscopy and therein fluorescein angiography is not warranted in this case. He further submits that even the reports at Dr. RML Hospital and AIIMS have found the petitioner to be case of '*Healed Vasculis'*, which would render the petitioner 'Unfit' for appointment. He placed reliance on articles in medical journals to explain that retinal periphlebitis is a sight-threatening inflammatory condition affecting the retinal vessels. He submits that the same can be caused as a result of tuberculosis, syphilis, CMV, HIV and multiple sclerosis; among other diseases.

10. We have considered the submissions made by the learned counsels for both the parties.

11. Para 3.12.9 of the IAP 4303 (4th Edition), which is the repository for medical examination in the Indian Air Force, states that any clinical findings in the media (cornea, lens, vitreous) or fundus, which is of pathological nature and likely to progress will be a cause for rejection. It further states that the examination will be done by slit lamp and ophthalmoscopy. Clause 2.11.38 of IAP 4303 (4th Edition) further mandates that in the examination, the normality of the disc and the vascular pattern in the disc and its edges, AV ratio, papillary oedema or colour change in and around the disc and pigmentary changes elsewhere provide valuable clues to various systemic disease and must be carefully noted. The two Paragraphs are reproduced hereinbelow:

> "*3.12.9 Any clinical findings in the media (cornea, lens, vitreous) or fundus, which is of pathological nature and likely to progress will be a cause for rejection. This examination will be done by slit lamp and ophthalmoscopy under mydriasis."*
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> *"2.11.38.* ***Ophthalmoscopic Examination.*** *Ophthalmoscopic examination is carried out to exclude any abnormality in the fundi and media. Examination must be carried out in a systematic manner starting from the cornea, anterior chamber, pupil, iris, lens, posterior chamber and retina. Note will be taken of reaction of the pupil to the light, abnormality of the papillary edge, any evidence of inflammation of the iris and lenticular opacity. Vitreous floaters are usually of no significance. Any abnormal vascular pattern, macular scarring, hemorrhages or exudates in the fundi will be noted. The normality of the disc and the vascular pattern in the disc and its edges, AV ratio, papillary oedema or colour change in and around the disc and pigmentary changes elsewhere provide valuable clues to various systemic disease and must be carefully noted."*

12. The IAP therefore, places emphasis on the eye fitness. In the present case, both at the stage of the DME as also AME, the petitioner has been examined by the specialist doctors. Their findings are unanimous that the petitioner is suffering from '*retinal periphlebitis both eyes'*. Wing Commander (Dr) Prashant Rudra has stated that retinal vasculitis is a sight-threatening inflammatory condition affecting the retinal vessels; occlusive periphlebitis can cause retinal edema, intraretinal haemorrhages, and hemorrhagic retinal infarctions. It is caused by tuberculous hypersensitivity, syphilis, CMV etc. and therefore, is a definite cause of disqualification of the candidate.

13. The report from Nutema Hospital, relied upon by the petitioner, also states that the petitioner has an '*old healed vasculitis'*. The report from Dr. RML Hospital opines the petitioner as a case of '*healed vasculitis'* and '*peripheral vascular & sheathing'*. The report of AIIMS also opines the petitioner as a case of '*healed vasculitis'* and advices '*wait & watch'*. These reports also therefore, do not support the petitioner's case.

14. Be that as it may, this Court is of the opinion that in selection to the Armed Forces, the candidate must be fully fit and no benefit of doubt in this regard can be given to a candidate. In ***Abhigyan Singh vs Union of India,*** W.P.(C) 5083 of 2021, this Court held that the doctors of the Forces are the best judge to ascertain whether a candidate ought to be enrolled in the services or not, owing to the strenuous and hostile terrain and environment where personnel would

have to serve. Any error in judgment, particularly with respect to medical ailments as serious as the one in the present case, would not only endanger the life of the petitioner but also of those other officers involved in possible operations.

15. This Court, in its judgment dated 21.12.2020 in ***Km. Priyanka vs. Union of India & Ors.***, W.P.(C) 10783 of 2020, has also held that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for the civilian employment. It was held that it is the doctors of the Forces who are aware of the demands of duties and the physical standards required to discharge the same. It was further held as under:

> "8. *We have on several occasions observed that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for civilian employment. We have, in Priti Yadav Vs. Union of India 2020 SCC OnLine Del 951; Jonu Tiwari Vs. Union of India 2020 SCC OnLine Del 855; Nishant Kumar Vs. Union of India 2020 SCC OnLine Del 808 and Sharvan Kumar Rai Vs. Union of India 2020 SCC OnLine Del 924, 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*."

16. This Court, in its judgment dated 15.07.2020 in ***Priti Yadav vs. Union of India,*** W.P.(C) 3930 of 2020, has held that once the Rules

for judging medical fitness of a candidate provide for finality and are found to have provided for a review to eliminate the possibility of human error, the finality has to be accepted, unless a case for interference is made out.

17. In the present case, we find that no case is made out by the petitioner warranting any interference with the report of the DME and the AME. Consequently, we find no merit in the present petition. The same is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

MANMOHAN, J

FEBRUARY 16, 2022/AB