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

Date of Decision: 18.01.2022

+ W.P.(C) 5083/2021 & CM 15575/2021

ABHIGYAN SINGH

..... Petitioner

Through

Mr.Ankur Chhibber, Mr.
Anshuman Mehrotra, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through

Mr.Ravi Prakash, CGSC with
Ms. Shruti Shiv Kumar, Mr.
Varun Agrawal, Mr. Gurtejpal
Singh, Advs. for UOI,
Dr. Jayachandra, Cardiologist

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

1. The present petition has been filed seeking quashing of the order dated 09.03.2021 whereby the petitioner's request for examination by the Review Medical Board (in short, 'RMB') was rejected by the respondents. The petitioner further seeks permission to appear for a fresh medical examination before an independent board of doctors at the R&R Hospital or any other Government Hospital with

relevant cardiovascular specialists, and if found fit, seeks appointment in the Indian Air Force.

2. It is the case of the petitioner that pursuant to an advertisement published by the Union Public Service Commission in January-February 2020, the petitioner had applied seeking appointment in the Armed Forces in the following order of preference:

- a) Indian Air Force
 - i. Flying Branch
 - ii. Ground Duty
- b) Indian Army
- c) Indian Navy
- d) Indian Naval Academy

3. The petitioner, after clearing the written examination, interview and the Computerised Pilot Selection System (in short, 'CPSS'), was required to appear before the Initial Medical Board (in short, 'IMB') for medical examination which was scheduled to be held at the Institute of Aerospace Medicine, Bangalore. Vide report of the IMB dated 17.12.2020, the petitioner was declared medically unfit on the ground of '*scoliosis of lumbar spine*'. During the IMB examination, the petitioner was also informed that his ECG tests showed an abnormality on the ground of '*Right Bundle Branch Block*' (in short, '*RBBB*') and the respondents wanted a second opinion of their specialists to be sure of the anomaly.

4. The petitioner, to seek a second opinion, was referred to the Command Hospital, Bangalore by the respondents for the opinion of the Senior Cardiologist, who performed an Echocardiogram (in short, 'ECO') test on the petitioner on 18.12.2020. According to the report, the petitioner was declared to be *'fit'*.

5. After receipt of the report, the respondents filled out an application form for the petitioner to appear before the Appeal Medical Board (in short, 'AMB') stating that he had been declared temporarily unfit only on account of *'scoliosis of the lumbar spine'*. At the AMB stage, the test conducted by the respondents on 27.01.2021 was only an X-Ray of the petitioner's spine with respect to the scoliosis. However, the petitioner was asked to undergo another ECO test at Base Hospital, New Delhi on 12.02.2021. Vide report dated 15.02.2021, the petitioner was declared medically unfit as his ECG was found to be abnormal.

6. The learned counsel for the petitioner submits that he had been made to believe by the respondents themselves that he was clear of any cardiovascular abnormality, as the respondents at the time of filling out the petitioner's application form for examination by the AMB, did not include *'RBBB'* on his form. The learned counsel for the petitioner further submits that on 08.02.2021, the petitioner on inquiry with the respondents, had been informed verbally that he is medically fit for the post he had applied for and is not suffering from

any kind of medical abnormality for which he has been initially declared medically unfit.

7. This Court, in its order dated 08.12.2021, had directed the learned counsel for the respondents to produce the original medical record of the petitioner. The Court had further directed one of the doctors, who had examined the petitioner at the AMB stage, to appear before this Court by way of an online link.

8. In compliance with the said order, the medical record of the petitioner has been produced before this Court. Dr. Jayachandra, Cardiologist, who examined the petitioner at the AMB, has also appeared through video conference pursuant to our direction.

9. A perusal of the medical records of the petitioner indicates that the IMB conducted at the Institute of Aerospace Medicine, Bangalore had declared the petitioner to be medically unfit on the grounds of '*scoliosis of lumbar spine Cobb's Angle > 15 degree*' as well as '*RBBB in ECG*'. The record also contains an ECG which records the finding of the petitioner suffering from RBBB. The same is signed by Dr. VR Mujeeb, Group Captain, Sr. Med & Gastroenterology, CHAF Bangalore.

10. Another ECG of the petitioner was conducted 12.02.2021 at the stage of the AMB. Dr. Jayachandra has explained that both the ECG show that the petitioner is suffering from RBBB.

11. The medical record however, also contains a report dated 18.12.2020 of “2D Echo” with the remark “Normal Study” opined by Dr. AJ Swamy, Air Cmde, Consultant (Med & Cardiology), CHAF Bangalore. Relying thereon, the learned counsel for the petitioner contends that the same must be given primacy and in any case, there being a contrary opinion on record, the petitioner should be allowed to be examined by an independent Board of doctors. In this regard, he has placed reliance on Clause 13(d) of Annexure C to the Advertisement issued by the UPSC for the National Defence Academy & Naval Academy Examination (I), 2020, which is reproduced hereinbelow:-

“13. Cardiovascular System

(d) Evidence of organic cardiovascular disease will be cause for rejection. Diastolic murmurs are invariably organic. Short systolic murmurs of ejection systolic nature and not associated with thrill and which diminish on standing, especially if associated with a normal ECG and Chest radiograph, are most often functional. However an echocardiogram should always be done to exclude organic heart disease. In case of any doubt the case should be referred to cardiologist for opinion.”

12. However, Dr. Jayachandra has explained that echocardiogram would only show an organic heart disease. However, where the ECG itself is showing the candidate to be suffering from RBBB, mere normal report of echocardiogram is not sufficient to declare the

candidate medically fit. He has also placed reliance on Clause 13(e) of the Advertisement, which is reproduced herein below:

“13(e) Electro Cardiograms. Assessment of a properly recorded ECG (resting - 14 lead) should be carried out by a medical specialist. Note will be taken of wave patterns, the amplitude, duration and time relationship. At initial entry no abnormalities are acceptable except incomplete RBBB in the absence of structural heart disease, which must be excluded. In such cases, opinion of Senior Adviser or Cardiologist will be obtained.”

13. Dr. Jayachandra explains that the petitioner’s case was not that of “incomplete RBBB” but of complete RBBB and there being no doubt, report of echocardiogram is not relevant.

14. In view of the above explanation, though the echocardiogram report of the petitioner states “Normal Study”, the same does not support the case of the petitioner any further. It must be remembered that in selection to armed forces, the candidate must be fully fit and no benefit of doubt in this regard can be given to the candidate. This Court is of the opinion that the doctors of the Forces are the best judge in ascertaining whether a candidate ought to be enrolled in the services or not, owing to the strenuous and hostile terrain and environment where personnel would have to serve. Any error in judgment, particularly with respect to medical ailments as serious as the one in the present case, would not only endanger the life of the petitioner but also those of other officers involved in possible operations.

15. This Court in its judgment dated 21.12.2020 in *K.M. Priyanka vs. Union of India & Ors*, W.P.(C) 10783/2020, has held that once no *mala fide* is attributed and the doctors of the Forces, who are well aware of the demands of duties of the Forces in the terrains in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, such opinion must prevail.

16. The submission of learned counsel for the petitioner that the petitioner was declared medically unfit at the stage of IMB only on ground of Scoliosis cannot also be accepted. The report clearly states that he has been found Unfit also on the ground of RBBB in ECG. In any case, petitioner's ECG was also taken at the AMB stage and as per Dr. Jayachandra, the report was again showing the RBBB in the petitioner. Therefore, no prejudice was caused to the petitioner as he was re-examined for RBBB even at the AMB stage, even though his appeal may have been only against the finding of Scoliosis.

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

NAVIN CHAWLA, J

MANMOHAN, J

JANUARY 18, 2022/AB