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

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Date of Decision: 26.10.2009

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W.P.(C) 5433/2003

MALKIAT SINGH

..... Petitioner

Through: Mr.K.K. Sabharwal and
Mr. S.D. Kushwaha,
Advocates.

versus

UOI & ANR.

..... Respondents

Through: Mr. Puneet Aggarwal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

PRADEEP NANDRAJOG, J. (ORAL)

1. Rule DB was issued on 20.08.2008. The matter has been heard for disposal.
2. The grievance of the petitioner is that inspite of being empanelled in list 'D' for promotion to the rank of Sub-Inspector vide the order dated 28.02.2001, promotion has been denied to him.

3. The order dated 26.02.2001 is at pages 14 and 15 of the record of the writ petition.

4. Vide para-2 of the order in question, it has been clearly indicated as under:-

“2. On Promotion, they are posted to the unit mentioned against their names. Formal orders will be issued by the unit concerned subject to the condition that they are medical category “AYE” and no. D.E./Vigilance case is either ending or contemplated against them. The named persons have a rights to forgo their adhoc promotion in case they do not favour their new postings no alternative postings will be offered.”

5. It is not in dispute that the petitioner, on a medical examination, was not approved for being placed in category “AYE”.

6. As per the averments made in the writ petition, it is apparent that the petitioner underwent heart by pass surgery at the All India Institute of Medical Sciences, New Delhi (for short ‘AIIMS’) in December 2000 and thereafter remained hospitalized at the Army Base Hospital, New Delhi for 56 days. Being put back in the unit, the petitioner had to be re-hospitalized at the Army Base Hospital, New Delhi for 7 days w.e.f. 01.03.2001 to 07.03.2001.

7. As per the respondents, in terms of para-2 of the order dated 26.02.2001 the petitioner was not promoted, though

empanelled for promotion, on account of not being placed in the medical category "AYE".

8. We note that the averments of the respondents on the issue are in para-5 of the counter-affidavit, which reads as under:-

"5. The Petitioner underwent by pass surgery in December 2000, which was a major surgery and the Petitioner was not fit to resume his duties even after the said surgery. The said surgery was conducted at AIIMS and the Petitioner after the discharge from AIIMS remained admitted in Base Hospital, ITBP from 23.12.2000 to 3.1.2001 for follow-up treatment. The Petitioner was again sent on 56 days leave on medical grounds by the Base, Hospital, New Delhi w.e.f. 3.1.2001 as he was not fit to resume duty. After the expiry of the leave the Petitioner was again admitted in Base Hospital, New Delhi from 1.3.2001 to 7.3.2001 for review and follow-up of the treatment. A copy of the instructions on 'Medical Categorisation and Invalidation' dated 19.2.1999 issued by the Director (Medical) is annexed herewith as **Annexure R-1**. That the Petitioner during all these days after his discharge from AIIMS was either remained admitted in hospitals or was on leave on medical grounds. The Base Hospital, New Delhi referred the Petitioner to Base Hospital, Ramgarh on 23.3.2001 for medical review and medical categorization with a clear opinion that after CABG surgery the individual could not be placed under medical category "AYE". It is submitted that the medical categorization of a personnel is always done by well-qualified Doctors working in different Base Hospitals, keeping in view the hazards of high altitude and difficult terrains etc. The Petitioner was not declared medically fit for the purpose of his promotion to the rank of Sub. Inspector. On the receipt of subsequent representation by the Petitioner, the comments of Director (Medical) were obtained and the Director (Medical) gave his opinion. The excerpts from the

note recorded by the Director (Medical) dated 14.8.2001 is being reproduced hereinbelow for the convenience of this Hon'ble Court:-

The hospitalization period is also taken as Low Medical Category. That is Cat "DEE". It is already in our orders.

He was- in Cat DEE from 7/2000

- Cat CEE (T) after 18.12.2000
- Cat CEE (P) after 4.4.2001

Even if he avoids AMC, his hospitalization period is covered on the day of promotion i.e. on 26.2.2001 he was in Category CEE(T) even if he avoided Medical Board. After CABG operation (By pass surgery of heart) on 18.-12-2000, he cannot be declared Category AYE after two months. The individual was formally placed in medical category CEE(P) for two years by Base Hospital, Ramgarh w.e.f. 4.4.2001."

9. Responding to the said paragraph, in para-5 of the rejoinder affidavit it is pleaded as under:-

"5. In reply to the contents of para 5 of the preliminary objections of the counter-affidavit, it is submitted that the Petitioner is seeking the relief based on the submissions that he is to be treated equally as equally two other persons. In the case of other persons, whose names are mentioned, inspite of their having also undergone by-pass surgery they have been promoted while the Petitioner after having promoted on adhoc basis and given rank cermonium has not been regularized. It is also submitted that the members of Schedule Casts were directly offered regular posts while the Petitioner was not treated so as he should have been treated."

10. With reference to the medical category in which a member of the Armed Force has to be put, vide the Annexure R-1, being the office memorandum dated 19.02.1999, a non-gazetted officer cannot be placed in the category "AYE", if he

cannot undergo severe strain.

11. Further, a medically fit officer has to be in Shape-1 and as per the same office memorandum, nobody can be certified to be in Shape-I, if there is a sign of functional or organic disease of the heart and blood vessels.

12. As per the respondents, due to the heart disease of the petitioner, though he has undergone by-pass surgery, he cannot be put in category "AYE" as he cannot undergo severe strain.

13. Learned counsel for the petitioner submits that the authorities at AIIMS have certified the petitioner as medically fit.

14. To be medically fit as an ordinary person is distinct from being medically fit to service in the Armed Forces. Needless to state, as an officer in the Armed Forces, physical fitness required is above the normal standard. The physical stress of the officers in the Armed Forces is a known fact.

15. We note that the petitioner is employed in ITBP i.e. a Paramilitary Force Station at the Indo-Tibetan Border i.e. at high altitude.

16. We find no infirmity in the action of the respondents and hold that no vested right accrued to the petitioner pursuant to

the order dated 26.02.2001, which order, as noted above was contingent upon the petitioner being placed in the medical category "AYE".

17. The petition is dismissed.

18. No order as to costs.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

OCTOBER 26, 2009
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