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

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DECIDED ON: 09.09.2015

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W.P. (C) 3161/2015

INDERJEET

..... Petitioner

Through: Mr. Akshay Verma with Mr. Akashdeep Verma, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Barkha Babbar, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The petitioner is aggrieved by the respondent's Sashastra Seema Bal ("SSB")'s cancellation/withdrawal of his appointment, by issuing orders dated 08.11.2014 and 13.11.2014, which in effect resulted in his discharge from the post of Constable (Driver). The petitioner had applied for recruitment to the post of Constable (Driver) in August, 2013. He participated in the recruitment process and was called for medical examination on 24.01.2014. He was declared medically unfit at that stage. He appealed to the authorities to grant the benefit of review medical board. The review carried out led to a report which declared him fit. Consequently, the SSB issued an offer of appointment on 30.05.2014. Further to this, the petitioner reported for duties on 26.06.2014. It is alleged that on the basis of a clandestine information/complaint, allegedly made by the co-trainee, the petitioner was directed to be medically

examined again. Apparently, this led to the petitioner's examination at the behest of the Commandant when it was discerned that he was suffering from knock knee. Consequently, he was referred to the Medical Board. The Board which carried out his physical examination comprised of three Doctors including the Orthopaedic Surgeon. The findings of the Board *inter alia* are as follows:-

“FINDING OF THE BOARD:-

Shri Inderjeet (Roll No. 131913006351) has reported at 25th Bn. SSB, Ghitorni, New Delhi on 24.09.2014 to conduct Re- Medical Examination for Knock Knee. He has been examined clinically and radiologically by the medical board including Orthopaedic Surgeon Dr.P.L.Singh , who is also a member of the medical board. Measurements, X-Ray and photographs have been taken. The measurement findings are as under:-

1. Intermalleolar gap is more than 5 cm. (Precisely 9 cm), but normal should be less than 5 cm.
2. Clinical Q angle:- (Rt.) 10 degree
(Lt.) 16 degree (Normal should be in a range of 11.2 degree (±) 3 degree)
3. Radiologically Tibio-Femoral angle (Rt.) 10 degree
(Lt.) 12 degree (Normal should be less than 10 degree)

OPINION OF THE BOARD :-

The board is of the opinion that Shri Inderjeet (Roll No.131913006351) Constable (Driver) has significant Knock Knee.”

2. Based upon the evaluation, the respondents issued the impugned orders dated 08.11.2014 and 13.11.2014. The subsequent order of 13.11.2014 cancelled the petitioner's offer and consequently the appointment to the post of Constable (Driver). It is contended on the petitioner's behalf that the respondents could not have acted whilst invoking the powers to terminate his services without holding an enquiry,

given that the motivation for reopening the issue was an allegation, the particulars of which were never shown to him. Emphasizing that the petitioner has become a victim of unilateral action, learned counsel for the petitioner submitted that fairness demanded that the SSB should have conducted a detailed enquiry and in the circumstances obtained independent opinion and found out whether in fact he really suffered from the condition alleged, i.e., knock knees.

3. The respondents in their counter affidavit highlight that no action which resulted in a stigmatic order was taken against the petitioner. It is submitted that the information received only led to an ascertainment as to whether there was any truth in the allegation and whether any candidate was in fact suffering from a medical condition which rendered him ineligible for appointment. In the process of this enquiry it was discerned by the petitioner's Commandant that the petitioner did in fact have a knock knee condition, which was a disqualification. The findings of the medical board of September, 2014 were relied upon in these circumstances to say that the action in this case cannot be termed as stigmatic. The respondents have also relied upon the paragraph 19 of the relevant extracts of the Medical Manual which sets out the medical standards for candidates/recruits to the SSB. The relevant portion of the said manual reads as follows: -

"Knock-knee

19. Knock-knee combined with tendency to flat feet and muscular weakness, is a disqualification. Where knock-knee alone exists, a separation of internal malleoli of over two inches will disqualify. The measurement will be taken with the body sitting upright on a chair, the legs fully extended in front and the knee just touching or candidate lying flat on his back on flat surface and knee just touching."

4. The above factual discussion would show that whilst the petitioner

succeeded in the recruitment process, even initially in the first medical examination, the opinion by the Medical Board was that he suffered from knock knees, a condition that rendered him ineligible for the post. His appeal resulted in reversal of that determination in March, 2014. On that occasion the Doctor declared him fit. Ordinarily, any punitive action or actions based upon an alleged misconduct of an employee regardless of whether he was probationer or temporary government servant, is matter to be preceded by some form of enquiry (refer to *Anoop jaiswal v. Government of India and Anr.*, 1984 SCR (2) 453 and *SBI & Ors. v. Palak Modi and Anr.*, (2013) 1 SCC 607. In this case, however, the respondents resorted to the method of first examining whether in fact there was any truth to the allegation that some candidates or candidate did not measure up to the physical standards. In undertaking this review, the respondents did not direct an enquiry as to the petitioner's conduct. They were more concerned with whether a recruit in fact measured up to the medical standards prescribed for that category. Whilst doing so, the Commandant felt that the petitioner did not fulfil the medical standards since he had a knock knees. That review was conducted not only in respect of the petitioner but also several others as is evident from the letter/note dated 10.07.2014. This led to the petitioner's examination by Board of three medical officers, all of whom felt that he had a knock knees and was ineligible for the post. These circumstances in the Court's opinion clearly show that the respondents at no stage contemplated an enquiry nor was the foundation of the termination order based upon an alleged misconduct. The judgment of the Supreme Court has emphasized that whilst the motive behind the termination or discharge order may be irrelevant if it is founded upon alleged misconduct and the order is not preceded by an enquiry, the termination would be illegal. In the present case, the facts clearly point to

the order not being founded upon an alleged misconduct but rather upon the authorities' directing an ascertainment as to whether the petitioner in fact fulfilled the medical standards.

5. The petitioner had, during the course of hearing, urged that this Court should give weight to the subsequent certificate issued after his examination by the Safdarjung Hospital and All India Institute of Medical Sciences. Considering that the SSB is the employer and is primarily responsible for administering its regulations which include the medical standards, the fact that other authorities including the AIIMS or some Doctor in such Institute might have issued a certificate to the contrary, in our opinion, is not reason enough for us to invoke the jurisdiction under Article 226 of the Constitution of India.

6. The writ petition is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

SEPTEMBER 09, 2015
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