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

+ W.P.(C) 11576/2015

RAMESH Petitioner

Through: Mr. R.K. Shukla, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. J.K. Singh, Standing Counsel
for Railways

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

17.02.2016

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1. The present petition has been filed by the petitioner praying inter alia for setting aside the order dated 14th August, 2015 wherein he has been discharged by the respondent No.1 by declaring him unfit in BEE-ONE category and resultantly, his candidature to the post of a Constable in the respondent No.3- Railway Protection Special Force, has been turned down.

2. In the year 2011, respondent No.3 had issued an advertisement for filling up the posts of Constables. The petitioner had applied in response to the said advertisement and had appeared in the written examination held on 20th October, 2013,

which he had successfully cleared. On 16th June, 2014, the petitioner was examined at the Railway Hospital at Badshah Nagar, Lucknow and was declared medically unfit on the ground that he was "unfit in BEE-ONE category".

3. On 16th September, 2014, the medical department of the respondents declared that the petitioner was unfit for the appointment to the post of Constable and gave him an option to file an appeal before the Chief Medical Director within a period of fifteen days along with a medical certificate issued by a Medical Officer of the Ministry of Railways. Immediately thereafter, the petitioner had approached the General Hospital at Jhajjar, Haryana and the Medical Officer of the said hospital issued a certificate to the effect that the petitioner '*can readily identify primary colours on Edmdge Green Lantern in a semi dark room*'.

4. Armed with the aforesaid certificate, the petitioner filed an appeal before the respondent, who issued a letter dated 22nd October, 2014 calling upon him to appear before the Senior Divisional Security Commissioner R.P.F., N.B.E. Railway Izzat Nagar for his reexamination. Though there is nothing on record to evidence the decision taken on the petitioner's re-examination, the records produced by learned counsel for the respondents reveals

that the Senior D.M.O., Northern-Eastern Railways, Izzat Nagar had issued a medical certificate dated 1st/3rd November, 2014 stating *inter alia* that the petitioner was fit for BEE-ONE Category Constable in Railway Protection Special Force.

5. It is the stand of the petitioner that the respondents did not communicate the decision taken on his re-examination and in the meantime, he had joined duty and had continued working on the post of a Constable with the respondent No.3, from 5th October, 2014 till 14th August, 2015, when the impugned discharge order came to be issued. Aggrieved by the said action of the respondents, the petitioner had submitted a representation dated 3rd November, 2015 to the respondent No.3, which has remained pending at its end.

6. Having perused the records produced by learned counsel for the respondents, it is apparent that the petitioner was declared fit for BEE-ONE Category Constable in terms of the certificate dated 1st/3rd, November, 2014 issued by the Senior D.M.O., Northern-Eastern Railways, Izzat Nagar.

7. Counsel for the respondents submits that a subsequent medical certificate dated 17th July, 2015 issued by the C.M.O, Railway Hospital, Kalyan had declared the petitioner unfit for BEE-

ONE category, which forms the basis of the impugned discharge order dated 14th August, 2015. He is, however, unable to explain that when there were two sets of contradictory medical opinions in respect of the petitioner, why was a Review Medical Board not constituted.

8. On being confronted with the aforesaid query, learned counsel for the respondents stated on instructions that a Review Medical Board can be constituted for the medical examination of the petitioner and thereafter, steps would be taken to dispose of his pending representation dated 3rd November, 2015.

9. In view of the aforesaid submission, it is deemed appropriate to dispose of the present petition with the following directions:-

- a. The respondents shall constitute a Review Medical Board to examine the petitioner, under written intimation to him;
- b. After the petitioner appears before the Review Medical Board for his examination, a Report shall be submitted within four weeks;
- c. The said Report shall be forwarded to the Director General, Railway Protection Special Force, who shall consider the same and decide the petitioner's representation dated 3rd November, 2015, within a period of four week from the

date of receipt of the said Report, underwritten intimation to him.

10. If the respondents propose to turn down the petitioner's representation, then a speaking order shall be passed under written intimation to him. Liberty is granted to the petitioner to seek his remedies in law in the event the respondents reject his representation.

11. A copy of this order be given *dasti* to the counsel for the respondents for compliance.

HIMA KOHLI, J

SUNIL GAUR, J

FEBRUARY 17, 2016

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