

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

% **Reserved on: October 12, 2022**

Pronounced on: November 01, 2022

+ **W.P.(C) 9716/2020 & CM APPL. 33245/2021**

RAVI KUMAR

..... Petitioner

Through: Mr.Ankit Negi, Advocate for
Mr.Ajit Kakkar, Advocate

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms.Nidhi Raman, CGSC with
Mr.Zubin Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SURESH KUMAR KAIT, J

1. Pursuant to a notification issued by the Indian Navy for recruitment to the post of 'Artificer Apprentice & Senior Secondary Recruit' (henceforth referred to 'AASSR'), the petitioner claims to have applied for the same in the month of July, 2019. The respondents issued Admit Card to the petitioner to appear in the Phase-I written test, which he successfully cleared. The petitioner was directed to appear for Phase-II, physical and medical test, wherein he was declared medically fit. Petitioner thereafter received Call Up letter dated 17.01.2020, being provisionally appointed in

Indian Navy and was directed to appear for final medical examination on 05.02.2020 before the appropriate authorities. However, in the final medical examination, petitioner was declared medically unfit vide Medical Unfitness Certificate dated 05.02.2020 on the ground of “ATELECTATIC EAR CRT”.

2. Being aggrieved, in an appeal to the respondents, the petitioner was directed to appear for re-medical before INHS, Kalyani, Vishakapatnam on 24.02.2020, however, his candidature was rejected on the similar medical grounds by the Appeal Medical Board, though he claims to have never received a copy thereof. According to petitioner, the impugned Medical Unfitness Certificates dated 05.02.2020 and 24.02.2020 do not mention any specific remarks in detail with regard to his being medically unfit. For ascertaining the opinion of the Appeal Medical Board, petitioner got himself examined from Safdarjung Hospital, which issued a Medical Certificate dated 18.03.2020, observing no such medical disability. Hence, the present petition has been filed by the petitioner seeking setting aside of Medical Unfitness Certificates dated 05.02.2020 and 24.02.2020 and to take on record the Medical Certificate dated 18.03.2020 issued by Safdarjung Hospital.

3. Learned counsel appearing on behalf of petitioner submitted that respondents have violated the fundamental right of petitioner by depriving him from employment, without giving a justifiable specification in the Medical Unfitness Certificates dated 05.02.2020 and 24.02.2020. Reliance is placed upon decision of this Court in “*Anish Barla Vs. Union Public Service Commission*” 2007 (3) SLJ 66 Delhi, wherein on the basis of

Medical Certificate issued by the Safdarjung Hospital, the respondents were directed to conduct re-medical examination of the petitioner. Reliance is also placed upon another decision of this Court in **“Faizan Siddiqui Vs. Sashastra Seema Bal”** (2011) 124 DRJ 542 (Del) (DB) in support of petitioner’s case.

4. To the contrary, learned Central Government Standing Counsel (CGSC) appearing on behalf of respondents submitted that the present petition deserves to be dismissed *in limine* being devoid of merit. It was submitted that the recruitment process to the post of AASSR got completed in February, 2020 and the selected candidates had completed their training much prior to the filing of the present petition. As such, the present petition is hit by gross delay and laches. Attention of this Court was drawn to the Paragraphs 18(d) and 18(e) of the advertisement published in May, 2019 for the subject post to submit that no review of appeal is permissible if not selected and medical certificate other than that of a specialist opinion in a Military Hospital, will not be considered. Attention was also drawn to Paragraphs 11(a) and 11(d) of the advertisement, wherein desirable medical standards have been specified.

5. According to respondents, during final medical examination at INS Chilka, petitioner was declared medically unfit for disabilities as he was having “Right Otitis Media” and “Knock Knees” and was thus referred to INHS Nivardini for a specialist review, where he was declared UNFIT for **“ATELACTATIC EAR (RT)”** by graded specialist ENT, but was declared fit for Knock Knees. In the Appeal Medical Examination at INHS, Kalyani by a graded Specialist (ENT), petitioner was declared “UNFIT”

for disability “ATELECTATIC EAR (RT)”.

6. Respondents relying upon “Service Personnel” No. (Spl.) 01/2008, Medical Standards- Officers and Sailors, submitted that doubtful cases are referred to the appropriate service specialists for opinion, to detect the disability, which at a later date, is likely to adversely affect physical and mental efficiency of the individual. Attention is also drawn to Appendix-A to the aforesaid Navy order to show the parameters laid down to assess the medical fitness of a candidate.

7. Reliance is placed upon decision of this Court dated 03.07.2019, in W.P.(C) 7021/2019, titled as *Nikhil Pandey Vs. UOI*; dated 21.12.2020 in WP(C) 10144/2020, titled as *Sachin Kumar Yadav Vs. UOI &Ors.* and dated 21.09.2015 in WP(C) 8990/2015, titled as *Saurabh Kumar Vs. UOI & Ors.* to submit that medial officers and specialists other than those from authorized military hospitals, would not be in a position to comment on the required medical standards desired for recruitment.

8. Learned counsel submitted that petitioner has already been examined by the specialists in accordance with the recruitment procedure and the Navy Order (Spl) 01/2008 and even otherwise, the medical report from Safdarjung Hospital only states that petitioner’s “*Tympanic Membrane and hearing are normal*”, however, it does not comment on the Atelectasis of the Right Ear.

9. In rebuttal, it was contended on behalf of petitioner that the present petition is not barred by delay and laches and due to pandemic Covid, only restrictive cases were filed and listed for hearing and since no specific percentage of disability was mentioned by the respondents, this shows

biased conduct of the respondents, denying him opportunity of appointment.

10. After going through the material placed on record and upon meticulously hearing learned counsel representing both the sides, we find that with regard to medical assessment of candidates, the Advertisement inviting applications for the post of AASSR, notified as under:-

“ THE INDIAN NAVY

INVITES ONLINE APPLICATIONS FROM UNMARRIED MALE CANDIDATES FOR ENROLMENT AS SAILORS FOR ARTIFICER APPRENTICE (AA) & SENIOR SECONDARY RECRUIT (SSR) –FEB 2020 BATCH FOR COURSE COMMENCING FEB 2020

11. Medical Standards

(a) Medical examination will be conducted by authorised military doctors as per medical standard prescribed in current regulations applicable to sailors on entry.

XXXXX

XXXXX

(d) Preliminary Medical Examination for recruitment will be considered only “provisionally fit subject to fitness in the final medical examination”. Final enrolment Medical Examination of all selected candidates will be held at INS Chika. Candidates who are found medically fit in final enrolment Medical Examination will be enrolled. Candidates who are

found medically unfit will be advised to appeal against its findings, if they so desire, at INHS Kalyani, Vishakhapatnam within a maximum period of 21 days.”

11. It is not disputed by both the sides that pursuant to afore-said advertisement, petitioner applied for the post of AASSR in the Indian Navy for February, 2020 batch and cleared the written examination. Though petitioner also cleared the phase- II physical and medical test held on 21.10.2019, however, in the final physical medical test held on 05.02.2020, he was referred to Specialists for opinion on “Otitis Media (ENT) and Knock Knees”. Once again, though petitioner was declared unfit for “ATELACTATIC EAR (RT)” by the Specialist ENT, however, he was declared fit for “Knock Knees” by the Specialist Surgery.

12. According to medical terms, the “Atelectasis of the Right Ear” is a sequel of Chronic Otitis Media with effusion (Long standing infection of ear with fluid collection in middle ear) causing disability of the Tympanic Membrane and/ or Middle ear. It can progress to complications like adhesive otitis, ossicular disruption, cholesteatoma and Sensorineural Hearing Loss. The respondents have averred that the above medical condition can get aggravated due to abnormal pressure regulations, which are present in ships and submarines; swimming and firing small and large arms/ ammunition, which is a common practice for sailor. The nature of job of a sailor involves sonar duties, radio operator duties etc, which may result in further medical complications of the petitioner.

13. We have also gone through the Navy order (SPL) 01/2008, relied upon by the respondents, which reads as under:-

“2. The standards of medical fitness are meant to preclude from acceptance of those individuals who are either unfit or are likely to break down under stress and strain of service. Every effort is to be made to detect any disability, which at a later date is likely to affect the physical and mental efficiency of the individual adversely, so that the infructuous expenditure to the state is avoided due to later dropouts. All doubtful cases are to be referred to the appropriate service specialists for opinion.”

14. Relying upon the afore-noted, the respondents claim to have rejected the candidature of the petitioner. Distressed with his rejection, petitioner filed an appeal and he was directed to appear for re-medical before INHS, Kalyani, Vishakapatnam on 24.02.2020, where upon assessment by the Specialist, petitioner was declared unfit in ENT, observing “Right ear- thin TM and immobile” and “Left ear – NAD (no abnormality detected)”. Hence, the Appellate Medical Board did not find the petitioner suitable for recruitment to the subject post.

15. In order to belie the medical reports of the respondents, petitioner approached and got himself checked at Safdarjung Hospital, where he was declared medically fit and was issued Medical Fitness Certificate dated 18.03.2000.

16. We may mention here that by virtue of Navy Order (Spl) 01/2008, the respondents have laid down the following parameters with regard to medical examination of the entry of sailors in Indian Navy, which are as under:-

“4. Medical Examinations on Entry for Sailors.

(a) Initial Medical Examination.

(i) Recruiting Medical Officer (RMO) is responsible for examining the candidates for medical fitness and their identification marks. In case of fit candidates, the RMO will make endorsement as Fit in Medical Category S,A, on AFMSF-2.

(ii) In case of unfit candidates, the RMO will make an endorsement very legibly, with cause/causes for rejection and mention the disability/defect.

(iii) In both the above cases (fitness or otherwise). RMO will write the same in his/her own handwriting and initial the entry.

(b) Appeal Medical Board.

(i) RMO will issue a medical certificate to each of the Temporary or Permanently Unfit candidates and advise them to appeal against his/her findings if they so desire at the affiliated Armed Forces Hospitals (List available with NRO) within a maximum period of 21 days.

(ii) All Permanently Unfit candidates desirous of an appeal will be required to deposit a sum of Rs. 40/- in the Government Treasury. However, no fees will be charged from Temporarily Unfit candidates.

(iii) Candidates appealing against their unfitness (Temporary/Permanent) will be referred to the nearest affiliated Armed Forces hospital. The Commanding Officer of the

hospital should then detail an appropriate specialist/ specialists by name to carry out the medical examination. Commanding officer of the hospital will not refer the candidate to another hospital for advice. The Medical Officer at the MI Room of the hospital will not dispose of the case directly under any circumstances. After obtaining the opinion of the specialist/ specialists on AFMSF-2A, it will be put up to the Commanding officer/ Registrar of the hospital for countersignature;

(iv) The above Appeal Medical Examination will be considered as final and the candidate will have no right for further appeal at any other or same hospital again.”

17. In view of parameters laid down in Navy Order (Spl) 01/2008, whether or not the said Medical Fitness Certificate dated 18.03.2000 can be considered for recruitment of petitioner, is the limited question for determination before us.

18. Reliance has been placed by petitioner upon decision in **Anish Barla (Supra)**. In the said case, after being rejected for appointment to the post of Asst. Commandant in CRPF on medical grounds due to skin disease, the petitioner therein, had approached this Court pleading that he was free from all skin diseases and this Court in view of Medical Certificate issued by Safdarjung Hospital, directed to re-examine him by another Review Medical Board. Pertinently, while passing the said order, the Court had observed that the petitioner was held unfit for appointment on the ground of inveterate skin disease, but none of the members of the Medical Board, who had disqualified petitioner therein, had any experience of

dermatology.

19. Petitioner has also placed reliance upon another decision of this Court in ***Faizan Siddiqui (Supra)***. In the said case, the petitioner had applied for the post of female Constable with Seema Sashastra Bal and though clearing the passing criteria, she was rejected for appointment being declared medically unfit for “congenital anomaly and pseudohermaphroditism”. In the said case, this Court had observed that even if petitioner was earlier detected with “androgen insensitivity syndrome” and had undergone certain medical procedures but was declared unfit without any material basis and had therefore, directed respondents to consider her for appointment to the post of Constable, General Duty.

20. At this juncture, this Court would like to impress upon the fact that terms and conditions to evaluate the medical health of a candidate depends upon the post/ job to the force in which the appointment is sought.

21. In ***Anish Barla (Supra)***, the Court considered the statement made by the counsel that the petitioner in the said case was free from all skin diseases and disapproved the manner in which he was disqualified by the Review Medical Board, as none of the members had any experience in dermatology. In the present case, it is an admitted position that petitioner’s re-medical was conducted before INHS, Kalyani, Vishakapatnam on 24.02.2020 by the Specialist ENT, where he was declared unfit with the observation “Right ear- thin TM and immobile” and “Left ear – NAD (no abnormality detected)”. Hence, the facts in ***Anish Barla (Supra)*** are distinct and not applicable to the present case.

22. Similarly, in ***Faizan Siddiqui (Supra)***, petitioner had applied to the

post of Constable, General Duty, whereas in the present case the appointment sought is to the post of 'Artificer Apprentice & Senior Secondary Recruit' in Indian Navy, which is altogether a different profile, requiring the sailor to shoulder the complex responsibilities of maintaining systems and sophisticated equipment; work on steam powered machinery; highly advanced radio and electronic power systems etc. As such, the recruitment conditions require different medical parameters of the recruits.

23. In **Sachin Kumar Yadav (Supra)**, this Court while dealing with the appointment of SSR and MR Hygienist in Indian Navy, observed and held as under:-

"We have already, in Priti Yadav Vs. Union of India 2020 SCC OnLine Del 951. Sharvan Kumar Rai v. Union of India 2020 SCC OnLine Del 924. Nishant Kumar Vs. Union of India MANU/DE/1486/2020 JonuTiwari Vs. Union of India MANU/DE/1524/2020, Vani Viswanathan Vs. Union of India MANU/DE/1678/2020, Akash Sharma Vs. Union of India MANU/DE/2069/2020, held that it is the opinion of the medical experts of the respondents and not of the doctors of other hospitals, even of government hospitals, which has to prevail, unless some doubt is created with respect to the opinion rendered by the medical experts of the respondents or any error in the conduct of medical examination is shown."

24. Learned counsel appearing on behalf of respondents has placed reliance upon another decision of this Court in **Nikhil Pandey (Supra)**. We would like to note one para of the said decision, which reads as under:-

“6. In cases like the present, we are faced with a dilemma. On the one hand, we have a young candidate who is rearing to join one or the other forces to serve the nation. Sometimes, he suddenly realises that he is medically unfit upon his medical examination by the respondents – who conduct such examination keeping in view the medical standards required in the light of the job requirements. Such like candidates often approach this Court after obtaining medical certificates from, other reputed hospitals, or institutions such as the AIIMS, Safdarjung Hospital, Ram Manohar Lohia Hospital, etc. On the other hand, are the reports of the Medical Board, Appellate Medical Board and the Review Medical Board conducted by the respondents, wherein the candidate is found to be unfit. Such Medical Boards are conducted by qualified and competent doctors and, invariably, there are no allegations of mala fides in the making of their report.”

25. In **Saurabh Kumar (Supra)**, the petitioner had participated in recruitment process for Air Force and Indian Navy as well. The petitioner in Indian Navy had applied for the post of Artificer apprentice with Submarine Specialization and though he qualified in the examination, but was declared unfit by the Medical Board. The petitioner in the said case challenged the same on the ground that he was not rejected by the Air Force for the same condition. This Court dismissed his petition and observed as under:-

“This Court is of the opinion that the Indian Navy's opinion as to the fitness of the particular candidate for the physical or

medical conditions requisite for the Navy cannot be judicially reviewed in the manner sought. What can be open for examination is whether the individual actually suffers from the medical condition which constitutes a disability. In other words, the process of examination to determine whether as a matter of fact, the candidate suffers from disability alleged is alone open to examination. However, as to what constitutes fitness and the standards prescribed therefore cannot be judicially reviewed. The compulsion of each Force may vary depending on the exigencies of service and the kind of duties which its personnel have to undertake. In the present case, the petitioner had applied for recruitment as Artificer apprentice and opted for Submarine Specialisation. The condition which he suffers from results in excessive sweating in his palms. Since this is a listed disability, the Court is of the opinion that judicial review cannot be resorted to.”

26. In a somewhat similar situation, this Court vide decision dated 13.05.2016, in W.P.(C) 2898/2016, titled as **Satish Vs. Union of India & Ors.**, observed as under:-

“4. Having regard to the exigencies of service prescribed for a Sailor in the Indian Navy and the submission of the counsel for the respondents that this is not an ailment of a nature which could be overlooked to recruit the petitioner, we are of the opinion that the petitioner’s physical condition, as detailed in the records handed over by the counsel for the respondents for our perusal and also confirmed during the petitioner’s provisional diagnosis by the Surgeon Commander, Surgical Specialist,

does not entitle him to any relief. The parameters of fitness and the required standards for appointment of a candidate in the Forces, has to be left to the discretion of the respondents.”

27. Hence, there is no gainsaying to the settled position enumerated in the afore-noted decisions that the parameters of fitness and required standard set by the Forces for appointment cannot be judicially reviewed and the opinion of the medical experts of the appointing authority shall prevail. In the present case, in terms of Navy Order (Spl) 01/2008, the decision of *Appeal Medical Examination will be considered as final and the candidate will have no right for further appeal at any other or same hospital again*. Also, we find that petitioner’s case has been considered by the Appeal Board of respondents as per procedure prescribed and pursuant to petitioner’s re-medical examination by the Specialists, he has been found ‘unfit for appointment’. The medical opinion of the specialists coupled with the nature of job involved, we find no reason to interfere with the decision of respondents.

28. The present petition is accordingly dismissed. Pending application is dismissed as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 01, 2022

r

W.P.(C) 9716/2020

Page 14 of 14