

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

Reserved on: 24.12.2021
Date of Decision: 04.01.2022

+ **W.P.(C) 13904/2021 & CM Nos.43884-85/2021**

MILASH ARROL NORONHA Petitioner
Through Mr.Ray Vikram Nath, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through Mr.Ajay Dignpaul CGSC,
Mr.Kamal R Dignpaul, Adv. for
UOI alongwith Major Partho,
Lt. Col. Dr. Uday in person.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. This petition has been filed by the petitioner praying for a direction to the respondents to re-conduct the petitioner's medical examination and to issue a joining letter to the petitioner enabling him to report to the Officer Training Academy, Chennai for Short Service Commission (JAG) (MEN) 27th Course.

2. It is the case of the petitioner that having graduated in LL.B, the petitioner applied, pursuant to the 'JAG ENTRY SCHEME 27TH COURSE (OCT 2021): SHORT SERVICE COMMISSION (NT) COURSE FOR LAW GRADUATE (MEN AND WOMEN)', for the post of 'Judge and Advocate General' (hereinafter referred as 'JAG'). After completing two stages of the selection process, the petitioner

was recommended as the top candidate in his batch, for a medical examination. The Special Medical Board (in short, 'SMB') held at the Military Hospital, Allahabad, however, verbally communicated to the petitioner that he is medically unfit on the ground of '*Polycythaemia*' and his haemoglobin levels are 17.1 g/dl, which is high.

3. The petitioner preferred an application seeking an Appeal Medical Board (in short, 'AMB'), which was thereafter held at the Command Hospital Air Force (CHAF), Bengaluru. At the AMB stage, two tests, that is, Complete Blood Count (in short, 'CBC') and Peripheral Blood Smear (in short, 'PBS') tests were conducted on the petitioner. The petitioner was informed that his haemoglobin levels were 17.1 g/dl and his PBS test reports are normal, however, was again declared medically unfit for '*Polycythaemia*' as his haemoglobin levels were still high.

4. The petitioner then applied for a Review Medical Board (in short, 'RMB'). The same was conducted at Armed Forces Medical College (AFMC), Pune where three tests were conducted, that is, CBC, PBS and a Uric Acid Level test. His Haemoglobin again was at the level of 17.6 g/dl while his PBS and Uric Acid Level test reports were normal. The petitioner was verbally informed, once again, that he is medically declared unfit on the ground of '*Polycythaemia*'.

5. The petitioner thereafter got himself tested at a private laboratory wherein his CBC report was normal with haemoglobin levels at 16.1 g/dl, which are well within the biological level for a healthy adult male as per international medical standards.

6. The petitioner thereafter has got himself tested repeatedly and all such reports have ruled out the possibility of the petitioner suffering from ‘*Polycythaemia*’. The details of such reports have been given by the petitioner as under:

<i>Sl. No.</i>	<i>TEST</i>	<i>REPORT</i>
1.	<i>Renal Doppler Ultrasound Test conducted on 27-11-2021.</i>	<i>Normal Renal Doppler Study</i>
2.	<i>JAK2 Exon 12 Mutation conducted on 25-11-2021</i>	<i>Not Detected</i>
3.	<i>JAK2 V617F Mutation conducted on 25-11-2021</i>	<i>Not Detected</i>
4.	<i>Erythropoietin (EPO) Serum (CLIA) conducted on 25-11-2021</i>	<i>7.60 Miu/mL</i>

7. The learned counsel for the petitioner submits that the ‘*Manual of Medical Examination and Medical Standard for Various Entries into Army, TRG Academies and Military School*’ (hereinafter referred to as the ‘*Medical Manual*’) prescribes only the lower limit and not the upper limit/ceiling for haemoglobin levels. He submits that therefore, the rejection of the petitioner’s candidature is without any basis and is manifestly arbitrary and unreasonable. He further submits that even otherwise, the respondents have found haemoglobin level of the petitioner to be 17.1 g/dl at the AMB stage. The biological

permissible limit of haemoglobin in a healthy adult male is 16.5 g/dl. He submits that therefore, the difference in the haemoglobin level is very minor. He further submits that the other tests which the petitioner got conducted on his own accord clearly show that the petitioner is not suffering from '*Polycythaemia*'.

8. This Court vide its order dated 07.12.2021, had directed that one of the doctors who had examined the petitioner at the RMB stage, to appear before this Court with the medical documents of the petitioner. Pursuant thereto, Dr. Lt. Y. Udai had appeared before us on 13.12.2021 and explained the dangers of having high haemoglobin levels. He was directed to file a short note alongwith the blood test results of the tests conducted on the petitioner at Allahabad, Bangalore and Pune.

9. In compliance with the above order, Dr. Lt. Y. Udai has filed an expert opinion alongwith copies of various articles explaining the standard haemoglobin level and the dangers of a patient suffering from '*Polycythaemia*'. He has explained that Polycythaemia (erthrocytosis) is an abnormal elevation of haemoglobin and/or haematocrit (Hct) also known as Packed Cell Volume (PCV) in peripheral blood. He states that WHO considers the following values to constitute Polycythaemia:

- Increased haemoglobin: > 16.5 g/dL in men or > 16_0 g/dL in women
- Increased haematocrit: >49% in men or >48 % in women

10. He further states that the haemoglobin level of the petitioner was found as under:

<i>S No</i>	<i>Hospital</i>	<i>Date</i>	<i>Hb</i>	<i>Hct</i>
1	<i>MH Allahabad (Prayagraj)</i>	<i>06 Aug 2021</i>	<i>20.9g/dL</i>	<i>57.7%</i>
2	<i>Command Hospital (Bengaluru)</i>	<i>08 Sep 2021</i>	<i>17.1g/dL</i>	<i>49%</i>
3	<i>Armed Forces Medical College, Pune</i>	<i>02 Nov 2021</i>	<i>17.6g/dL</i>	<i>52%</i>

11. The doctor has further explained that the diagnosis of 'Polycythaemia' is purely based on Hb and Hct only. The other investigations are meant only for aetiology of the same (E.g. JAK2V617F, Erythropoietin levels, CALR Mutation, Exon 12 mutation, EPOR mutation). They are not meant for diagnosing 'Polycythaemia' but for finding the cause of 'Polycythaemia'.

12. He submits that Polycythaemia in the Armed Forces can lead to problems both at high altitudes and in deserts. In high altitude, due to hypoxia at altitudes above 8000-9000ft, the body compensates by further increase in Hb from base line by 3-4g/dL. Polycythaemia at high altitude can lead to thrombosis of both arteries (leading to heart attacks/ MI, paralytic attacks/ ischemic stroke) and venous thrombosis (deep vein thrombosis and pulmonary thromboembolism). All these thrombotic disorders are associated with high morbidity and mortality. He states that currently, thrombotic disorders are the primary cause of non-enemy related morbidity and mortality at these altitudes faced by

armed forces personnel who are otherwise healthy and not suffering from any pre-existing known thrombotic conditions. Similarly, in desert conditions, due to dehydration there will be a relative raise in Hb from baseline. This will exacerbate the baseline ‘*polycythaemia*’ and make a person prone to heat strokes and sudden cardiac deaths.

13. We have considered the submissions made before us.

14. As far as the submission of the petitioner that only the lower limit of Haemoglobin was prescribed in the Medical Manual and not the higher ceiling limit, we are of the opinion that the Medical Manual cannot be stated to be the sole repository of all ailments that may make a person medically unfit for appointment in the Armed Forces. The doctors conducting the medical examination are the best judge to understand the complexity of the human body and the myriad of ailments that it may suffer from and the repercussions thereof. Medical Manual cannot lay down all the complex ailments/grounds that would make a candidate unfit for appointment to Armed Forces, whose demands are most extracting with the personnel being posted to extreme weather conditions.

15. In *Km. Priyanka v. Union of India & Ors.*, (judgment dated 21.12.2020 passed in W.P.(C) 10783/2020), this Court 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 further 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 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.”*

16. In the present case, the respondents through the reports of Dr. Lt. Y. Udai have been able to show the dangers associated with ‘*Polycythaemia*’. The learned counsel for the petitioner could not produce any material to cast a doubt on the said report.

17. As far as the submission of the learned counsel for the petitioner that the variance in Haemoglobin readings of the petitioner is very miniscule to the standard prescribed, we again do not agree as it is not for this Court to determine the degree of variance that can be permitted from the normal medical standards for enrolment in the Armed Forces. In our opinion, in the Armed Forces, the medical standard should be even more strictly adhered to only for the reason that the armed personnel have to perform their duties in the most strenuous and hostile atmosphere and terrains. This Court in **Km. Priyanka** (supra) has emphasised this as under:

“9. What may seem as a minor difference in the assessment of the Civil doctors in comparison to the assessment of the Medical Boards, may blow up into a serious health condition during the course of service with the CAPFs. It is not in the interest of either the Police Forces or candidates that their medical problems are brushed aside only on the plea that it was a question of employment. The general health of candidates would be permanently impacted due to the stress, both physical and mental, on account of these medical shortcomings. On the other hand, the government would be saddled with a Police Force where such personnel would seek soft postings because of their health conditions and low medical category. This would lead to dissatisfaction amongst the personnel in the Forces as some people, who ought not to have been taken into the Forces, would always benefit, whereas the others would be mostly faced with hard postings and duties.”

18. Similarly, the various test reports relied upon by the petitioner also cannot justify any interference with the medical opinion of the respondents, especially since the petitioner does not today deny the result of the three tests reports that were conducted at Allahabad, Bengaluru and Pune.

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

NAVIN CHAWLA, J

MANMOHAN, J

JANUARY 04, 2022/Arya/AB