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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7062/2024, CM APPL. 31166/2024

SHUBHAM MALIK

..... Petitioner

Through: Mr. Abhay Kumar Bhargava,
Ms. Niharika and Mr. Satyaarth
Sinha, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Shagun Shahi Chugh and Ms. A.
Sahitya Veena, Advs. for UOI with
SI. Prahlad Devenda and SI. Amit
Kumar (CISF)

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

22.05.2024

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1. This petition has been filed by the petitioner with the following prayers:

“It is, therefore, humbly prayed that this Hon'ble Court may please to allow this writ petition and may further be please to:

a. Issue a writ of certiorari or any other appropriate writ, order or direction, thereby calling for records and quash the Medical Board opinion dated 15.03.2024 only to extent it says that the petitioner is unfit for recruitment on the sole ground of the recent surgery done on 18.01.2024.

b. Issue a writ of Certiorari or any other appropriate writ, order or direction, thereby quashing the order dated 05.04.2024 issued by the DIG RRC NCR ZONE.

c. Issue a writ of mandamus or any other appropriate writ, order or direction, thereby directing the respondents to recruit the petitioner in service in service with date of seniority and



*consequential benefits as par with his batchmates. Alternatively, the petitioner may be examined six months after his surgery which took place on 18.01.2024 to examine whether the petitioner is fit for recruitment or not and accordingly case of the petitioner may be considered for the current recruitment year or the next recruitment year
d. Pass any other order in the interest of Justice.”*

2. In effect, the petitioner is challenging the decision of the Medical Board dated March 15, 2024 and communication dated April 5, 2024 whereby the petitioner on medical examination, pursuant to the order passed by this Court in W.P.(C) 1370/2024, dated January 31, 2024, was found unfit for left inguinal hernia (opted). This Court while disposing of the petition, has stated as under:

“2. In substance, the petitioner is challenging the conclusion drawn by the Medical Board/Review Medical Board, wherein he has been diagnosed to be suffering from Inguinal Hernia. In support of his submission, learned counsel for the petitioner has drawn our attention to the result of the Medical Examination of the petitioner conducted at P L Sharma District Hospital, Meerut, U. P, which is a Government hospital in the State of U.P, to contend that the Doctor therein has stated that there is no Left Inguinal Hernia. Petitioner is fit for duty.

3. Without commenting on the conclusion drawn by the Medical Board/Review Medical Board, we deem it appropriate, in the facts of this case, to refer the petitioner to Army Hospital (Research and Referral) (‘RR Hospital’, in short), New Delhi. The R. R. Hospital shall constitute a Medical Board consisting of an Assistant Surgeon of Grade-1 or a Surgeon, above the said grade, which shall undertake the Medical Examination of the petitioner to consider as to whether the petitioner is suffering from Inguinal Hernia (Left side). The Examination shall be conducted within four weeks from today and the R. R. Hospital shall give an advance notice



of four days to the petitioner informing him the date and time, for his presence. The report shall be submitted to the respondent/Authority in the CISF, being Dy. Inspector General (Recruitment), Central Industrial Security Force, Block No. 13, C.G.O. Complex, Lodhi Road, New Delhi-110003, who shall consider the report and proceed in accordance with law.

4. With the above terms, the petition is disposed of.”

3. A perusal of the report of the Medical Board, it transpires that the petitioner was found unfit because of the reasons which we have already stated above.

4. On a specific query, to Mr. Abhay Kumar Bhargava, learned counsel for the petitioner whether the fact that petitioner had undergone surgery for inguinal hernia was stated in the previous writ petition being W.P.(C) No. 1370/2024, the answer is in the negative.

5. Mr. Bhargava submits that the petitioner had informed the said aspect to the department vide his application dated January 24, 2024. Suffice to state, in the absence of any specific averment in the writ petition, this Court proceeded to decide the previous writ petition on the premise that the petitioner though having been found unfit by the Medical Board of the respondents, but having been found fit in the report submitted by P.L. Sharma District Hospital, Meerut, U.P. wherein the Doctor has opined, *no left Inguinal Hernia, the petitioner is fit for duty*, deemed it appropriate to refer the petitioner to Army Hospital. The Army Hospital conducted the medical examination. The fact that the Army Hospital has found the petitioner unfit on the ground of Inguinal Hernia and the fact that the guidelines issued by the respondents in respect of Inguinal Hernia states as under, it is clear that an operated case will not be accepted within six months



of the surgery:

*“(d) **Inguinal Region:** Inguinal hernia is the possibility at the young age. The candidate should be asked to turn his head away from the examiner and cough. A swelling will appear on coughing. It can also to be confirmed by **VALSALVA MANEUVER**. Operated cases (with documentary proof) of inguinal hernia may be accepted if the scar is well healed, supple and non-tender, the tone of abdominal muscles is good and there is no tendency for recurrence 6 months after operation. An operated case will not be accepted within 6 months of surgery.”*

6. Since, the surgery of the petitioner was performed in the month of January, 2024, the respondents would not accept the case of the petitioner till July 2024. If that be so, we do not find any illegality insofar as the decision of the Medical Board dated March 15, 2024 and communication dated April 5, 2024. The writ petition being without merit, is dismissed.

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Dismissed as infructuous.

V. KAMESWAR RAO, J

RAJNISH BHATNAGAR, J

MAY 22, 2024/aky