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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 27th October, 2009

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W.P.(C) 16507/2006

D.P.TYAGI

..... Petitioner

Through: Mr.O.P.Agarwal, Advocate.

versus

U.O.I THROUGH ITS SECY. HOME AFFAIRS & ORS.

..... Respondents

Through: Ms.Barkha Babbar, 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. Heard for final disposal, as consented to by learned counsel for the parties.
2. On 22.2.2008, following order was passed in the writ petition:-

“In para 22 of the writ petition, the petitioner has alleged that some of the candidates selected for appointment to the post of Assistant Commandant (GD) through Limited Departmental Competitive Examination -2005, could not qualify the medical examination. It is stated that though in the first instance they were declared unfit, they were given another chance after a long interval and in the second attempt they were declared medically fit and were selected which deprived the petitioner of

his chance of selection.

The respondents, in the counter affidavit, have explained that the whole recruitment process was conducted in accordance with the common scheme prescribed by the Government of India, Ministry of Home Affairs and the medical examination was also conducted as per DOP&T instructions circulated vide OM No.A17011/6/79-MS (I) dated 25.06.1980 which is annexed as Annexure R-2.

There is a dispute as to whether Annexure R-2 would apply in such case or not. Be that as it may, we find that no particulars of the persons who failed in the medical examination in the first instance and were given another chance, are given in the writ petition. Learned counsel for the petitioner wants to file additional affidavit giving these particulars as according to him, the persons whose names appear at Sl.Nos.1, 2 and 5 in the merit list, had been declared unfit when medically examined for the first time.

We may note that there were nine vacancies and, therefore, first nine persons in the merit list were selected and the name of the petitioner appears at Sl.No.10. It is for this reason, we allow the petitioner to file an additional affidavit within four weeks from today giving clear particulars of the persons and also the circumstances under which they were wrongly given second chance, according to the petitioner. Reply to the said affidavit may be filed within four weeks thereafter.

Re-notify on 12.08.2008."

3. Pursuant to the aforesaid order, further pleadings have been completed by the parties and learned counsel for the parties state that the writ petition may be disposed of on the short question arising out of the additional pleadings;

namely, Whether the respondent has the power to declare fit such persons who are initially declared temporarily unfit.

4. We may note that as per the additional affidavit filed by the respondents on 25.9.2008 under the signatures of Balbir Singh, DIG (Personnel), BSF, 69 candidates were declared temporarily unfit during medical examination, evidenced by Annexure R-1. As per the said affidavit, in terms of the office memorandums dated 13.12.1955 and 16.12.1960, enclosed as Annexure R-2 such candidates were entitled to be declared fit at a subsequent medical examination. It is submitted that the persons senior in the merit to the petitioner who were declared temporarily unfit were found to be subsequently fit.

5. We have perused the office memorandums. As per para 32 of the OM dated 13.12.1955 it is apparent that candidates have to be certified as 'Fit' 'Unfit' or 'Temporarily Unfit', depending upon their medical health status.

6. A candidate being certified 'Fit' would mean complete physical fitness. A candidate being certified 'Unfit' would mean a positive finding of a medical deficiency of a permanent kind. 'Temporary Unfitness' would mean a medical unfitness which is curable within a reasonable time and qua said unfitness, if within a reasonable time, the medical infirmity stands cured, the candidate has to be

declared 'Fit'.

7. Thus, we find no infirmity in the action of the respondents. Needless to state, candidates at serial No.1, 2 and 5 in the merit list, above the petitioner were declared 'Temporarily Unfit', but were found to be fit later on within a reasonable period of time. As regards candidates at serial No.3, 4, 6 to 9, all were found 'Fit' at the first instance. The petitioner was at serial No.10 of the select list; vacancies being 9 in number, with the subsequent fitness of candidates at serial No.1, 2 and 5, no vacancy was available for the petitioner.

8. We find no infirmity in the action of the respondents. The writ petition is dismissed without any orders as to costs.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

October 27, 2009
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