

Before Rajiv Narain Raina, J.

VIKRANT—Petitioner

versus

UNION OF INDIA AND OTHERS—Respondents

CWP No.23008 of 2015

July 12, 2017

Constitution of India, 1950—Art.226—Guide to Medical Officers 2008—Chapter 2, Para 4.3.6—Selection process seeking employment as Airman in Indian Air Force—Discovery of External Haemorrhoids candidature rejected on medical ground—Held, petitioner examined by a team of Medical doctors of PGIMS Rohtak and also by team of doctors of PGI Chandigarh and found fit and free from haemorrhoids—No distinction between opinions of experts in defence hospitals and experts in PGI Chandigarh in case of external haemorrhoids once it is certified to be not present or has been permanently cured—No reason why a direction should not be issued to respondents to consider report of PGI Chandigarh as per amendments of Para 4.1.3 of Guide—Direction issued to respondents to re-consider matter in light of opinion expressed by PGI Chandigarh and to consider desirability of offering appointment to petitioner—Petition allowed.

Held that, on a consideration of the matter I am unable to draw in the case of external haemorrhoids a disabling distinction between civil post and the post of Airman in the Indian Air Force once it is certified to be not present or has been permanently cured. Then I see no reason why a direction should not be issued to the respondents to consider the report of the PGI Chandigarh as per the amendment to Para.4.1.3. The petitioner does not appear to suffer from any active or latent acute or chronic medical or surgical disability or infection as to make him permanently unfit physically and mentally for duty in all climates anywhere in the world during peace or war. A difficult question to answer is where to draw the line with the pen of Para.4.2.1 that if something goes wrong in case of appointment due to preexisting defects/disease is viewed as a serious lapse on the part of the Medical Examiner as well as wasteful expenditure to the State. The command in Para.4.2.1 may frighten any Medical Examiner in defence service hospitals to take a rational decision. No one might take the risk of approval even if the defect is present but curable within days. Frankly,

if I were the Medical Examiner in an initial medical examination or Appeal Medical Board I might also be scared of passing the petitioner in the medical test to invite for myself disciplinary action. It may appear best to rest the matter with the medical opinion of the PGIMER, Chandigarh. The seriousness of the issue can be gauged alone by the fact that the interlocutory order dated March 08, 2017 was appealed against by the Air Force with the seriousness that I respect. Therefore, I have proceeded to hear great many arguments on both sides for sufficiently long time to hear the contentions and objections of Mr. Puneet Gupta, Senior Panel Counsel, articulately put forth for the dismissal of the writ petition. However, my conscience and judicial reflex does not permit me to dismiss the case. A case of haemorrhoids falls under Temporary Unfitness.

(Para 17)

Further held that, in view of the submissions made by the petitioner and the resistance in paragraphs of the affidavit reproduced above, I asked Mr. Gupta if I should make an order for re-consideration of joint medical examination of the candidate in the presence of doctors from the Air Force deputed to be associated with the medical examination at PGI, to which the answer was in the negative and statement made that the case should be considered on merits with the available material on record. That is how I proceeded to hear arguments for final disposal of the matter. Having weighed the submissions of the learned counsel and given my thoughtful consideration of the totality of the facts and circumstances of the case, I would accept the arguments of the petitioner and reject those of the respondents.

(Para 24)

Sanchit Punia, Advocate,
for the petitioner.

Puneet Gupta, Senior Panel Counsel,
for the respondents.

RAJIV NARAIN RAINA, J.

(1) Having successfully steered through the selection process seeking employment as an Airman in the Indian Air Force the petitioner's candidature was rejected on discovery of a medical condition in the presence of External Haemorrhoids found by the attending doctors in the Medical Board. The petitioner's aspirations and effort made for joining the prestigious Air Force came to zilch when the Appeal Medical Board declared him medically unfit for the post. It is

argued that the norms for fitness for a civil post and for posts in Defence Services are quite different. The defence forces follow rigorous medical standards which are prescribed in instructions titled Guide to Medical Officers, 2008 and in the case of the petitioner cited against him is a condition falling in Chapter VI - Clinical Aspects of Certain Diseases. The relevant paragraphs of the Medical Standards are contained in Paras.1.1.8, 2.1.1, 4.2.1 and 4.3.6 thereof. The last two are in issue and are therefore reproduced:-

“CHAPTER 2

MINIMUM PHYSICAL AND MEDICAL STANDARDS

General Health

PARA 4.2.1: Great care is to be exercised during the medical examination of candidates for entry into Air Force. Discharge from service of an airman trainee within a few months of enrolment on medical grounds due to preexisting defects/disease, is a serious lapse on the part of the medical examiner as well as wasteful expenditure to the State. **A candidate must be free from any active or latent acute or chronic, medical or surgical disability or infection and must be physically and mentally fit for duty in all climates anywhere in the world during peace or war.”**

“PARA 4.3.6: During abdominal examination note will be made of any hepatic or splenic enlargement. **Look for hemorrhoids, condylomata, presence of hernia or undescended testis, hydrocele, bubonocele, varicocele or any other swelling of the scrotum. These will be causes for rejection.”**

(2) Haemorrhoids as a medical condition falls in Para.4.3.6 and is a cause for rejection.

(3) A large number of judgments and orders have been relied upon by Mr. Puneet Gupta, Senior Panel Counsel, for the Union of India representing the Air Force. The seven decisions of different High Courts are presented in a compendium which includes (1) CWP No.25289 of 2015 titled *Vikas Kumar v. Union of India and others*, decided on 02.06.2016; (2) CWP No.10203 of 2015 titled *Vikas v. Union of India and others*, decided on 15.11.2016; (3) CWP No.8093 of 2015 titled *Sumit v. Union of India and others*, decided on 15.11.2016; (4) Writ-A No.66507 of 2014 titled *Uttam Prakash v.*

Union of India and others, decided on 09.12.2014; (5) Writ-A No.15086 of 2015 titled *Randheer Singh v. Union of India and others*, decided on 25.03.2015; (6) W.P. (C) No.1962/2010 titled *Prashant Grewal v. Union of India and others*, decided on 05.10.2010; (7) W.P. No.26399 (W) of 2016 titled *Mukul Sahoo and others v. Union of India and others*, decided on 28.02.2017.

(4) It is urged by the Union of India in Para.12 of CM No.7806 of 2017 that Para.4.1.3 had suffered amendment which is against the claim in the petition. It is stated in the affidavit of Air Commodore Arun Saklani, Air Officer, Air Force Station, Chandigarh as follows:-

“before amendment of Para 4.1.3 there was a provision that if the candidates for recruitment are found to be suffering from disease(s)/injury, which are likely to be cured within 6 weeks period then the candidate is to be cured within 6 weeks period then the candidate is to be declared “Temporary Medical Examination” and the review of such candidates is to be carried out within 42 days after the initial medical examination on submission of cure certificate from the Civil Medical Officer. But after the amendment is Para 4.1.3 the above mentioned status of “Temporary Medical Examination” stands deleted from Para 4.1.3. Hence, there is no waiting 6 weeks period and no review Medical in 42 days. The Amended Para 4.1.3 introduced from 24.06.2014 reads thus:

“Para 4.1.3: Candidates for recruitment found to be suffering from disease/injury during initial medical examination will be given a chance to appeal. During initial medical examination, candidates are not to be referred to specialist in the Armed Forces hospitals and decision for fitness or otherwise are to be made by the Medical Board. Referral to specialists will be made only at the appeal stage.”

The Advertisement in question is thereafter i.e dated 12.09.2014.”

(5) On the other hand it is argued by the petitioner while citing the chapter "The anus and anal canal in Bailey and Love's Short Practice of Surgery" that external haemorrhoids unlike internal haemorrhoids consist of a conglomerate group of distinct clinical entities. He quotes from the treatise to impress upon the Court that a

permanent cure is certain and relief of pain is immediate with surgery done under local anesthesia. To counter the judgments cited by Mr. Gupta, Mr. Sanchit Punia, learned counsel appearing for the petitioner relies on the following judgments:-

- (1) CWP No.15706 of 2012 titled ***Anoop Kumar v. Indo Tibetan Border Police Force and others***, decided on 03.12.2013;
- (2) CWJC No.4990 of 2009 titled ***Gautam Kumar v. The Union of India and others***, decided on 12.08.2009
- (3) CWP No.17439 of 2012 titled ***Sandeep Kumar v. Union of India and others***, decided on 24.09.2013;
- (4) CWP No.24852 of 2015 titled ***Sachin Kumar v. Union of India and others***, decided on 18.12.2015;
- (5) CWP No.23528 of 2014 titled ***Rahul v. Union of India and others***, decided on 19.12.2015;
- (6) LPA No. 654 of 2015 titled ***Raju versus Union of India and others***, decided on 19.05.2015;
- (7) ***Bhaganoo Chauhan versus Union of India and others***¹

(6) Two of which have been authored by me i.e. *Anoop Kumar* and *Sandeep Kumar* cases. These cases relate to Defence Services and the Paramilitary Forces and involve cases of declaration of medical unfitness. An appeal is provided against the decision of the Appeal Medical Board. Amended Para.4.1.3 commands that referral to specialists will be made only at the appeal stage. However, during initial medical examination, candidates are not to be referred to specialist in the Armed Forces hospitals. The amended law was introduced on June 26, 2014. When CM No.2146 of 2017 filed by the petitioner with a prayer that in the light of Annex P-9 the Director of PGIMER Chandigarh may be requested to constitute a Board of Doctors to medically examine the petitioner and to opine as to whether the petitioner is free from External Haemorrhoids or not he placed on record report of PGIMS, Rohtak certifying that the petitioner is fit and free from haemorrhoids, he relied on orders passed in CWP No.8108 of 2014 and CWP No.7303 of 2013 wherein this Court had referred cases of those petitioners to a Board of Doctors other than the medical specialists in the Armed Forces. This Court issued notice to the non-

¹ 2010 (2) ADJ 743

applicants to show cause as to why PGI Chandigarh be not directed to constitute a Board to examine the petitioner and opine whether he is free from External Haemorrhoids or not. This was by order dated February 22, 2017. When the matter came up on March 08, 2017 I passed the following interim order after hearing both sides:-

“After hearing counsel, the dispute narrows down to whether; at the stage of review medical in the Air Force, the medical specialists instead of blindly acting on Para 4.3.6 alone should have further considered the effect of an operation performed on the petitioner by civil doctors for external hemorrhoids on 14.08.2015. On medical examination of the petitioner, the Review Medical Board conducted on 09.10.2015 including in the team a specialist doctor in the Air Force was medically justified in sticking to the initial view taken on 18.07.2015 that the petitioner was medically unfit for employment as an Airman by reason of discovery of presence of external haemorrhoids on his person.

Appearing for the petitioner, Mr. Gupta points out to the amendment carried out on 24.06.2014 in para.4.1.3 which prescribes by change of procedure that even when candidate for recruitment is found suffering from disease/injury during initial medical examination will be given a chance to appeal, with a Specialist medical doctor examining the candidate for the first time only at the stage of Medical Board Referral.

His reliance on para.4.1.3 falling Chapter 1/General Instructions which have been supplied by the respondents in terms of interim order dated 10.11.2016 which emboldened him to rely on the documents since the copy of the came from the respondents when handed over to him in Court on a previous hearing. This is a legal matter for the Air Force authorities to explain by additional affidavit in terms of what the prevailing regulations mean and the change brought about and the effect of it on the rights of the petitioner.

However, there appears to be no firm opinion in the original medical papers placed before this Court except for relying on para.4.3.6 and declaring the petitioner unfit for recruitment under para.4.2.1. The effect of the surgical operation [external haemorrhoids] on the admitted condition of the petitioner is not clear from the record and to its

impact on a career as an Airman.

It would, therefore, appear to me in the fitness of things that to put the dispute beyond reasonable doubt by a second opinion that a request should be made to the Director, PGIMER, Chandigarh/Medical Superintendent to help this Court by constituting a Medical Board of specialists to medically examine the petitioner and opine as to whether the petitioner is fit for employment as Airman even after surgical intervention for curing external haemorrhoids.

The petitioner will take along his medical original record of surgery performed by a private doctor to be shown to the Medical Board requested to be constituted by the PGI, Chandigarh.

The respondents will be free to depute medical doctor/s from the Air Force to be present at the time when the medical board examines the petitioner for him to explain the point of view and medical requirements of the Indian Air Force.

The respondents will supply their regulations on the point noticed above including what the Air Forces thinks of external haemorrhoids noticed in “Chapter VI Clinical Aspects of Certain Diseases” mentioned in “Guide to Medical Officers, 2008” in para.42 and the effect of the medical condition on an aspirant Airman at present and the future.

The petitioner to present himself on 27.03.2017 in the office of the Medical Superintendent, PGI, who is requested to take further steps to facilitate the medical examination and submission of the findings. .

List on 08.05.2017.

Registry is directed to sent a copy of this order to the Director PGIMER Chandigarh for necessary action and compliance.”

(7) By May 08, 2017 when the case was called on for hearing the report had been received from PGIMER, Chandigarh. The report is positively in favour of the petitioner.

(8) Mr. Puneet Gupta, Senior Panel Counsel was requested to

take a photocopy of the same and inform the respondent-authorities of the medical report of PGI to enable the Court to take further proceedings. The report was retained on record.

(9) Accordingly, there are two medical reports of specialists in the premier medical institutes; one from Rohtak and the other at Chandigarh.

(10) Mr. Puneet Gupta, has brought to my notice that the interlocutory order dated March 08, 2017 was called in question before the Letters Patent Bench in LPA No.539 of 2017 in *Union of India and others v. Vikrant*. The following order was passed:-

“The instant Letters Patent Appeal is directed against an interlocutory order whereby learned Single Judge has directed medical re-examination of the respondent by a Medical Board of Post Graduate Institute of Medical Education and Research, Chandigarh. It has also been directed that Medical experts from Air Force would also be associated while conducting the medical examination. The controversy pertains to the fitness of the respondent for recruitment to the post of Airman in Air Force. The medical examination was directed to be conducted on 27.03.2017 but it is stated that the same has been postponed.

In our considered view no case to interfere with the interlocutory order is made out. Suffice to observe that even if the respondent is found medically fit, the appellants shall be at liberty to raise their all the contentions/objections before the learned Single Judge at the time of final hearing.

With the liberty aforementioned, the appeal is disposed of.”

(11) It may be noted that after the initial medical examination when the petitioner was declared medically unfit he took treatment for external haemorrhoids and an operation was performed on August 14, 2015 on local anaesthesia. It was only thereafter that the petitioner preferred appeal before the Appeal Medical Board where he was directed to appear on September 01, 2015 at SMC, 12 Wing, AF, Chandigarh. However, the appeal was rejected on October 09, 2015 for the same condition, namely, External Haemorrhoids. The petitioner asserts that he is cured permanently for external haemorrhoids and he has two reports from medical experts one for Rohtak and one for Chandigarh in hand to support his cause.

(12) The team of three medical doctors was headed by Prof. L. Kaman, Department of General Surgery PGIMER, Chandigarh with Dr. Harjeet Singh, Assistant Professor, Department of General Surgery PGIMER, Chandigarh as Member while Dr. Pranay Mahajan, Senior Resident Department of Hospital Administration PGIMER, Chandigarh was Convener.

(CONFIDENTIAL)

Medical Report

Mr. Vikrant S/O Randhir Singh R/O House No. 23, Minar Road, District Karnal, Haryana, 21 years Male was physically examined by the Board on 7th April 2017 at 4:30 PM in the Male Surgical Ward, Nehru Hospital, PGIMER. He was identified by ID proof (AADHAR Card)


No H/O Bleeding per rectum or Constipation.

Findings:
On Examination :-
Perianal area - No Skin tag, External Haemorrhoids, Fissula or Sinus seen.

Pro-Rectal Examination :-
No growth / no mass felt.
Finger Stool - Normal coloured stools.

Proctoscopy :-
Mucosa normal, No Internal Haemorrhoids, No Mass seen.

IMPRESSION :-
At present there is no External or Internal Haemorrhoid.

 Prof. L. Kaman Dept. of General Surgery PGIMER, Chandigarh. Chairperson	 Dr. Harjeet Singh Assistant Professor Dept. of General Surgery PGIMER, Chandigarh. Member	 Dr. Pranay Mahajan Senior Resident Dept. of Hospital Administration PGIMER, Chandigarh. Convener
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Dr. Gurneet Kaur, Senior Resident, PGD
Professor, Gastro Surgery
PGIMER, Chandigarh (India)

Senior Resident,
Department of Hospital Administration
PGIMER, Chandigarh.

(13) In the opinion of the PGIMER Chandigarh on examination and per-rectal examination the picture is clear. The impression of these medical experts is that at present there is no External or Internal Haemorrhoids. The examination was conducted on April 07, 2017 in the Male Surgical Ward, Nehru Hospital, PGIMER after due identification.

(14) I have heard learned counsel at great length on whether relief should or should not be granted to the petitioner. The petitioner asserts his case as vigorously as Mr. Gupta opposes it with his judgments in hand. The scope of interference in defence matters is ordinarily narrow and restricted. But to argue that medical reports from

civil hospitals under Court directions has to be ruled out of consideration and reduce them to waste paper would be blocking reason and toeing the Air Force line asininely. This Court respects the medical opinion of defence hospitals as much as it does of the medical doctors at PGIMER Chandigarh. The question is how to balance the two in a judicious manner without pointing any fingers at any one since experts are experts and the Court is not but it is the final arbiter of justice according to law. It is not for the first time in defence matters that parties have been referred to the PGI Chandigarh for examination in case of doubt. If doubt arises in the mind of the Court in such a situation as presented in this case it would not be unnatural for the Court to look for outside opinion on which it can place faith and trust. It is reasonable doubt of the unforeseen and expertise which steers the plane towards a safe landing. For this end, extrinsic help which is dependable and trustworthy should not be ruled out. I do not think it would be fair and just to lay down as an inflexible proposition of law or rule that medical reports of defence authorities in the matter of recruitment are impregnable.

(15) In a case of External Haemorrhoids which are not disputed to have been present in the petitioner's, person but are curable and open to correction by simple surgical procedure, then there could be hardly any dividing line I think between opinions of experts in defence hospitals and experts in PGI Chandigarh, created by "The Post-Graduate Institute of Medical Education & Research, Act, 1966" to be "an institute of national importance".

(16) If such a watertight distinction between the two sets of experts is drawn it may be artificial and unrealistic. The question is one of judicial choice and judicial choice reasonably taken on trustworthy evidence cannot be inflexibly in favour of the Air Force alone cussedly holding on to their opinion when there is tangible evidence available in the shape of the medical report submitted to this Court by the medical experts in PGIMER in favour of the petitioner. If case has to be decided one way or the other then the interest of the Air Force has to be balanced properly with the career of the petitioner. He has made it through the entire process of selection and that is a valuable right earned by dint of merit but kept away by initial medical examination and Appeal Medical Board.

(17) On a consideration of the matter I am unable to draw in the case of external haemorrhoids a disabling distinction between civil post and the post of Airman in the Indian Air Force once it is certified

to be not present or has been permanently cured. Then I see no reason why a direction should not be issued to the respondents to consider the report of the PGI Chandigarh as per the amendment to Para.4.1.3. The petitioner does not appear to suffer from any active or latent acute or chronic medical or surgical disability or infection as to make him permanently unfit physically and mentally for duty in all climates anywhere in the world during peace or war. A difficult question to answer is where to draw the line with the pen of Para.4.2.1 that if something goes wrong in case of appointment due to pre-existing defects/disease is viewed as a serious lapse on the part of the Medical Examiner as well as wasteful expenditure to the State. The command in Para.4.2.1 may frighten any Medical Examiner in defence service hospitals to take a rational decision. No one might take the risk of approval even if the defect is present but curable within days. Frankly, if I were the Medical Examiner in an initial medical examination or Appeal Medical Board I might also be scared of passing the petitioner in the medical test to invite for myself opinion of the PGIMER, Chandigarh. The seriousness of the issue can be gauged alone by the fact that the interlocutory order dated March 08, 2017 was appealed against by the Air Force with the seriousness that I respect. Therefore, I have proceeded to hear great many arguments on both sides for sufficiently long time to hear the contentions and objections of Mr. Puneet Gupta, Senior Panel Counsel, articulately put forth for the dismissal of the writ petition. However, my conscience and judicial reflex does not permit to dismiss the case. A case of haemorrhoids falls under Temporary Unfitness.

(18) It would now be for me to deal with the case law relied on by Mr. Gupta to examine its applicability. In *Vikas Kumar* (supra) the petitioner was found suffering from hypertension and, therefore, his case was rejected as interference is not called for. In *Vikas* the petitioner has been declared medically unfit on account of hypertension.

(19) In *Sumit* case the candidate was examined for deviated nasal septum and an operation had been performed. The Allahabad High Court in Writ-A No.66507 of 2014 dismissed the petition of an aspirant for the post of Airman in the same selection process as the present petitioner was a candidate. This case is also one of Blood Pressure and abnormal ECG. In Writ-A No.15086 of 2015 the Allahabad High Court dealt with the same selection process for Airman. The petitioner therein was found medically unfit on account of

chest abnormality showing from X-ray.

(20) In *Prashant Grewal* case the Division Bench of the High Court of Delhi found no justification or basis for overruling the opinion of defence authorities when the condition of Esophoria breaking into Esotropia was explained by the Joint Director Medical Services of Air Headquarter present in Court at the hearing that the condition would seriously impact the candidate's vision and he would be unable to perceive fast moving objects.

(21) In *Mukul Sahoo* case the Calcutta High Court is a case involving the post of Soldier Tradesman failing to qualify Medical Review Board. In *Mukul Sahoo*, the Court considered the cases of three petitioners in a joint petition for the post of Soldier Tradesman where one was diagnosed with digital tremor, the other two suffering from visual acuity less than 6/6 and for squint, deviated nasal septum and knock knee. These are all permanent disabilities determined by medical experts in the Army and, therefore, no interference could be made. However, there is an observation in *Mukul Sahoo* by learned Single Bench, Sambuddha Chakrabarti, J. while shown interim orders passed in some other writ petitions about the constitution of Medical Board entirely excuse the presence of Army doctors. These cases are distinguishable on facts and I fail to see how they can be readily applied to the case in hand.

(22) Nevertheless, by way of the interim order dated March 08, 2017, I had given liberty and opportunity to the respondents and set them free to depute medical doctor/s from the Air Force to be present at the time when the Medical Board examine the petitioner in PGI for them to explain the defence point of view and the medical requirements of the Indian Air Force. The respondents were given liberty to supply regulations on the medical condition in issue including what the Air Force thinks of external haemorrhoids noticed in Guide to Medical Officers, 2008 in para.42 and the effect of the medical condition on an aspirant Airman in the present and the future. Despite opportunity granted, an additional affidavit has been filed by Air Cmde Arun Saklani. The following averments have been deposed to in the affidavit in paras.4 to 7:-

“4. That vide order dated 08.03.2017, the liberty was granted to the deponent that the respondents will be free to depute medical doctor(s) from the Air Force to be present at the time when the Medical Board examines the petitioner, for him to explain the point of view and medical

requirements of the Indian Air Force. It was also observed that the respondents will supply their regulations in order to show medical requirements of the Indian Air Force including what the Air Force thinks of external haemorrhoids noticed in “Chapter VI Clinical Aspects of Certain Diseases” mentioned in “Guide to Medical Officers, 2008” in Para 4.2 and the effect of the medical condition on an aspirant Airman at present and the future.

5. That the date 27.03.2017 was fixed for the medical examination of the petitioner by this Hon'ble Court. Vide office order dated 27.03.2017, the Medical Superintendent, PGIMER constituted the board for medical examination and requested the Medical Board to submit its report before 08.05.2017. No intimation was sent to the respondents in respect of the constitution of the medical board or in respect of the date of the medical examination as is evident from a perusal of the office order dated 27.03.2017 despite the fact the respondents were to be associated at the time of the medical examination to enable them to explain the medical requirements of the Indian Air Force.

6. That Sqn. Ldr. Varun Sabarwal Medical Officer of 12 Wing Air Force was deputed to communicate with the office of the Medical Superintendent, PGIMER, Chandigarh. On 29.03.2017 Sqn. Ldr. Varun Sabarwal Medical Officer reported to PGIMER and communicated with the convener of Medical Board i.e. Dr. Shweta, who said that Dr. Pranay Surg Spl is Presiding Officer of the Board and also intimated the mobile No. 7087009669 of Dr. Pranay Surg Spl. The medical examination was not conducted on 29.03.2017. Hence, Sqn Ldr Varun Sabarwal Medical Officer gave his mobile number to Dr. Shweta for further communication and informed his willingness to remain present on the date of medical examination for rendering necessary assistance. Sqn Ldr Varun Sabarwal Medical Officer remained in touch with Dr. Pranay on several occasions regarding progress in the case, however, he was never called to PGIMER. On 03.05.2017, Sqn Ldr Varun Sabarwal Medical Officer again communicated with Dr. Pranay regarding requirement of his presence for rendering assistance as directed by this Hon'ble Court but it was

intimated that the medical report has been finalized on 07.04.2017 and dispatched to this Hon'ble Court.

7. That be that as it may, it can be deduced that non-communication of the communication of the composition of Medical Board vis-a-vis date fixed for medical examination, seems to be a deliberate action of the Institute designated to conduct medical examination of the petitioner and amounts to non-compliance of the order of this Hon'ble Court. In the absence of the representative of the respondents, the opinion of the medical board, PGIMER is nonest in the eyes of law and is liable to be ignored as specific liberty was granted by this Hon'ble Court vide order dated 08.03.2017 that the respondents will depute medical doctor(s) from the Air Force in order to explain the point of view and medical requirements of the Indian Air Force and it was also mentioned that the respondents shall also supply their regulations on the point of medical examination including what the Air Force thinks of external haemorrhoids and the effect of the medical condition on an aspirant Airman at present and the future. The report of the medical board is liable to be ignored on this short account only.”

(23) It is stated in the affidavit that the admissibility of the medical report of the PGIMER, Chandigarh would in any case, be violative of the Medical Standards Procedures laid down for the recruitment of Airman in the Indian Air Force in particular and the Armed Forces in general. Other than paras.4.2.1 and 4.3.6; para.1.1.8 and para.2.1.1 have also been referred to in para.9 of the affidavit which read as under:-

“PARA 1.1.8: INITIAL MEDICAL EXAMINATION.

In case of candidates for commissioning in the officer cadre, this examination is to be carried out at AFCME/IAM/MEC(East), for enrolment of airmen it is to be carried out at Airmen Selection Centers/recruitment rallies and for NCs(E) at the concerned SMC. The purpose of this medical evaluation is to ensure that each candidate fulfills the medical qualifying standards for his branch or trade into which he or she is seeking entry. Every effort is made to detect any disease or infirmity, which may at a later date affect the physical and/or mental capacity of the individual adversely. **During the initial medical**

examination the benefit of doubt regarding fitness or otherwise goes to the State. This is to avoid likely drop-outs and subsequent invalidments due to disabilities when sizeable expenditure on training has been incurred by the State.”

“PARA 2.1.1 An essential objective of a military medical examination is the selection of personnel who will be capable of withstanding of stress of active service. **To be fit, a candidate must be in good physical and mental health. He/She should be free from any disease or disability, which may interfere with the initial training subsequently, with the performance of service duties during all conditions of peace and war, in all climatic conditions and in any part of the world.**”

(24) In view of the submissions made by the petitioner and the resistance in paragraphs of the affidavit reproduced above, I asked Mr. Gupta if I should make an order for re-consideration of joint medical examination of the candidate in the presence of doctors from the Air Force deputed to be associated with the medical examination at PGI, to which the answer was in the negative and statement made that the case should be considered on merits with the available material on record. That is how I proceeded to hear arguments for final disposal of the matter. Having weighed the submissions of the learned counsel and given my thoughtful consideration of the totality of the facts and circumstances of the case, I would accept the arguments of the petitioner and reject those of the respondents.

(25) Accordingly, this petition is allowed and a direction is issued to the respondents to re-consider the matter in the light of the opinion expressed by the PGI Chandigarh and to consider the desirability of offering appointment to the petitioner in the light of this order. The re-consideration may take place within a month or two of receipt of a certified copy of this order.

Ritambhara Rishi