

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

**SUBJECT:SERVICE MATTER**

**WP(C) No.9080/2011**

**Date of Decision: 07.02.2012**

Inder Setia  
Through Mr.Manish Gandhi, Advocate

Petitioner

Versus

Union of India & Ors.  
Through Ms.Shilpa Singh, Advocate.

Respondents

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA**

**ANIL KUMAR, J.**

1. The petitioner has sought the quashing of the order declaring the petitioner unfit for recruitment/selection to the "Flying Branch" of the Indian Air Force and a direction to the respondents to select the petitioner in the "Flying Branch".

2. Brief facts to comprehend the disputes are that the petitioner had applied for selection in the "Flying Branch" of the Indian Air Force, pursuant to a publication dated 10th September, 2011, through a Fast Track Selection at the Guru Nanak Dev University, Amritsar.

3. The petitioner has the qualification of B.Tech and he thus had fulfilled the eligibility educational qualification for selection into the "Flying Branch" of the Indian Air Force. The eligibility educational qualification for selection as prescribed in the said advertisement dated 10th September, 2011 is "Graduate (three years degree course) in any discipline from a recognized University who have attained a minimum 60% in aggregate in all the papers

put together and have passed Maths & Physics at 10+2 level or BE/B.Tech (four years course) from a recognized University with minimum 60% marks in aggregate in all papers put together”. The physical standards provided for vision were (a) Minimum Visual Acuity 6/6 in one eye and 6/9 in other, correctable to 6/6 only for hypermetropia (b) Manifest Myopia-nil. The physical standards further stipulated that candidates who have undergone Lasik surgery for correction of vision are admissible in the Transport and Helicopter streams of the Short Service Commission in the “Flying Branch”.

4. The petitioner disclosed that he was enrolled for selection vide Batch No.V-AFCAT/SEC/20. The petitioner had qualified for the written examination and for the further selection he was directed to report on 2nd October, 2011 at the 4th Air Force Selection Board, Varanasi. The Selection Board at Varanasi by letter dated 6th October, 2011 recommended the name of the petitioner for medical examination. The petitioner appeared before the Air Force Central Medical Examination (AFCME) on 17th October, 2011. The petitioner had also applied for selection to the post of Assistant Commandant in the Indian Coast Guard and since the dates of examination for the said post were clashing with the date of medical examination of the petitioner, he sought for a change of the date of his medical examination. The date of medical examination of the petitioner was, therefore, changed to 24th October, 2011 in place of 17th October, 2011. Pursuant to the medical examination by the AFCME, Subroto Park, New Delhi, he was declared medically unfit on account of firstly having Sub Standard Vision and Myopia beyond permissible limits and secondly due to VPCS.

5. The petitioner, therefore, preferred an appeal before the Appellate Medical Board. For the medical examination by the Appellate Medical Board, the petitioner was directed to appear on 18th November, 2011 at R.K.Puram, Air Force Head Quarters, Delhi. The Appellate Medical Board conducted the medical examination of the petitioner at the Base Hospital, Delhi Cantt. The result of the Appellate Medical Board was communicated to the petitioner by letter dated 25th November, 2011, whereby the petitioner was declared unfit for 09 SSC (M) F(P) “Flying Branch”, however, the petitioner was declared fit for 80 AEC/131 GDOC “Technical Branch”. Ultimately, the petitioner was declared unfit for the “Flying Branch” on account of having Myopia beyond permissible limits. While communicating the result of the Appellate Medical Board, the petitioner was also given the option to have a Review Medical Board. It was, however, clarified that the grant of the Review Medical Board is at the discretion of the Director

General, Armed Force Medical Services after considering the merit of the case. The petitioner, therefore, applied for the Review Medical Board which was allowed and he was re-examined on 12th December, 2011. While requesting for a Review Medical Board, the petitioner had also furnished an OPD Card of the All India Institute of Medical Science in support of his claim that he does not have manifest Myopia. The Review Medical Board was permitted since there was a variance between the findings of the Appellate Medical Board's Eye Specialist and the Civilian Eye Specialist.

6. The Review Medical Board was conducted by a Senior Eye Specialist Consultant (Ophth) on 14th December, 2011, however, the Review Medical Board too declared the petitioner unfit for 09 SSC (M) F(P) on account of manifest Myopia but held the petitioner to be fit for 80 AEC/131 GDOC.

7. The petitioner had also got himself medically examined for his eye sight from the B.K.General Hospital at Faridabad. According to the petitioner, the Govt. Hospital declared the frequency measurement of the eye sight of the petitioner in consonance with the criteria mentioned under the advertisement for the "Flying Branch".

8. The petitioner was also medically examined for the Selection Board of the Coast Guard on 16th November, 2011. The medical examination was conducted at the Base Hospital, Delhi Cantt. The Medical Board of the Coast Guard, however, did not find any disability in the eye sight of the petitioner and they found the vision of the petitioner to be 6/6 in the right eye and 6/6 in the left eye.

9. As the petitioner had been declared medically unfit by the Medical Board, the Appellate Medical Board and the Review Medical Board for "Flying Branch", the petitioner has preferred the present writ petition, inter-alia, on the grounds that the respondents have conducted the medical examination of the petitioner in the "Flying Branch" in an arbitrary manner. According to the petitioner, the result of the Air Force Central Medical Establishment, Appellate Medical Board and Review Medical Board are contrary to the reports of the Medical Board of the Coast Guard Selection Board, though the medical examination was conducted in the same Hospital. Relying on the certificate dated 28th November, 2011 issued by the Govt. Hospital, B.K. General Hospital, Faridabad and the certificate dated 28th December, 2011 issued by the AIIMS Hospital, the petitioner has contended that he does not have Myopia. In the circumstances, it is contended that the

medical examination by respondent Nos.1 to 6 are not reliable and thus, the petitioner is entitled to be declared as medically fit for joining the “Flying Branch”.

10. The petitioner after filing the writ petition, filed an additional affidavit dated 3rd January, 2012 deposing that Myopia is a disorder of the eye which cannot be cured by way of any course of medicines. According to the petitioner, Myopia can be corrected only by wearing eye glasses, or by wearing contact lenses or pursuant to Lasik surgery. The petitioner states that he has never worn/used any eye glasses, or contact lenses and had never been operated with Lasik surgery.

11. The petitioner categorically asserted in his additional affidavit that on 13th December, 2011 he was examined at the Army Hospital, R&R by Brigadier Parihar and on 14th December, 2011 he was declared unfit for Flying as well as “ATC/FC” and he was informed about the finding by Major General, Ved Chaturvedi that his vision is 6/9 in both the eyes, however, the said finding has not been provided to the petitioner. Relying on the medical examination carried out at AIIMS, the petitioner asserted that there is no reflective error/disorder of Myopia in his eyes. The petitioner further asserted that he even approached a well reputed and recognized Eye Institute, namely, “Shroff Eye Centre” for their expert opinion. The said Shroff Eye Centre also declared that the petitioner does not have any reflective error/disorder of Myopia rather his vision was measured as 6/4 in both the eyes, which is better than the parameter required by respondent Nos.1 to 6 as per their advertisement. On 28th December, 2011, the petitioner had again approached the AIIMS Hospital where he was examined and it was held that the petitioner does not have any reflective error/disorder of Myopia and that his vision in both the eyes is 6/6.

12. According to the petitioner, the examination of respondent No.3/AFCME, respondent No.4/AMB & respondent No.5/RMB on 28th October, 2011, 24th November, 2011 and 13th December, 2011 are contradictory and in variance to the results of examinations carried out at B.K.Hospital (Govt. Hospital), Base Hospital (Delhi Cantt.)/Indian Coast Guard, AIIMS, Venu Research Institution and Shroff Eye Institute which had declared that the vision of the petitioner is 6/6 in both the eyes and that no reflective error was found in his eyes.

13. The petitioner also disclosed that he has been issued a joining letter with the Technical Wing of the Air Force and that he has to report on 6th January, 2012 in Hyderabad. The petitioner asserted that his sole aim in life is to become a fighter pilot and in the circumstances, the result of the Medical Board of respondent Nos.1 to 6 should be quashed and the directions ought to be issued to respondent Nos.1 to 6 to include the petitioner in the list of "Flying Branch".

14. Learned counsel for the petitioner also relied on a decision of the Patna High Court in CWJC No.4990/2009, titled as "Gautam Kumar v. The Union of India & Ors.", which writ petition was disposed of with the consent of the parties at the stage of admission itself. In that case, the candidate Gautam Kumar was identified by the doctors of Air Force as having systolic murmur, however, All India Institute of Medical Science had certified that the petitioner does not have systolic murmur. In these circumstances, it was held that the finding of the Appeal Medical Board of the Air Force could not be sustained and consequently the said candidate was declared as fit for appointment in the Indian Air Force for the post he had applied for, by decision dated 12th August, 2009. A Letters Patent Appeal being LPA No.1371/2009 against the order was dismissed by order dated 18th December, 2009. A Special Leave Petition being SLP No.15947/2010 was also filed, titled as 'Union of India & Ors. v. Gautam Kumar' was also dismissed by the Supreme Court by order dated 27th September, 2010.

15. The writ petition is contested by the respondents by contending that the petitioner was found to have manifest Myopia by the Medical Board on 28th October, 2011, the Appellate Medical Board on 21st November, 2011 and by the Review Medical Board on 28th November, 2011.

16. The respondent Nos.1 to 6 contended that since there was a variance in the opinions of the Medical Board & the Appellate Medical Board and the opinion given by the AIIMS and the other private Hospital, a Review Medical Board was duly constituted by the Director General, Armed Force Military Service. The petitioner was re-examined at the Army Hospital (R&R), Delhi Cantt on 14th November, 2011 by the Senior-most Eye Specialist (Ophth) and he had been declared unfit for 09 SSC (M) F(P) on account Myopia but fit for 80 AEC/131 GDOC.

17. Regarding the allegation that the reports by the three Medical Boards, Initial Medical Board, Appellate Medical Board and Review Medical Board

are different, it was asserted by the learned counsel on behalf of respondent Nos.1 to 6 that the petitioner was found to have Myopia by all the three doctors of the respondents who has examined him. The amount of the myopia as detected by respondent Nos.1 to 6 is as under:-

“(a) Initial Medical Board \_\_ RE-6/18  
LE-6/12

(b) Appeal Medical Board \_\_ RE-6/9  
LE-6/9

(c) Review Medical Board \_\_ RE-6/9  
LE-6/9”

18. Reliance was placed on IAP 4303 (4th Edition) Para 3.12.3 laying down that no amount of myopia is acceptable for the “Flying Branch”. Regarding the examination at AIIMS Hospital, it was stated that the petitioner was examined at AIIMS by a resident of the Hospital and not by a Faculty Member. It was also stated that the medical standard of Armed Forces for fitness is at variance with the civilian medical standards. Reliance was also placed by the respondents on a decision of High Court of Kolkata in the case of Anupam Ghosh v. Union of India (FMA No.5749) where the Court held that the norms for the civilian posts are quite different to what is required in the defense posts. Reliance was also placed on a decision of this Court in the case of Prashant Grewal v. Union of India , W.P.(C) No.1962/2010 holding that the doctors who conducted the medical examination in the civilian Hospital by virtue of the nature of their duties would not have the requisite experience for making assessment of fitness for defence forces and para military forces. Respondent Nos.1 to 6 also contended that a person would ordinarily be eligible for appointment in the civil post, but he may not be eligible according to the rigorous medical standards which are required to be met so far as the defense forces are concerned. Respondent Nos.1 to 6 further contended that after taking into consideration the variance in the opinions of the Medical Board and the Appellate Medical Board and the opinion of the AIIMS Hospital and other doctors, the Review Medical Board was constituted in order to have the discrepancy cleared at the highest level. The petitioner was duly evaluated by a consultant who is one of the Senior Most Eye Specialist in the Armed Force Medical Services of the Rank of Brigadier who has confirmed that the

petitioner has Myopia. The respondents also contended that the medical examination report of the Review Medical Board would be produced before the Court at the time of hearing, which was duly submitted for this Court's perusal on 7th February, 2012.

19. This Court has heard the learned counsel for the parties and has also heard Col.S. Mathur (AMC) and Wing Commander, R. Mohanty, Joint Director, Medical Services of the Air Headquarter and has seen the documents produced by them pertaining to the review medical board of the petitioner. The petitioner has sought the quashing of the orders declaring the petitioner unfit for selection for the "Flying Branch" of the Indian Air Force on the basis of the certificates issued by civilian medical practitioner declaring him fit and holding that he is not myopic, whereas, the initial medical board and the appellate medical board had found the petitioner to be myopic. Since the degree of myopia was found to be different, therefore, the review medical board was constituted.

20. Col. S. Mathur (AMC) and Wing Commander, R. Mohanty, Joint Director, Medical Services of the Air Headquarter have explained in detail about myopia. It is contended that normally vision of a candidate is tested and if the vision is found to be slightly abnormal then retinoscopy is also done. According to them, all reflectors have two component, manifest component and latent component. Manifest myopia is ascertained by means of a straightforward eye test and if the candidate is found to have manifest myopia then in some cases retinoscopy is also done, but if there is manifest myopia, then retinoscopy is not done.

21. From the Review Medical Board report of the petitioner, it is apparent that his vision was found to be less than 6/6 and that he had manifest myopia of -0.5 at 150 Degree. Apparently, the petitioner also has astigmatism with the reading of -0.5D Cyl. The report produced by the respondents clearly disclose that the petitioner has manifest myopia. Col. A.S.Mathur and Wing Commander R. Mohanty further disclosed that since there was manifest myopia in the case of the petitioner, though there was no necessity to carry out a retinoscopy, however, retinoscopy was also done in his case and it was also indicated on his report as well.

22. Perusal of the review medical board papers also reveals that this was done by three persons of fairly high ranking and even the petitioner has not imputed any malafides or bias of any type against them.

23. In the facts and circumstances of the case, on the basis of the reports obtained by the petitioner from the civilian doctors, it cannot be held that the petitioner is not myopic. On account of the conflicting report between the civilian doctors and specialists of the respondents, a Review Medical Board was duly constituted, which was headed by some fairly senior ranking officials and in the circumstances, this Court does not have to sit in appeal over the findings of the review medical board, nor does it have to overrule the findings of the review medical board on the basis of the certificates obtained by the petitioner from the civilian eye specialists. The respondents have also averred in the reply to the show cause notice that the report obtained by the petitioner from the All Indian Institute of Medical Sciences reveals that he was examined by a senior resident of the Hospital and not by a faculty member. In Prashant Grewal (supra), relied on by the respondents, a Division Bench of this Court had held that the doctors who conducted the medical examination in the civilian hospitals, by virtue of the nature of their duties, would not have the requisite experience for making the assessment regarding fitness for the defense forces and the para-military forces. It was further held that the norms for fitness for the civil post and for the posts in the defense services are quite different, leading to a candidate ordinarily being eligible for appointment to the civil post, but inspite of this he may not be eligible according to the rigorous medical standards of the forces. In the case relied on by the respondents, the candidate was found to have Esophoria breaking into Esotropia. The candidate in the said case had also challenged the outcome of the review medical board conducted by the respondents which found him unfit for all three services on account of having Esophoria breaking into Esotropia. He too had relied on a certificate issued by a senior resident of the All India Institute of Medical Sciences. The Division Bench had, in the facts and circumstances, placed reliance on the explanation given by the Wing Commander, R.Mohanty, Joint Director, Medical Services who had contended that the condition with which the said candidate was suffering would have seriously impacted his ability to perceive fast moving objects and thus, the plea of the candidate that he is fit on the basis of the certificate of the civilian doctors was declined. In para 8 of the said judgment, the court had held as under:-

“8. Wing Commander R.Mohanti, Joint Director Medical Services of the Air Headquarter is present in the Court. He has explained that the condition which the petitioner has been found would seriously impact the candidate's vision and he would be unable to perceive false moving objects. This is certainly a material consideration so far as the fitness for all the three forces,



i.e. the army, navy and air force, is concerned. In view of the opinion of the experts in the specialty concerned.”

24. In exercise of its power of judicial review, this Court will not sit in appeal over the reports given by the civilian doctors and the reports of the initial medical board of the respondents and the appellate medical board. On account of the variance in the findings of the various doctors, a review medical board was constituted by the respondents, which has also opined that the petitioner has myopia. In the absence of any procedural irregularity in conducting the review medical board and the procedure explained by the experts who are present in the Court, this Court finds no reason to interfere with the findings of the review medical board on any of the grounds raised by the petitioner. This has also been explained that the extent of myopia found may vary from one test to another in a person on account of the various external and internal factors, though the variance may not be to such an extent as had been observed by the initial medical board and the appellate medical board. Despite the variance in the extent of myopia found in the petitioner, it cannot however, be over looked as the initial medical board, the appellate medical board and the review medical board have all found the petitioner to be myopic. It is on account of the extent of myopia being different, the petitioner was first held to be unfit for the “Flying Branch” and for enlistment in other branches of the Air Force. However, pursuant to the findings of the review medical board, the petitioner was issued the appointment letter for the 80 AEC/131 GDOC i.e. the “Technical Course” and the petitioner has also joined the same subsequently. Since the maximum limit of refractive error is different for enlistment in the different branches of the Air Force, the petitioner’s contention that since he is fit for 80 AEC/131 GDOC, he is also fit for F(P) including WSOs and has a medical category A1G1 cannot be accepted, nor can this Court give such declaration as has been sought by the petitioner seeking judicial review of his medical examination.

25. The learned counsel for the petitioner, on the other hand, had relied on Gautam Kumar (supra), a judgment of the Single Judge of Patna High Court regarding a candidate who was declared unfit for recruitment in group X, Technical Trade in the Indian Air Force on account of having systolic murmur in the heart. The said candidate was, however, declared not having systolic murmur after examination by the Cardio Thoracic and Neuro Sciences Centre OPD of the All India Institute of Medical Sciences. The plea that the conditions of disease for civilian recruitment and that for

recruitment in the force would be different was repelled on the ground that the disease is the same and it makes no distinction for employment in the forces or with the civilian authorities. The decision of the Single Judge was upheld by a Division Bench of the Patna High Court in Letters Patent Appeal filed by the respondents and thereafter the special leave petition filed by the respondents was also dismissed. Apparently, the case relied on by the petitioner is distinguishable as the petitioner is not suffering from any disease as was alleged in the case of the candidate Gautam Kumar. In contradistinction, the case of the petitioner is that of deficiency in his vision. The civilian doctors have given the certificate that the petitioner does not have deficiency in vision that is he is not myopic, whereas, the respondents' initial medical board and appellate medical board had held that he is myopic. On account of the variance of the opinions, a review medical board was duly constituted which too has opined after considering the opinions of the civilian eye specialist and the report of the initial medical board and the appeal medical board, that the petitioner in fact is myopic. However, it found him to be myopic with a different degree and reading so as to be fit for 80 AEC/131 GDOC i.e. the "Technical Course" in the Air Force which the petitioner has joined.

26. The judgment relied by the petitioner is apparently distinguishable. It must be remembered that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances in two cases. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.* (AIR 2004 SC 778) had held that a decision cannot be relied on without considering the factual situation. In the judgment the Supreme Court had observed:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become

necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

27. In the totality of the facts and circumstances, and for the foregoing reasons, this Court finds no grounds to interfere with the decision of the respondents declaring the petitioner to be fit for 80 AEC/131 GDOC, however, declaring him unfit for the “Flying Branch” F(P) including WSOs. The writ petition in the facts and circumstances is without any merit, and it is, therefore, dismissed.

Sd./-  
ANIL KUMAR, J.

Sd./-  
SUDERSHAN KUMAR MISRA, J.

February 07, 2012