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

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Date of decision: 30th May, 2023

+ **W.P.(C) 5068/2023**

SHUBHAM VERMA

..... Petitioner

Through: Mr. Rajneesh Chuni, Mr. Akbar Siddique, Mr. Parv K. Garg, Mr. Animesh Mishra, Mr. Abhishek Singh and Mr. Hasan Zaidi, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Bhagvan Swarup Shukla CGSC with Mr. Sarvan Kumar, G.P. and Wg. Cdr. Prashant Rudra.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Writ Petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India.
2. It is submitted in the petition that at the age of 18 years, immediately after completing 12th standard, the Petitioner herein cleared his UPSC exams for militarized training, and graduation in the first attempt, and got inducted in NDA for training. The Petitioner was pursuing his graduation in 5th term as Air Force Cadet. On 10.09.2019, the Petitioner whilst in his 2nd term during Inter Squadron Football Competition, he suffered injury and was diagnosed with "ACL Tear plus Medical Meniscus Tear (Rt) knee". The Petitioner was rushed to Military Hospital, Kirkee and on 20.11.2019



underwent surgery for reconstruction of ACL. The operation was successful and the petitioner was granted sick leave for a period of four weeks.

3. The Petitioner returned to Military hospital after expiry of sick leave, and as per the set norms was again examined by the specialist, and the Medical Board, and was upgraded to A-3 w.e.f. 04.01.2020. Based on the said report, the Petitioner was sent to NDA, and permitted to continue his graduation as well as rigorous military training. After completion of few weeks, the Petitioner was again asked to report to the hospital for re-survey by the Medical Board, and the Petitioner was further upgraded to A-2 (T12) w.e.f. 20th May 2020. During ongoing 4th semester, in September 2020, once again physical examination of the Petitioner was conducted, and the Petitioner was declared fit. Even though the report did not suggest anything adverse, and the Petitioner expected to have been upgraded at A-1, as a bolt from blue contradicting its own report, the Medical Officers declared/ downgraded the Petitioner to A-5. Challenging the said contradictory report which instead of upgrading the Petitioner to A-1 downgraded him to A-5, the Petitioner made a representation on 23rd September 2020 and requested for an appeal against the Medical Board Report. In the middle of the fifth term which was on the verge of getting over and written exams were already cleared by the Petitioner, abruptly based upon contradictory and wrong reports, the Petitioner was not allowed to attend the classes, and use the facilities available in the Academy.

4. The Petitioner on 01.09.2021 to remove all the ambiguities, at his own expense got himself examined at Safdarjung Delhi wherein it was categorically observed and reported that the Petitioner was physically fit in all aspects. The Commandant, NDA informed the father of the Petitioner



vide letter no. 010799/39411/edt dated 04.04.2022 that the Petitioner is required to report to Base Hospital Delhi Cantt (BHDC) for revaluation. The Petitioner was examined by the Base Hospital Delhi Cantt (BHDC) on 26th April 2022, which report was never ever shared with the Petitioner.

5. On 16.06.2022, the father of the Petitioner also made a representation before the Minister of State for Defense.

6. Seeing no reply forthcoming the petitioner approached this Court vide the present Writ Petition seeking following reliefs :

- “(i) To declare the action of the Respondents as unjust, arbitrary, perverse;*
- (ii) To quash the show-cause notice dated 22nd June 2021;*
- (iii) To constitute an independent government medical-board of the doctors from recognized hospitals other than army hospitals, for examining the case of the Petitioner, and record the proceedings;*
- (iv) To issue writ of mandamus or any other appropriate writ thereby directing the Respondents to allow the Petitioner to continue his graduation, finish his 6th Semester, and military training, and also be awarded ante date seniority at par 141 Course of NDA;*
- (v) To grant all the consequential benefits to the Petitioner; and*
- (vi) Pass such other orders and reliefs as this Hon'ble Court may deem fit in the dispensation of justice.”*

7. We have perused the opinion of the Specialist dated September 2020 Annexure-P6 and the Report dated 26.04.2022 of the Base Hospital, Delhi Cantt. and find some variations regarding “ACL laxity”. However, without going into the controversy, we hereby direct the respondents to get the petitioner examined from Research & Referral Hospital.



8. On approaching by the respondents, the In-charge of RR Hospital is directed to constitute a Medical Board which shall include Orthopedics Specialist and examine the petitioner within four weeks from today.
9. On taking date for examination from RR Hospital, the respondent shall communicate to the petitioner who shall appear as and when called, before the Medical Board.
10. The petitioner is present in person in Court with his father who is assisted by learned Counsel named above and on instructions has agreed that the Report of the RR Hospital shall be final and binding.
11. We hereby make it clear that if the Report of RR Hospital comes in favour of the petitioner, he shall be allowed to continue in service subject to completion of other formalities.
12. In view of the above, the petition stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MAY 30, 2023

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