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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10876-2020

Date of Decision:11.09.2023

RAMESHWAR PARMAR

..... Petitioner

Versus

UNION OF INDIA AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ganesh Kumar Sharma, Advocate
for the petitioner.

Ms. Amrita Singh, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 20.02.2020 (Annexure P-5) and order dated 24.04.2020 (Annexure P-8) whereby respondents have declared the petitioner medically unfit on account of Hyperbilirubinaemia (Liver Function Tests i.e. High Bilirubin).

2. The petitioner pursuant to advertisement applied for the post of Airmen vide Online application dated 12.07.2019. The petitioner cleared written examination as well as physical test and psychological test. The petitioner appeared for medical test on 14.01.2020 and was declared medically unfit. The petitioner preferred an appeal. The appeal was allowed and petitioner was again examined by

Appeal Medical Board on 11.02.2020. The petitioner was initially declared unfit on four counts, however, Appeal Medical Board declared him unfit on one ground i.e. Hyperbilirubinaemia (Liver Function Tests i.e. High Bilirubin).

3. Learned counsel for the petitioner submits that petitioner is not suffering from aforesaid disease and he has got opinion from Civil Hospital, Chandigarh (Annexure P-4).

4. Learned counsel for the respondents submits that opinion of Civil Hospital, Chandigarh cannot be considered because parameters of Civil Hospital are different from parameters prescribed by Armed Forces. The Armed Forces have prescribed strict parameters than considered by Civil Hospital. The petitioner was suffering from alleged disease and this fact was confirmed by Medical Board as well as Appeal Medical Board. The case of the petitioner is covered by paragraph 3.5.5 of manual of Medical Examination and Medical Boards. Paragraph 3.5.5 of manual reads as:

*“3.5.5 **Disease of the Liver.** If past history of jaundice is noted or any abnormality of the liver function is suspected, full investigation is required for assessment. Candidates suffering from viral hepatitis or any other form of jaundice will be rejected. Such candidates can be declared fit after a minimum period of 6 months has elapsed provided there is full clinical recovery; HBV and HCV status are both negative and liver functions are within normal limits.*

5. I have heard the arguments of both sides and with the able assistance of learned counsel have perused the record.

6. A Division Bench of this Court while adverting with a

similar issue in ***LPA No.871 of 2022 (O&M)*** titled as '***Sumit Vs. Union of India***' decided on 24.04.2023 has held that once the medical experts have examined and re-examined the appellant, this Court is not required to sit over the same and adjudicate upon the correctness of the opinion (s) expressed by the Medical Experts especially when this Court does not have expertise to decide as to whether the opinion (s) of the expert are right or wrong. The relevant extracts of the judgment reads as :

“Having heard learned counsel for the parties, we are of the considered view that in the facts and circumstances of the case, no illegality or infirmity can be found in the impugned order passed by the learned Single Judge. The appellant has been examined twice firstly by the Recruitment Medical Board and thereafter by the Appeal Medical Board which has also obtained opinion from the Command Hospital, Eastern Command, Kolkata and thereafter taken a decision in the matter. All medical experts have found the blood pressure and other parameters not to be in consonance with those prescribed. We are also in agreement with the opinion expressed by the learned Single Judge to the effect that once the medical experts have examined and reexamined the appellant's case thoroughly, this Court is not required to sit over the same and adjudicate upon the correctness of the opinion(s) expressed by the Medical Experts especially when this Court does not have the expertise to decide as to whether the opinion(s) of the Medical Experts are right or wrong. The process of medical examination cannot be converted into an endless process and therefore,

finality to the opinion of the Appellate Medical Board has rightly been prescribed. As far as the reliance placed by learned counsel for the appellant on the order passed by this Court in Letters Patent Appeal No. 635 of 2018 is concerned, it is evident that the said appeal was decided on the conjoint consensus statement made by the parties and therefore, it was an order passed on the basis of the consent given by the parties and does not form any binding precedent. In that case as the matter had been allowed by the learned Single Judge taking into account the medical reports of an hospital, which was not part of the medical set up of the respondents, and inspite of the negative reports being given by the Recruitment Medical Board as well as the Appeal Medical Board and therefore, the Union of India had made a statement that they will get further examination done from the Army Hospital (Research & Referral) New Delhi, a defence hospital and not a private one, to which the appellant therein had agreed and on the basis of the statements made by the parties with consent, the appeal was disposed of. In such circumstances, the reliance placed by learned counsel for the appellant on the order passed in LPA No. 635 of 2018 is misconceived. In the instant case, there is concurrent opinion given by the Medical Experts of the Recruitment Medical Board as well as the Appeal Medical Board that the appellant is unfit for appointment in Indian Air Force.”

7. In the case in hand, the petitioner was twice examined. In the

first examination, he was declared unfit on four counts, however, by Appellate Medical Board he was declared unfit on one count.

8. In view of afore-cited judgment, this Court cannot sit over opinion of Medical Board and further cannot substitute opinion of Medical Board by its own opinion.

9. In view of opinion of Medical Board as well as Appellate Medical Board and judgment of Division Bench of this Court, the present petition deserves to be dismissed, however, para 3.5.5 of manual of the Medical Examinations and Medical Boards, as pointed out by respondent needs to be considered, thus, the respondents are directed to re-consider case of the petitioner in the light of paragraph 3.5.5 of the manual and pass an appropriate order.

(JAGMOHAN BANSAL)
JUDGE

11.09.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>