



2024:DHC:9025-DB



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

Date of decision: 22.11.2024

+ W.P.(C) 15281/2024
SAJAL SAHA

.....Petitioner

Through: Mr.Ajit Kakkar, Mr.Aman
Kumar, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr.Jagdish Chandra, CGSC,
Mr.Shubham Kr. Mishra, Adv.,
Mr.Yash Tyagi, GP

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. The present petition has been filed by the petitioner, praying for the following reliefs:

"a. Issue a Writ, Order or Direction in the nature of certiorari to set aside and quash the findings of the medical board dated 11.06.2024 and appeal medical board dated 28.08.2024 in respect of the petitioner which declared the petitioner unfit;

b. Issue a writ, order or direction in the nature of Mandamus directing Respondent No. 3 for constitution of a Review Medical Board as per the choice of Respondents or any other Hospital as this Hon'ble Court may deem fit to ascertain the medical condition of the Petitioner."

2. It is the case of the petitioner that the petitioner has applied for AFCAT- (01/2024) for the ground duty (non-technical) branch for course commencing in January 2025. He successfully qualified for



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the Phase-I and Phase II process. Thereafter, he was medically examined at AFCME, Subroto Park, but was declared unfit on account of Lumbosacral Transitional Vertebra (LSTV-II A). The Review Medical Board again declared the petitioner unfit observing as under:

1. I, the above mentioned candidate declared unfit in the following disability/abilities by the Appeal Medical Board held at Base Hospital Delhi Centre Air Headquarters (RK Puram) on 12-08-2024 (Date).
- (a) LSTV - TYPE II A
- (b)
- (c)
2. I wish to undergo Review Medical Board at Army Hospital (Research & Referral) Delhi Centre Armed Forces Medical College, Pune (Strike out which is not applicable).
3. In view of the above, it is requested that my application may please be accepted and forwarded to office of DGAFMS. I am aware that I will be considered only on merit basis and with the time frame laid down by office of DGAFMS.

3. It is the claim of the petitioner that he got himself examined at All India Institute of Medical Sciences (AIIMS) at New Delhi, wherein the Doctor of Orthopedics opined that an X-ray review conducted is suggestive of normal variation present at the LS Junction. The doctor further stated that this variation does not restrict the petitioner's daily activities.

4. The learned counsel for the petitioner further submits that the petitioner has also been declared medically fit on 07.06.2024, in the medical examination conducted as part of the final merit list for the Assistant Commandant-02/2024. He submits that therefore, there is an apparent inconsistency in the Impugned Medical Board and the Review Medical Board opinions *vis a vis* the report of AIIMS and of the Medical Board for the Assistant Commandant-02/2024.



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5. Issue notice.
6. Notice is accepted by Mr.Jagdish Chandra, learned counsel for the respondents.
7. He submits that the finding of the Medical Board and the Review Medical Board cannot be challenged on the basis of an opinion obtained from AIIMS Hospital, New Delhi, and the same should not be considered as final.
8. We have considered the submissions made by the learned counsels for the parties.
9. In the present case, apart from the opinion from the Doctor from AIIMS Hospital, New Delhi, the petitioner has also placed reliance on the selected list issued by the respondents for the Assistant Commandant-02/2024 post, wherein the petitioner was declared medically fit as of 07.06.2024. The Impugned Medical Examination was conducted on 11.06.2024, that is, within four days thereafter.
10. Keeping in view this peculiar circumstance, we are of the opinion that the petitioner should be subjected to a further medical examination at the Army Research and Referral Hospital, Delhi Cantt., New Delhi. The result of such medical examination shall, however, be final for both parties, meaning thereby, if the petitioner is declared medically fit, his case for the AFCAT- (01/2024) post shall be further processed by the respondents, however, in case the petitioner is again declared medically unfit, the said report shall be final and shall not be challenged by the petitioner any further.
11. For the above purpose, the petitioner shall appear before the Medical Board constituted by the Army Research and Referral



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Hospital, Delhi Cantt., New Delhi, on 05.12.2024, at 11.00 A.M. The concerned officer of the respondents may also be present at that time along with the relevant documents of the petitioner.

12. The Medical Superintendent of the Army Research and Referral Hospital, Delhi Cantt., New Delhi, is requested to appoint a Board of Doctors which should include the Orthopedic, to examine the petitioner and give its opinion on the fitness of the petitioner for being considered further for the above-mentioned course.

13. With the above direction, the present petition is disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 22, 2024/Arya/DG

Click here to check corrigendum, if any