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

+ **W.P.(C) 3199/2016**

SHAILENDRA KUMAR

..... Petitioner

Through: Mr. Rakesh Kumar Yadav, Advocate
with petitioner in person.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Dev P. Bhardwaj, CGSC with
Mr. P.C. Yadav, Senior Panel Counsel.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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17.05.2016

1. The present petition has been filed by the petitioner praying *inter alia* that the proceedings of the Review Medical Examination held on 11.01.2016 at the BSF Base Hospital be quashed and the respondent No.3/BSF be directed to recruit him as a Constable (GD).
2. Learned counsel for the petitioner submits that the petitioner was one of the candidates who was selected by the respondent No.2/SSC for the recruitment in the Paramilitary Forces, for posts advertised in the year 2011. The petitioner was issued an appointment letter by the respondent No.3/BSF on 27.07.2015 and he had joined his duties at the Chhawla Camp, New Delhi on 31.08.2015 as a probationer. However, the petitioner was declared unfit in the Review Medical Examination conducted by the respondent No.3/BSF on 27.10.2015, on the ground that he is suffering from "*fixed distal inter phalyngeal joint of Rt. Index finger*".

3. Counsel for the petitioner states that thereafter, the petitioner had approached an Ortho Surgeon at the District Hospital, ORAI, UP for being examined, and was declared fit. Armed with the Medical Certificate dated 30.10.2015, the petitioner had submitted a representation to the respondent No.3/BSF for a Review Medical Examination, which was acceded to. The petitioner's Review Medical Examination was conducted on 11.1.2016 by three doctors at the BSF Hospital, R.K. Puram, New Delhi and he was again declared unfit for the following reason :

“fixed deformity and muscle wasting of distal inter phalangeal joint Rt. Hand index finger”.

4. Though the petitioner has not filed the report of the Review Medical Board held on 11.1.2016, counsel for the respondents has handed over the documents pertaining to the petitioner, which includes the report of the Review Medical Examination. He explains that the petitioner, who was recruited as a Constable (GD) in the BSF, is required to handle arms and ammunition in the course of his duty but in view of the aforesaid deformity, he would not be in a position to effectively to do and it was in this background that he was declared unfit for the aforesaid post.

5. Having regard to the legal position that it is the sole discretion of an employer as to the manner in which it proposes to structure a selection process for the purposes of recruiting its employees and that the courts ought to refrain from stepping into the shoes of the employer to examine the procedure prescribed for appointment or substitute it with what it thinks is more appropriate, we are of the opinion that the deformity of the nature

referred to above is a matter which would fall within the discretion of the employer.

6. In view of the facts and circumstances stated above, we are not inclined to entertain the present petition by exercising our powers of judicial review. Accordingly, the writ petition is dismissed.

HIMA KOHLI, J

ASHUTOSH KUMAR, J

MAY 17, 2016/sk

