



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 1664/2020

Karamveer

----Petitioner

Versus

1. Union Of India, Through Secretary, Ministry Of Defence, (Navy), New Delhi.
2. Principal Director, Directorate Of Manpower Planning And Recruitment, C-Wing, Ihq-Mod (Navy), Sena Bhawan, New Delhi.
3. The Flag Officer Commanding-In-Chief (For Pio), Headquarters, Southern Naval Command, Kochi-682004
4. Recruiting Officer, Indian Naval Ship, Chilka, Po-Chilka, District Khurda (Orissa)

----Respondents

For Petitioner(s) : Mr. Sanjay Mehla
Mr. Nagendra Sharma
For Respondent(s) : Ms. Manjeet Kaur

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

05/07/2023

Reportable

1. The Indian Navy conducted recruitment process for appointment on the post of Sailors. The petitioner participated in the said selection process for getting appointment on the post of Sailor. After qualifying in the examination, the petitioner was preliminary examined and he was found to be fit and finally his medical examination was conducted and he was found to be unfit due to "ECG abnormality" vide medical certificate dated 09.08.2019. Thereafter, a review medical examination of the



petitioner was conducted and again the petitioner was found to be unfit for the same reasons i.e. "ECG LBBB abnormality" vide medical certificate dated 24.08.2019. Learned counsel for the petitioner submits that after review medical examination, the petitioner got examined himself at All India Institution of Medical Science, Delhi (for short, "AIIMS") on 27.09.2019, where no symptoms of "ECG LBBB" were found. Counsel submits that under these circumstances, petitioner cannot be treated as unfit for appointment on the post of Sailor. Counsel submits that a direction be issued to the respondents to conduct his re-medical examination to ascertain about his fitness.

2. Per contra, learned counsel for the respondents opposed the arguments raised by learned counsel for the petitioner and submitted that petitioner has neither been able to point out any irregularity in the medical examination nor any allegation of mala fide or bias have been levelled against the medical experts, who have examined and found him unfit. Counsel submits that the Medical Officer at AIIMS Hospital does not understand or know the requirement of this job and the standard of medical fitness for getting appointment on the post of Sailors. Counsel submits that it cannot be said that the certificate issued by AIIMS would be up to the mark. Counsel submits that Indian Navy is a part of force and forces are required to serve on rough terrain, harsh climate conditions and stressful conditions. The fitness of the candidates for such service is to be considered on the basis of requisite duties and such candidates have to perform keeping in view the climatic conditions. Counsel submits that since the petitioner was twice medically examined by the experts and on both occasions he was



found to be unfit and in absence of any allegations of mala fide/bias against the medical experts, the petitioner is not entitled to get again re-examination of medical for the third time. Hence under these circumstance, interference of this Court is not warranted. In support of her contention, she has placed reliance upon the following judgments:-

(1) Ahil Singh Vs. Union of India and Ors.: WP (C) No. 797/2021 decided by the High Court of Jammu and Kashmir;

(2) Ashish Kumar Pandey Vs. Union of India and Ors. : WP (C) No. 5847/2021 decided by the Delhi High Court.

3. Heard and considered the submissions made at bar and perused the material available on record.

4. Admittedly, the petitioner has undergone the medical examination process as required under Clause 11 of the advertisement issued by the respondents. Sub clause (a) of the Clause 11 of the advertisement clearly indicates that medical examination will be conducted by the various medical doctors as per the medical standard prescribed in current regulations applicable to sailors on entry. Sub clause (c) further indicates that the candidate must be in good physical and mental health, free from any defect likely to interfere with the efficient performance of duties both ashore and afloat under peace as well as war conditions as per Navy order (Special) 01/2008. Sub clause (d) further indicates that preliminary Medical examination for recruitment will be considered only "provisionally fit subject to fitness in the final medical examination".



5. Perusal of the record indicates that petitioner was finally examined by the medical expert of the respondents on 08.08.2019 and "ECG abnormality" was found due to which he was declared as unfit, thereafter at request of the petitioner his review medical was conducted by the medical expert again on 23.08.2019 and again the same unfitness "ECG LBBB" was found and the petitioner was declared unfit for getting appointment on the post of Sailor. The petitioner has neither able to point out any irregularity in the medical examination nor is there any allegation of mala fide or bias made against the medical experts who have examined during the recruitment process and at the time of review medical examination. Thus, in absence of allegation of mala fide or bias, decision of the medical experts who have conducted the medical examination of the petitioner cannot be questioned before this Court. It is worthy to note here that the similar controversy came before the Jammu and Kashmir High Court in the case of **Ahil Singh (Supra)** and the same has been dealt by recording the following reasons:-

"10. The medical standard required to be followed for declaring a candidate fit by an Army Doctor is different than that of a civilian doctor. The forces are required to serve on rough terrain, harsh climate conditions, stressful conditions. The fitness of the candidates for army service is to be considered on the basis of requisite duties that they have to perform keeping in view the climatic conditions, rough terrain, extreme conditions while defending the country. They are required to be physically, mentally and emotionally fit to endure rigors of the service condition, accordingly, very high medical



standards are required to select the right candidate in the forces. The report of the Civil Hospital declaring the petitioner fit cannot be considered over the opinion of the specialist doctors of the Army as it would be interfering in the assessment made by the specialists of the Armed Force. It is well settled that norms of recruitment of a civil post are different than that of an Army and the standard of selection of the two may also vary.

11. The petitioner has been examined by the experts in the field who were of the opinion that the petitioner suffers from TMJ Subluxation. These experts have framed an opinion with regard to the fitness of the petitioner and are best judges regarding the same. There being no allegation of mala fide/bias and no interference in such an opinion is warranted by this Court."

6. Similarly, in the case of **Jonu Tiwari Vs. Union of India & Ors.** WP (C) 4456/2020 decided on 06.08.2020 considering the similar issue, the Delhi High Court has held that:-

16. We have in Priti Yadav supra, in judgment dated 27th July, 2020 in W.P.(C) No.4558/2020 titled Sharvan Kumar Rai Vs. Union of India, in Nishant Kumar supra and in judgment dated 22nd May, 2020 in W.P.(C) No.3237/2020 titled Dhiraj Milind Dhurve Vs. Union Public Service Commission, inter alia held that:-

.....(i) fitness for serving requisite duties in the Air Force is a matter of opinion and if in the opinion of the authorities constituted under the Rules of the Air Force the petitioner is unfit, a report of a medical practitioner of another organization which does not intend to recruit the petitioner and which will not be affected by the medical unfitness of the petitioner, cannot be the basis for interfering



with the assessment by the specialist of the Air Force; (ii) it cannot be lost sight of that just as in justice delivery system, appeal provisions are provided to eliminate the possibility of human error, so has the appeal remedy been made available in the matter of medical examination at the time of recruitment in Air Force and just like the decision making before the Courts cannot be indefinite, so can the decision making with respect to medical fitness in the Air Force, be not indefinite; (iii) there has to be a finality in decision making, as is there in the justice delivery system; (iv) it cannot be lost sight of, that no mala fides are attributed with respect to any of the medical examinations or with respect to the team of medical professionals conducting the medical examination; (v) it is the medical practitioners of the Defence Services who have themselves undergone the rigours of the training and discharge the functions of the organization, who are best suited to form an opinion as to the medical fitness of the candidates to be recruited and once they have so formed their opinion, there can be no interference therewith, at the mere asking of a rejected/disgruntled candidate; and, (vi) candidates found medically unfit cannot seek a change of the terms subject to which they have taken the examination and which terms uniformly apply to all candidates; only a few of all those found medically unfit, who approach the Court, cannot be permitted another round of medical test.”

7. Again in the case of **Ashish Kumar Pandey Vs. Union of India & Ors.**, WP (C) 5847/2021, the Division Bench of the Delhi High Court has held in Para No.17 as under under:-

“17. With respect to the question on merits also, we may refer to the decisions in Priti Yadav Vs. Union of India 2020 SCC OnLine Del 951 (DB), Sharvan Kumar Rai Vs. Union of India 2020 SCC OnLine Del 924 (DB), Jonu Tiwari Vs. Union of India MANU/DE/1524/2020 (DB) [Special Leave Petition (Civil) No. 13492/2020 preferred where against was dismissed on 17th December, 2020], Vani



Viswanathan Vs. Union of India MANU/DE/1678/2020 (DB) [Special Leave Petition (Civil) No. 12682/2020 preferred where against was dismissed on 5th January, 2021], Akash Sharma Vs. Union of India MANU/DE/2069/2020 (DB), Sachin Kumar Yadav supra, Aman Yadav supra and the decision dated 2nd June, 2021 in W.P.(C) 5717/2021 titled Sachin Vs. Union of India & Anr., wherein we have 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. The petitioner has not been able to make out such case of mala fides in the present case. Further it has been held that just like in the judicial process, though providing for appeals, to eliminate human error, there has to be a finality attached to the judicial decision of some Court, so is the position qua medical fitness decision making by the recruiting employer/agency; there can be no indefinite rounds of opinions. Further it has been observed in Nishant Kumar Vs. Union of India MANU/DE/1486/2020 (DB) and Akash Sharma supra that the standard of medical fitness is higher in the recruitment to the Armed Forces and the Court must be wary of interfering with or diluting such stringent standards as that would be at the cost of preparedness of the Armed Forces to meet emergent





security challenges and would ultimately imperil the sovereignty of the country.”

8. It is worthy to note here that Navy Hospitals are well equipped with latest instruments/equipment for testing and the specialists in the field to examine and recommend the candidates and conduct the tests as per the requirement. It is only after expert medical examination the petitioner was found to be unfit twice. The opinion regarding fitness of any candidates by the medical experts is final. And the same cannot be challenged unless and until any irregularity is found or there are any allegation of malice or biasness against the doctors, who have examined the petitioner. Thus, in absence of such allegation, the reports of the medical experts cannot be doubted.

9. Since the petitioner has participated in the selection process knowing full well that he would be subjected to the medical standard as prescribed under Clause 11 of the advertisement and after examination by experts on being unsuccessful he cannot turn around and challenge the standard of examination followed by the experts on the field.

10. In view of the aforesaid discussion, this petition is found to be without any merit and the same is hereby dismissed.

11. Stay application and all pending application(s), if any also stand dismissed.

(ANOOP KUMAR DHAND),J

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