



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

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Date of decision: March 11, 2024

+ **W.P.(C) 3426/2024**

(61) **ROHIT SINGH BAGHEL**

..... Petitioner

Through: **Mr. Indra Sen Singh, Mr. Abhishek Singh, Mr. Nasir Mohd. and Ms. Kaberi Sharma, Advocates**

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: **Mr. Ajay Kumar Pandey, SPC Mr. Deepak Tanwar, GP alongwith Mr. Rajat Choudhary, and Mr. Rajdev Kumar, Advocates**
Major Partho Katyayan (Army)

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J. (ORAL)

1. On 10.07.2023, the petitioner applied for the Short Service Commission¹ under the NCC Special Entry Scheme, scheduled to commence from April 2024 at Officers Training Academy Chennai². After undergoing the Service Selection Board³ from 03.12.2023 to 07.12.2023, he secured the 17th position in the Merit List, whereafter, on 15.12.2023 he underwent a medical examination conducted by the Special

¹ Hereinafter referred to as “SSC”

² Hereinafter referred to as “OTA”

³ Hereinafter referred to as “SSB”



Medical Board⁴ at Military Hospital, Prayagraj, which declared him medically 'Unfit' due to a 'Hyperpigmented Lesion' on the left arm and shoulder, digital tremors and deep cupping in both his eyes.

2. On 29.01.2024, the Appellate Medical Board⁵ found him medically 'Fit' for certain conditions but once again found him medically 'Unfit' due to the 'Hyperpigmented Lesion'. In fact, the petitioner applied for constitution of the Review Medical Board⁶ to be held at the Armed Forces Medical College⁷, Pune on 29.01.2024 itself. However, the office of DTE General Armed Forces Medical Services⁸ rejected the said application for constitution of a RMB vide impugned order dated 15.02.2024.

3. Thereafter, on 02.03.2024, the petitioner was examined by a Skin Specialist, Gajra Raja Medical College, Gwalior, Madhya Pradesh, who opined that the said 'Hyperpigmented Lesion' on his left arm was a birthmark and it neither affected his health nor performance as it was not contagious.

4. It is mainly on the strength of the above opinion of the Skin Specialist that vide the present petition under Article 226 of The Constitution of India, the petitioner seeks directions to the respondents for allowing him to be medically examined by RMB at AFMC, Pune.

5. Against the aforesaid background, learned counsel for the petitioner submits that 'Hyperpigmented Lesion' for which the petitioner has been declared medically 'Unfit' has been present on his left arm and shoulder

⁴ Herein after referred as "**SMB**"

⁵ Herein after referred as "**AMB**"

⁶ Hereinafter referred to as "**RMB**"

⁷ Hereinafter referred to as "**AFMC**"

⁸ Herein after referred as "**Respondent No.4**"



since birth and also that it has never caused any problem or difficulty, physically or otherwise. Relying upon the aforementioned opinion of the Skin Specialist, he asserts that the said birthmark is in fact neither infectious nor contagious. He further submits that neither the SMB conducted at Prayagraj nor the AMB, which examined the petitioner at Base Hospital, Delhi Cantt. had carried out any laboratory or pathological test before declaring him medically 'Unfit'.

6. Lastly, relying upon paras 58 and 90 of the "*Manual on Medical Examination and Medical Standards for Various Entries into the Army, Trg Academies and Military Schools*"⁹ dated 16.07.2019, learned counsel submits that the general grounds for rejection listed in para 58 do not contain the condition of the petitioner and further as per para 90 specifically pertaining to Dermatological Systems, only those skin disorders will be a ground for rejection which are of such degree or nature as requiring frequent treatment or hospitalization or inter affecting thermoregulatory function or interfering with the wearing of military clothing/ equipment or interfering with the satisfactory performance or duty.

7. *Per contra*, learned Senior Panel Counsel for UOI, without filing any counter affidavit, relying upon the Manual submits that both the SMB and the AMB constituted by the respondents comprise of specialised experts in their fields who are the final Medical Authority for determining the standard of recruitment of any candidate like the petitioner herein. He further submits that the reference of any candidate like the petitioner to

⁹ Hereinafter referred as "*Manual*"



the RMB, as per the terms and conditions contained in the manual, is not a matter of right. It is under these circumstances that he lastly submits that in matters involving adjudication of medical condition of any candidate like the petitioner for recruitment, there is hardly any scope for interference by this Court.

8. This Court has heard the learned counsels appearing for all the parties and has also gone through the documents on record.

9. Before proceedings to adjudicate on the merits of this petition, this Court finds that the petitioner herein, *admittedly*, was first declared medically '*Unfit*' in the first round by the SMB on 15.12.2023 and then in the second round by the AMB once again on 29.01.2024, both times due to 'Hyperpigmented Lesion', a copy whereof, being '*Confidential*', was handed over by the respondent to this Court during the course of hearing on 07.03.2024.

10. Also, since the issue involved before us rests on the terms and conditions contained in the Manual and which is the guiding force with the determining factors qua recruitment of any candidate like the petitioner, the relevant paragraphs thereof are reproduced hereunder :-

"General

4. *It must be come in mind by all Medical Officers and Specialists that a candidate once selected as Medically Fit, if found unfit at a later stage due to a disability that could have been discovered during initial medical examination (although many diseases/disabilities may not be detected due to limited investigations), causes considerable embarrassment to authorities and avoidable financial burden to State. In case of any doubt about any disease/disability/injury/genetic disorder etc noticed during enrolment/commissioning, the benefit of doubt will be given to the State.*

Review Medical Board(RMB)

22. *When a candidate is declared unfit by AMB, the result is*



*communicated him/her by the President of AMB. The candidate can appeal against the findings of AMB within 1 day of the same being communicated. RMB will be granted at the discretion of DGAFMS, based on the merits of the case. **RMB is not a matter of right. RMB is held at AH (R & R), Delhi Cantt and at AFMS, Pune. After approval by DGAFMS, the Medical Board proceedings are forwarded to the concerned authorities via the respective DGMS.***

62. Standards for general physical examination

(r) Skin infections such as Tinea cruris, Tinea corporis, Intertrigo, Impetigo, Folliculitis, Purunculosis, Scabies, Sycosis barbae, warts, Molluscum contagiosum, Herpes, Giant Congenital Melanocytic naevi or any other naevi more than ten cm in size will be a cause for rejection.

(t) Presence of haemangiomas, naevus, moles etc will be rejected if they are multiple and large (more than one cm in size).

73. Skin

(e) Abnormal pigmentation. Abnormal pigmentation in the form of hypo or hyper pigmentation is not acceptable. Localized, congenital mole/naevus, however is acceptable provided size is less than one cm. Congenial multiple naevi or vascular tumours that interfere with function or are exposed to constant irritation are not acceptable."

(emphasis supplied)

11. There is no qualm about the fact that the terms and conditions contained in the Manual being the gospel when it comes to recruitment of any candidate by the respondents like the petitioner herein, are the guiding principles for the respondents to follow and abide. Similarly, recruitment of all candidates like the petitioner is also bound by the said Manual.

12. The facts involved reveal that both the SMB and the AMB being constituted by the respondents comprising of specialized experts in their fields have rendered their valuable opinion independently on two respective occasions and declared the petitioner medically 'Unfit'. In view thereof, it is not for this Court to sit in appeal over the said decisions/opinions rendered by both the medically competent boards.



13. Further, since this Court finds that neither of them is vitiated by any element of biasness, arbitrariness or mala fide, there is no occasion and/or reason for doubting either of them. In fact, as per the settled position of law, this Court, actually Courts, ought to be circumspect, wary and watchful in dwelling into such matters of correctness or the analysis or the appraisal thereof, especially when it is qua recruitment into the Armed Forces, as also when they are involving opinion(s) rendered by specialized experts in their fields.

14. The aforesaid Manual also has been prepared by the specialized experts in their fields of the respondents, who, in their esteemed wisdom have chosen to device the criteria for determination of any candidate for the recruitment, as also the conditions for reference of such candidature to the RMB. The Hon'ble Supreme Court, while dealing with the aforesaid in ***Union of India v. Lt. Gen. Rajendra Singh Kadyan*** (2000) 6 SCC 698 has held as under:

“29. Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. Maybe one may emphasize one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government.”

15. *De-hors* the above, in terms of para 22 of the Manual reproduced



hereinabove, the reference of any candidate for recruitment like the petitioner herein to the RMB is certainly is not a matter of right. The same is in fact dependent upon various other factors contained in the Manual and the medical opinion rendered by the specialized experts of the respondents. As such, the same is indeed subjective.

16. Lastly, the opinion obtained by the petitioner from the Skin Specialist, Gajra Raja Medical College is hardly of any material relevance or has any significance as the parameters for the recruitment of someone like the petitioner in the Armed Forces are completely different from those of the General Public. In fact, the Hon'ble Supreme Court while dealing with the matters of recruitment, recently in ***Telangana Residential Educational Institutions Recruitment Board v. Saluvadi Sumalatha***, 2024 SCC OnLine SC 235 has specifically held as under:-

16. Courts will have to be cautious and therefore slow in dealing with recruitment process adopted by the recruitment agency. A lot of thought process has gone into applying the rules and regulations. Merely because a recruitment agency is not in a position to satisfy the Court, a relief cannot be extended to a candidate deprived as it will have a cascading effect not only on the said recruitment of respondent no. 2, but also to numerous others as well. In such view of the matter, courts are duty bound to take into consideration the relevant orders, rules and enactments before finally deciding the case. In this regard, reliance is placed on the decision of this Court in Dalpat Abasaheb Solunke v. B.S. Mahajan, (1990) 1 SCC 305 where it was held:

*“12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. **It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the***



candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.”

17. For the aforesaid reasons, this Court finds no ground for judicial intervention or referring the petitioner to the RMB.

18. Accordingly, the present petition is dismissed, leaving the parties to bear their respective costs.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

MARCH 11, 2024/rr