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

+ W.P.(C)NO.7341/2010 and CM No.14527/2010

Date of Decision : 2nd December, 2010

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SATENDER KUMAR Petitioner
Through : Mr. Anuj Aggarwal and
Mr. Gaurav Khanna, Advs.

versus

UOI AND ORS Respondents
Through : Mr. Neeraj Chaudhary, CGSC
with Mr. Mohit Auluck, Adv.

CORAM :-

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

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

GITA MITTAL, J. (Oral)

1. By way of this writ petition, the petitioner assails an order dated 3rd June, 2010 finding him medically unfit for appointment to the post of driver with the Indo Tibetan Border Police ('ITBP' hereafter for gravity). The candidature of the petitioner has been rejected on the ground that in a medical examination dated 1st June, 2010 and the review medical examination conducted on 17th September, 2010, it has been opined that the petitioner is medically unfit on account of "Deformed (Bony) little finger both hands".

2. The petitioner premises his challenge on the ground that

the medical boards which examined him did not include the Orthopedician and no other test in the nature of X-ray or otherwise was performed on the petitioner. The petitioner has placed reliance on a medical examination conducted on 22nd June, 2010 at the Primary Government Health Centre of Tehsil, Kosi in District Rewari, which found the petitioner medically fit for appointment to the post of Driver.

3. Perusal of the medical report of the petitioner's medical examination and re-medical examination by the board dated 17th September, 2010 placed by the respondents before us would show that the petitioner does not appear to have been examined by specialist in the field concerned.

4. In the interest of justice and merits of this case, it is necessary that the petitioner be appropriately examined by such experts who would place the opinion on the medical fitness of the petitioner for recruitment.

5. In view of the above, we make the following directions:-

- (i) The petitioner shall appear before the Commandant, Army Hospital (Research and Referral), Delhi Cantt. with all records of his medical examination and treatment, if any, which may be in his power and possession, at 11.00 a.m. on 9th December, 2010.
- (ii) The respondents shall also ensure that the complete original record relating to the medical examinations of the petitioner is placed before the Commandant,

Army Hospital (Research and Referral), Delhi Cantt.
on 9th December, 2010.

- (iii) The Commandant, Army Hospital (Research and Referral), Delhi is directed to constitute a Board of concerned Specialists/Experts for examination of the petitioner in the matter. The records which are produced by the petitioner as well as the respondent shall be placed before the Board so constituted.
- (iv) The medical board, constituted in terms of our order shall be at liberty to examine the petitioner as well as the above records produced by the parties, on a date and time appointed by it which shall be informed to both parties. If considered necessary, the Board may perform any test for arriving at their conclusion. The Board shall thereafter take an independent view in the matter uninfluenced by any observation made in this order or the opinion expressed in the report of the petitioner and the reports produced by the parties.
- (v) The report as well as the standards being applied shall be communicated to both the parties.
- (vi) If the report is found in favour of the petitioner, the respondents shall proceed and take a reasoned view thereon within four weeks.
- (vii) Any order passed by the respondents shall be forthwith communicated to the petitioner.

This writ petition is allowed in terms of the above directions.

Copy of this order be given to counsel for the parties under the signature of the Court Master.

CM No.14527/2010

In view of the order passed in the writ petition, no order is necessary in this application and the same is dismissed.

GITA MITTAL, J

J.R. MIDHA, J

DECEMBER 02, 2010
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