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**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.**

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**CWP-5398-2020 (O&M).
Date of Decision: 28.04.2025.**

NIKHIL SHARMA

... Petitioner

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sandeep Bansal, Advocate,
for the petitioner.

Ms. Gurmeet Kaur Gill, Senior Panel Counsel,
for the respondents/UOI.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer made in present writ petition is for setting aside of the letters dated 06.01.2020 as well as 30.01.2020 declaring the petitioner unfit on medical grounds and for directing the respondents to conduct medical re-examination of the petitioner and to issue appointment as Airman Group 'X', if found fit.

2 Learned counsel appearing on behalf of the petitioner contends that the petitioner had applied for the post of Airman in Group X and Y in different trade including General Duty, in the month of July 2019 pursuant to Advertisement No.DAVP/10801/11/0007/1920. The Phase I test was held

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online on 21.09.2019 at Meerut whereafter the petitioner was called for Phase II test to be conducted at Ambala on 27.11.2019 for physical fitness, Psychology, Dynamic Factor Test, Group Discussion Test and Interview. The petitioner successfully cleared the same as well and was directed to report for medical fitness at the Air Force Station, Halwara, on 06.01.2020. The petitioner thus reported for the medical examination however he was declared unfit on account of ECG Abnormality. The petitioner objected to the same whereupon he was asked to apply to the Appeal Medical Board. On submission of the said application, the petitioner was directed to report at SMC, 12 Wing Air Force at Chandigarh. Medical examination of the petitioner was undertaken yet again by the Appeal Medical Board of the respondents on 28.01.2020 wherein ECG Abnormality was noticed by the respondents yet again and he was declared as medically unfit. Claiming that the results of medical examination being incomprehensible and hence ought to be ignored and petitioner be medically re-examined, the instant petition has been filed.

3 Learned counsel appearing on behalf of the petitioner contends that the medical reasons cited by the respondents are inherently irreconcilable. The respondents have specifically stated in their reply in para No.2 that in the medical examination of the petitioner on 06.01.2020, he was found to be unfit on account of “ECG Abnormality-bradycardia.” During the appeal medical board examination at the SMC, the ECG abnormality detected and opined by the appellate Board was “ECG-sinus Tachycardia.” Learned counsel contends that the petitioner got himself medically examined from Dr. Ram Manohar Lohia Hospital, New Delhi on 20.02.2020 where he was declared to be medically fit and having no problem with the ECG. The Specialist had even

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conducted ECHO test of the petitioner and as per the result thereof, he was declared to be completely normal. He submits that the petitioner having been declared fit by Dr. Ram Manohar Lohia Hospital, New Delhi, the opinion given by the Medical Board of the respondents as well as by the Appeal Medical Board should not be enforced any further and appointment ought to be issued to the petitioner considering that the other candidates who had successfully participated in the same selection process had already been appointed by the respondents. It is submitted that the respondents have acted in a ministerial manner and have failed to examine that the reasons cited by the Medical Board and Appeal Medical Board are irreconcilable and cite diagonally opposite medical ailments. He contends that under similar circumstances, this Court had examined the claim of a candidate in CWP-9951 of 2014 and referred the petitioner therein for medical examination at PGIMER, Chandigarh and held that the result thereof shall be accepted by the parties.

4 He also places reliance on the Division Bench order in LPA No.635 of 2018 wherein the petitioner/Union of India had been directed to re-examine the respondent therein from the Army Hospital (Research and Referral) New Delhi.

5 Learned counsel for the respondents/Union of India, on the other hand, raises the following arguments: -

- (i) The present writ petition is liable to be dismissed as the Armed forces have now discontinued the earlier mode of recruitment in the service and Agnipath Scheme has been introduced thereafter. She contends that the said Scheme has already been upheld and the challenge raised by the selected

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candidates who were not appointed stands dismissed by the Division Bench of Delhi High Court in the matter of **Harsh Ajay Singh Vs. Union of India and others reported as 2023 (298) DLT 598** and even the Special Leave Petition against the same has been dismissed by the Hon'ble Supreme Court. The relevant para of the same is extracted as under: -

“78. The Petitioners have claimed that they have let go of other opportunities while awaiting the recruitment process to resume. It is their contention that due to this, they suffered on account of the sudden change in policy initiated by the Government. Hence, they claim that the Government being bound by the principle of promissory estoppel will have to bring the recruitment process to its logical conclusion. This argument also does not find favour with this Court, firstly, as there was no vested right in claiming appointment even after a selected list has been declared, and secondly on account of the larger public interest weighing strongly in favour of the Agnipath Scheme. This Court has already analysed other aspects of the Impugned Scheme in detail in the first part of this judgment, and reached the unequivocal conclusion that the Impugned Scheme is not arbitrary, capricious or devoid of reason. On the contrary, it squarely falls within the ambit of 'public interest'. As emerges from the various cases reproduced above, Courts have not evoked the principle of promissory estoppel when faced with a change of policy necessitated by public interest. The Government in this case cannot be held to be bound by the recruitment process initiated by it. Further, as

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dealt with already, the Petitioners, who are at various stages of the recruitment process, have no vested right to claim such recruitment.”

- (ii) She contends that the petitioner has no subsisting or accrued right to seek appointment in Air Force as such fresh consideration can only be done as per the Agnipath Scheme.
- (iii) It is also argued by her that the report of the Medical Board as affirmed by the Appeal Medical Board cannot be re-examined by this Court. She submits that the same would amount to re-examination of the report prepared by the experts and this Court, in the exercise of power of judicial review, would not be competent to do so.
- (iv) She further submits that so far as the reliance of the petitioner on the LPA No.635 of 2018 titled as Union of India and others Vs. Bhagat Singh is concerned, the same was a consent order, which such fact has also been discussed and distinguished by a subsequent Division Bench in LPA No.871 of 2022 titled as Sumit Vs. Union of India and others. Hence, the argument of the petitioner for being referred to the Army Hospital (Research and Referral) New Delhi, for a fresh medical examination ought to be declined at this juncture.

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6 Learned counsel for the respondents/Union of India was posed with the following questions: -

- (i) As to whether in the matter before the Delhi High Court in the case of **Harsh Ajay Singh (supra)** the entire selection list was set aside, it had been partly accepted for some candidates, counsel fairly concedes that no person in the select list was offered appointment in the matter of **Harsh Ajay Singh (supra)**.
- (ii) It was also put to the counsel for the respondents as to whether appointments pursuant to the instant recruitment process was offered to other candidates who had appeared and had successfully cleared the same, she fairly submits that the offer of appointment had been made to other candidates and they have also joined service.
- (iii) She has been asked if she has any case law to establish that once the mode of recruitment is changed subsequently, the rights of a person claiming under the old rules would also stand terminated - she submits that she has no such case law.
- (iv) It has also been put to her if she has any case law that a person would have no right to claim appointment, even if the reasons for rejection are not found to be valid by the Court on the ground of new recruitment rules having been

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notified - she submits that she has no legal precedent to supplement her argument.

(v) It is also put to her whether a lawful relief can be declined to a person who is wrongly denied appointment, when his contemporaries are working on the ground of new rules - -- there is no satisfactory reply.

(vi) She has also failed to refer to any law which holds that even if the medical reports do not reconcile and show mutually exclusive disease, yet, it would not be open to the High Court to doubt the admissibility of such medical report.

7 I have heard the learned counsel appearing for the respective parties and have gone through the documents appended along with the present petition.

8 While it is not disputed that a recommended candidate does not have an absolute right to appointment, however, every candidate has a right to be considered for appointment and also against wrongful denial of appointment. Refusal to appoint the candidate on the ground that due to amendment of Rules, the appointment cannot be made effective was held improper by the Hon'ble Supreme Court in the matter of **Gunaru Karan Vs. Revenue Divisional Commissioner reported as (1991) Supp. 2 SCC 291.**

The employer is no doubt not bound to accept the recommendations, however, such decision should not be based on malicious considerations.

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Further, it would also not be available to the employer to adopt a pick and choose approach in offering appointment and once the recommendations are accepted - appointment given, such parity has to be extended to all. A person, who could not be appointed for some reason, cannot be denied his right if the decision is eventually held to be erroneous and is set aside, merely on account of interregnum changes. Such person would relate back his claim to the date it was due to him but denied and the law prevailing then.

9 The position in law needs no elucidation that the employer is at liberty to accept a recommendation or to reject the same in its entirety. The position in law is, however, at some variance where a process of selection culminates in partial acceptance of the recommendation. In such circumstances, it does not lie with the respondent to contend that even though, it may have erred or committed an error in the selection process, however, on account of subsequent change in the recruitment policy, it has every right not to consider the candidature of the person so wrongly rejected. A parity of treatment is required to be extended to all. Thus, a person who has been prejudiced on account of what may be a probable incorrect assessment cannot be put to a further prejudice by denying him a relief to which he would otherwise be entitled to. Reliance in this regard is placed on the judgment of the Constitution Bench of the Hon'ble Supreme Court in the matter of **Shankarsan Dash Vs. Union of India (1991) 3 SCC 47.** The relevant part of the judgment is extracted hereunder:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are

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found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220], Neelima Shangla v. State of Haryana [(1986) 4 SCC 268], or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122]”

(Emphasis supplied)

10 Thus, the controversy involved in the matter of **Harsh Ajay Singh (supra)** or the ratio of law laid down thereunder is not applicable to the facts of the present case. Such an argument would have been valid for the respondents in case they would not have offered appointment to any person who would have participated in the said process of selection despite being recommended. That being not the position in fact hence, the reliance on para No.78 extracted above is misconceived and is not in conformity with the settled legal position.

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11 Having held so, even though the position in law is not in dispute that in the matters of opinion of experts including medical examinations, the High Court does not normally sit as a court of appeal, however, the reasons which compel this Court to exercise its jurisdiction in the present case is that there is a brazen incoherence/contradiction in the opinion given by the Medical Board as well as the Appeal Medical Board. As per the undisputed medical record, 'bradycardia - ECG abnormality' noticed by the Medical Board is a 'medical condition where the heart rate is below 60 beats per minute' while the 'ECG abnormality tachycardia' detected by the Appeal Medical Board in fact points out to 'a condition where the heart rate is above 100 beats per minute.' The opinion of the Medical Board is thus diagonally opposite to that of Appeal Medical Board and both medical conditions cannot co-exist. The conclusions of medical fitness being mutually exclusive, it leads to a natural inference that the conclusions drawn on fitness are flawed. The report about medical fitness given by Dr. Ram Manohar Lohia Hospital, New Delhi, thus becomes vital and should not be completely ignored. Under such conditions where the test results were incoherent and contradictory, the Hon'ble Supreme Court directed constitution of another Medical Board for re-examination of the aggrieved person in the matter of **NTPC Kahalagaon and others Vs. Nakul Das and others, reported as (2014) 9 SCC 385.**

12 Without disputing the limited competence of the High Court in the matters of medical examination, however, where the medical reports are contradictory and irreconcilable, the High Court while exercising its power under Article 226 of the Constitution of India cannot be said to be substituting

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its own opinion for the opinion given by the Medical Board and rather points out the inherently flawed conclusions given by the two respective medical boards of the respondents themselves and seeks to extend a fair opportunity of ascertaining correct status which becomes all the more necessary since another expert report of Dr. Ram Manohar Lohia Hospital, New Delhi, supports the claim of the petitioner.

13 Under the given circumstances, the impugned letters/order dated 06.01.2020 as well as 30.01.2020 declaring the petitioner unfit on medical grounds are set aside. The respondents are directed to re-examine the petitioner at the Army Hospital (Research and Referral) New Delhi for the aforesaid ECG abnormality and to take appropriate steps on the basis of the final conclusions of the Medical Board.

14 The respondents shall intimate the date of re-examination of the petitioner before the Army Hospital (Research and Referral) New Delhi, within a period of one month of receipt of a certified copy of this order and on such date(s), as may be suitably fixed thereafter, the petitioner shall remain bound to appear. Both the parties shall be bound by the opinion given by the Army Hospital (Research and Referral) New Delhi and in case the medical opinion comes in favour of the petitioner, the respondents would extend appointment to the petitioner along with all consequential benefits at par with his juniors notionally from the date of their joining and actually w.e.f. the date of joining.

15 The present writ petition is accordingly allowed.

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16 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

April 28, 2025.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No