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

Date of Decision: 25.02.2022

+ W.P.(C) 7000/2021 & CM 22095/2021

AMARJEET SINGH

..... Petitioner

Through: Ms.Ria Gandhi, Adv for
Mr.Ajit Kakkar, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Farman Ali with Mr.Athar
Raza Farooquei, Advs. for UOI.

Mr.Naresh Kaushik, Adv for R-3

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The present petition has been filed by the petitioner challenging the medical unfitness certificates dated 26.01.2021 and 16.02.2021. The petitioner further prays for a direction to the respondents to conduct re-medical examination of the petitioner or in the alternative grant appointment to the petitioner to the post of 'Artificer Apprentice Sub-marine Specialization' (hereinafter referred to as the 'AA SSR') in the Indian Navy.

2. It is the case of the petitioner that the petitioner applied for the post of AA SSR in the Indian Navy in December, 2019 pursuant to the advertisement published by the Indian Navy.
3. The petitioner cleared the Phase-I (Written Test) and Phase-II (Physical and Efficiency Test) examinations and was thereafter directed to report to the Recruiting Office, INS Chilika for the conduct of his Primary Medical Examination (in short, 'PME').
4. At the PME stage, the petitioner was declared medically unfit for appointment on the grounds of '*glucosuria*', '*Hypo pigmented Patch (Rt) Upper back*', '*Drooping Shoulder (Rt)*' and '*B/L Impacted Ear Wax*'.
5. The petitioner preferred an appeal again the said findings, however, the Appeal Medical Board (in short, 'AMB') conducted at INHS Kalyani again declared the petitioner medically unfit on account of '*Right Drooping Shoulder/Wining of Scapula Right*' and '*Hyper Hydrosis*'.
6. The petitioner thereafter got himself examined at the V.M.M.C & Safdarjung Hospital, New Delhi, which by reports dated 02.03.2021 and 06.03.2021, opined that the petitioner was not suffering from '*Hyper Hydrosis*' and that there was no evidence of petitioner suffering from '*Drooping Shoulder*'.
7. The petitioner thereafter sent a legal notice dated 10.03.2021 to the respondents, however, the respondents, by their reply dated 29.04.2021 refused to entertain/review the above said medical examination reports. The petitioner thereafter filed the present petition.

8. The learned counsel for the petitioner submits that in view of the certificate issued by the V.M.M.C & Safdarjung Hospital, New Delhi, the petitioner is entitled to seek re-medical examination from an independent board of doctors to rule out any mistake being committed by the medical board of doctors of the respondents.

9. This Court, by its order dated 17.08.2021, had directed the respondents to place on record the impugned medical certificates. The said order has been complied with by the respondents.

10. Today, during the course of hearing, Surg Commander Kaushik Roy was also present to explain the results of the medical examinations.

11. Surg Commander Kaushik Roy has explained that during the AMB, the petitioner was first examined by a Graded Specialist-Orthopaedist for '*Drooping Shoulder*'. He reported that the petitioner appeared to have '*Wining of Right Scapula*' and referred the petitioner for opinion from a Neurologist for verifying the same. The Neurologist, on examination, confirmed that the petitioner was suffering from '*Wining of Right Scapula*' and was therefore unfit for appointment. He submits that the '*Wining of Scapula*' is one of the reasons for the drooping of shoulders.

12. As far as the ailment of '*Hyper Hydrosis*' is concerned, he submits that the petitioner was examined by a specialist-

Dermatologist, who agreed with the opinion of the PME and reported that the petitioner suffered from '*Hyper Hydrosis*'.

13. He submits that both the above ailments are grounds for disqualification of a candidate in terms of '*Part-II Service Personnel NO(Spl) 01/2008 Medical Standards – Officers and Sailors*' (hereinafter referred to as 'the Medical Standards') and especially Clause 4(d) and Clause 10(c) thereof. He submits that both these ailments would cause impairment and hindrance in the discharge of service by the candidate and therefore, the candidate suffering from the same cannot be appointed.

14. We have considered the submissions made by the learned counsel for the petitioner and the learned Surg Commander Kaushik Roy.

15. From the documents, it is apparent that at the AMB stage for the ailment of '*Drooping Shoulder*', the petitioner was examined by a Specialist Orthopedist as also the Neurologist. For '*Hyper Hydrosis*', the petitioner was examined by a Specialist Dermatologist. There is no inconsistency in the finding of the PME Board and the AMB on these two ailments. They are also mentioned as the ground for disqualification in the Medical Standards referred hereinabove.

16. As far as the reliance on the report from the V.M.M.C & Safdarjung Hospital is concerned, this Court in its judgment dated

21.12.2020 in ***Km. Priyanka vs. Union of India & Ors.***, W.P.(C) 10783 of 2020, has held that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for the civilian employment. It was held that it is the doctors of the Forces who are well aware of the demands of duties and the physical standards required to discharge the same. It was further held as under:

“8. We have on several occasions observed that the standard of physical fitness for the Armed Forces and the Police Forces is more stringent than for civilian employment. We have, in *Priti Yadav Vs. Union of India* 2020 SCC OnLine Del 951; *Jonu Tiwari Vs. Union of India* 2020 SCC OnLine Del 855; *Nishant Kumar Vs. Union of India* 2020 SCC OnLine Del 808 and *Sharvan Kumar Rai Vs. Union of India* 2020 SCC OnLine Del 924, held that once no mala fides are attributed and the doctors of the Forces who are well aware of the demands of duties of the Forces in the terrain in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, opinion of private or other government doctors to the contrary cannot be accepted inasmuch as the recruited personnel are required to work for the Forces and not for the private doctors or the government hospitals and which medical professionals are unaware of the demands of the duties in the Forces.”

17. In view of the above, we find no merit in the present petition and the same is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

MANMOHAN, J

FEBRUARY 25, 2022/Sd/AB