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

+ W.P.(C) 719/2017 & CM No.3294/2017

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Date of decision : 11th April, 2017

DEBASIS DAS

..... Petitioner

Through: Mr. Hrishikesh Chitaley, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Prasanta Varma, CGSC for
R-1

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

JUDGMENT (ORAL)

GITA MITTAL, J.

1. The petitioner, a personnel of the Central Reserve Police Force ('CRPF' hereafter) was granted 7 days vacation in the year 2010 with effect from 1st October to 7th October, 2010. While on vacation, the petitioner was infected with chickenpox and had received treatment for this disease at the District Hospital, Vidhan Nagar, Durgapur, West Bengal. During treatment, this personnel was advised rest by the medical officer and after being declared fit on 8th November, 2010, had resumed duty. The period from 8th October to 8th November, 2010

of 32 days was treated as absence without leave and by an order dated 2nd March, 2011, it was directed that the period would be treated as leave without pay for the petitioner. This action was assailed by the petitioner before the Deputy Inspector General, Range, Lucknow who vide the order dated 19th August, 2015 directed reconsideration of the whole issue.

2. On reconsideration, the respondents first verified the correctness of the medical documents of the petitioner. Consequently, by an order dated 30th September, 2015, the Commandant-93 Battalion directed that the aforesaid period of 32 days would be considered as leave granted to the petitioner which was to be adjusted in the 64 days leave of the account of the petitioner as half pay leave.

3. Unfortunately when the petitioner sought to participate in the Limited Departmental Competitive Examination ('LDCE') for the post of Sub-Inspector (GD) in the CRPF which was scheduled on 29th January, 2017, his candidature was shown as rejected in the rejection list uploaded on the website for the reason that the leave period of the petitioner was re-regularized after a period of five years. The

petitioner has assailed his rejection by way of the present writ petition. Learned counsel for the petitioner contended that he is otherwise eligible and entitled to appear for the examination and is being denied his valuable right to a promotional avenue only on account of extraneous reasons.

4. When the writ petition came up before this court on 25th January, 2017, after noting the regularization of the petitioner's absence between the period from 8th October to 8th November, 2010, this court had recorded thus :

“Prima facie, the rejection of the candidature of a candidate applying for the LDCE Examination for promotion almost six years after his absence had been regularised and a year and a half after the leave was re-regularised to leave with half pay is arbitrary. Having regard to medical prescriptions which indicate that the petitioner, had at the material time been suffering from Chicken Pox, his absence has been regularised. Counsel appearing on behalf of the respondents submits that the petitioner had not got himself treated at CRPF Hospital but instead got himself treated at some private establishment. Prima facie that cannot be ground to reject the candidature of the petitioner for an examination for advancement of his career, after over six years. The examination is scheduled to be held on 29.1.2017. Unless an interim order, as prayed for in this petition is passed, the petitioner will irreparably be

prejudiced, if the writ petition succeeds. On the other hand, if an interim order is passed, but the writ petition ultimately fails, the candidature of the petitioner can be cancelled. No prejudice will be caused to the respondents. There will, therefore, be an interim order directing the respondents to permit the petitioner to appear for the LDCE scheduled to be held on 29.1.2017. The requisite admit card shall be issued to the petitioner. It is made absolutely clear that this interim order is without prejudice to the rights and contentions of either party and the petitioner shall not claim any equity by reason of his appearance in the LDCE pursuant to this order.”

5. We are today informed by learned counsel appearing for the respondent that pursuant to the order passed by this court, the petitioner participated in the LDCE Examination held on 5th February, 2017 (to which date the examination scheduled on 29th January, 2017 stood postponed), the learned counsel for the respondent has handed over a communication dated 6th April, 2017 to us wherein it is stated that the petitioner could not qualify in the written examination.

6. An apprehension is expressed by learned counsel for the petitioner that even though the petitioner was unable to qualify in the LDCE Examination held on 5th February, 2017, the respondent may propound the very excuse as was used for rejecting the petitioner’s

candidature for the examination scheduled to be held on 29th January, 2017.

7. In view of the above narration of facts, it is apparent that the petitioner's absence has been found to be genuine and his medical prescription verified. On 25th January, 2017, this court had noted that the petitioner was actually suffering from chickenpox which fact stood accepted by the respondent himself. The District Hospital where the petitioner was treated is not a "private" hospital. This court has also noted that not only was his absence regularized in the year 2015 but the absence in 2010 was on medical circumstances completely beyond the control of the petitioner. There is no complaint that the petitioner has been absent without leave or that he has been subjected to any other punitive action which under the rules would have disabled him from participating in the LDCE Examination. In these circumstances, the petitioner cannot be deprived opportunity of participating in any Limited Departmental Competitive Examination by the respondent in the future on the ground that he was absent from 8th October to 8th November, 2010, if

he is otherwise found eligible.

In view of the above, nothing survives for adjudication in the present writ petition. The writ petition and application are disposed of.

Dasti to parties.

GITA MITTAL, J

ANIL KUMAR CHAWLA, J

APRIL 11, 2017/kr