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

+ **W.P.(C) 607/2017**

VIKAS CHOUDHARY

..... Petitioner

Through Mr. Naveen Kumar Raheja,
Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through Mr. Akshay Makhija, CGSC along
with Mr. Vikas Bhadauria, Advocate
for UOI.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

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24.01.2017

CM No. 2780/2017 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 607/2017 and CM No. 2779/2017 (for stay)

In this writ petition, the petitioner, a candidate for the post of Head Constable (Education and Stress Counsellor) in Indo-Tibetan Border Police Force, has prayed for orders on the respondents to reconsider the request of the petitioner for medical re-examination.

The application of the petitioner for the post in question had been entertained. The petitioner was required to and he successfully cleared the written examination, after which, the petitioner was issued a memorandum to appear before the Commandant, Base Hospital, I.T.B.P, Tigri Camp on 14.10.2016 for medical examination.

Upon medical examination, the petitioner was found unfit. The comments were “B/L Testicular Swelling? Right indirect complete inguinal hernia.” It is pleaded that the petitioner had been advised that he could file an appeal against the above findings of the medical examination, after obtaining necessary medical certificate from a medical practitioner in accordance with ‘Annexure-VI’.

According to the petitioner, the initial medical examination of candidates was held at the Tigri Camp, Base Hospital on 14.10.2016 and 15.10.2016. The memorandum dated 14.10.2016 declaring the petitioner medically unfit was made over to the petitioner on 16.10.2016. Immediately thereafter, the petitioner got himself operated at the Government Hospital, Jhunjhunu, Rajasthan on 20.10.2016 and thereafter he filed an appeal with the requisite medical fitness certificate in the prescribed form. The appeal was dispatched through speed post on 22.10.2016. The appeal has been rejected on the ground that the same had been received late.

It is not in dispute that the appeal was dispatched on 22.10.2016 i.e. seven days before the last date, which was 29.10.2016. The delay was not due to any fault attributable to the petitioner. The envelope should have reached the authorities in seven days, but for undue delay on the part of the postal authorities.

This is not a case where the initial application has been received beyond time. The initial application was received in time. The petitioner as observed above was allowed to and successfully cleared the written examination. He even took part in the medical examination but was unsuccessful. He was given opportunity to appeal. He dispatched the appeal petition seven days in advance. The slight delay in receipt of the appeal is not attributable to the petitioner. Considering the exceptional circumstances of the case, the writ petition is disposed of by directing the respondents to condone the delay in filing the appeal which is not attributable to any fault of the petitioner and to conduct medical re-examination of the petitioner, in appeal, in accordance with rules. It is made clear that this order is not to be treated as a precedent.

The writ petition and the pending application shall stand disposed of.

Dasti.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

JANUARY 24, 2017

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