

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18952 of 2015

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Arun Kumar Paswan Son of Late Amirchand Paswan, Deputy Commandant, Border Security Force, Presently posted at 14th Battalion, B.S.F., Kishanganj, permanent resident of New Colony, Saharsa, Police Station + District - Saharsa.

.... Petitioner

Versus

1. The Union of India through the Union Home Secretary, North Block Central Secretariat, New Delhi.
 2. The Border Security Force through its Director General, C.G.O. Complex, Lodhi Road, New Delhi.
 3. The Director General, Border Security Force, C.G.O., Complex, Lodhi Road, New Delhi.
 4. The Commandant, Personnel, Border Security Force, C.G.O. Complex, Lodhi Road, New Delhi.
 5. The Deputy Inspector General (Personnel), Border Security Force, C.G.O. Complex, Lodhi Road, New Delhi.
- Respondents
- =====

Appearance :

For the Petitioner : Mr. Dinesh Singh Advocate and
Mr. Arvind Kumar Jha, Advocate

For the Union of India : Mr. S.D Sanjay (Addl. Soc. Gen.)

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 09-01-2018

Heard counsel for the petitioner and the Union of India.

2. The petitioner, an Assistant Commandant in the BSF has approached this Court for shifting of the date of promotion to the post of Dy. Commandant from 25.8.2004 to 14.7.2003. The facts giving rise to the instant writ petition is that during promotion process in the year 2003-04 when the petitioner was subjected to the medical assessment the Chief Medical Officer, HQ 1105 Bn BSF vide his report dated 1.6.2003 which is Annexure 2 of the writ petition has recommended the petitioner as follows:-

“In view of above I consider that individual is fit to remain in medical category SHAPE ONE and recommend that he be placed in Medical Category SHAPE-I”



3. However, the Medical Board held at BSF Sector Hospital BKR dated 4.6.2003 where the report of the Chief Medical Officer, HQ 1105 Bn BSF was sent did not concur with the findings of the CMO and in the Board's opinion recorded at Serial No.1, which is part of Annexure 2, the findings of the Board as follows:-

“The board having examined IRLA No.19569589 AC A.K.Paswan of 105 Bn BSF are of the opinion that he is a treated case of PIVP L5S1 is considered unfit to remain in category SHAPE-I”.

4. Counsel for the petitioner submits that there is some interpolation in this finding of the Medical Board as the expression “unfit” has been inserted later after crossing the findings mentioned at Serial No.1 of the report of the Board dated 04.06.2003. He also points out that this “opinion of the Board” (Annexure 2) has not recorded any findings in the other columns. In the column meant for “percentage of disability” at column 8 there is no opinion. Even at column 10, the Board has not recorded any restriction regarding employment. Thus, the opinion has not found the petitioner's capacity to discharge his duty as being restricted in any way and it is not that he has been recommended any leave, at column 12 of the said opinion. Thus, even as per the said opinion he could not be said to be prima facie ‘unfit’ as otherwise he continued to perform all the duties on the post of Assistant Commandant.

5. This Court finds that the same has already been considered by the Chief Medical Officer, Government of India,



Ministry of Home Affairs, Directorate General BSF (Medical Directorate) in his communication dated 20.06.2003 (Annexure 3), wherein he has requested that the officer be recommended for S1 H1 A2 (T-24) P1 E1 and the proceedings be redrawn afresh and to avoid overwriting/corrections on the existing proceedings which may convey a biased opinion about the Board. Opinion of the Board giving rise to reasonable likelihood of bias was thus acknowledged by the authorities. This Court on the earlier occasion vide order dated 23.02.2015, passed in C.W.J.C.No. 8400 of 2014 had directed the respondents to consider the grievance of the petitioner regarding the shifting of the date of promotion from 25.08.2004 to 14.07.2003 as well as to dispose of petitioner's representation being guided by its own Rules and Regulations as follows:-

“8. Nonetheless since the petitioner himself has assailed all these as part of the case in his representation, this Court instead of keeping the matter pending would direct the respondents to consider the grievance of the petitioner with regard to shifting of date of promotion of the petitioner from 25.8.2004 to 14.7.2003 by taking into account the facts which have been mentioned in the representation filed by him, as contained in Annexure 7 to this writ application.

9. It is, however, made clear that while disposing of the representation of the petitioner the respondent authority of the BSF will be guided by own Rules and Regulation regarding promotion but at the same time will not non-suit the petitioner if there was no fault on his part in getting his medical category improved. Thus, whatever consideration has to be made by the authorities of the BSF while disposing of the representation of the petitioner must be reflected by a reasoned order.

10. At this stage learned counsel for the respondents has tried to come out with a plea that



the representation filed by the petitioner vide Annexure 7 has already been disposed of but when this Court wanted to see the order which was passed, learned counsel for the respondents do not have a copy of the same.

11. In that view of the matter, this Court would give liberty to the petitioner to file a fresh representation giving all the details on the basis of which he would claim his promotion with effect from 14.7.2003 with all other consequential benefit dependent on shifting of date of his promotion with effect from 25.8.2004 to 14.7.2003. The said representation of the petitioner shall be disposed of expeditiously and by a reasoned order”.

6. Pursuant to the order of this Court, the petitioner made a representation dated 01.09.2015 (Annexure 10) to the respondents. It appears that the authorities have passed the same order again taking into consideration the same interpolated medical opinion of the Board dated 04.06.2003. The said opinion of the Board leaves scope for likelihood of bias as is acknowledged by the Chief Medical Officer in his letter dated 20.06.2003. Even the recommendation of the Directorate (Annexure 3) for redrawing the procedure afresh have not been followed. The same is evident from para wise reply of the petitioner's representation contained in the speaking order dated 06.11.2015 (Annexure 11). In reply to para 12 wherein this issue raised by the petitioner, has been considered and replied as follows:-

“Accordingly, the PO of the Medical Board was directed to submit fresh proceedings but the same were re-submitted after making corrections and attestation. Accordingly, the same has been approved by the CA.

Once the final category is changed, the other relevant paras of Medical Board Proceedings Part II were required to be changed accordingly.”



7. From perusal of the same there is no doubt that Medical Board proceedings have not been redrawn afresh as per recommendation of the Directorate (Annexure 3), but have only been “resubmitted after making correction and attestation” in the opinion of the Board (Annexure 2) which as per the said findings of the Directorate (Annexure 3) suffered with the vice of reasonable likelihood of bias and were required to be redrawn afresh. This Court is thus satisfied and of the opinion that the proceedings of the Medical Board dated 04.06.2003, cannot be made the basis for considering/rejecting the petitioner’s claim for promotion/shifting back of promotion from 25.08.2004 to 14.07.2003.

8. Admittedly the petitioner was found fit and granted promotion as Deputy Commandant in the year 2004-05, i.e., just in the year after 2003-04 in which he claims the same. Thus, it would not be possible now to comply with the recommendations of the Directorate for redrawing the Medical Board proceedings afresh with respect to the period 2003-04.

9. Because the respondent authorities have themselves not followed the Directorate’s recommendations, the petitioner cannot be made to suffer. In other words, the respondent authorities cannot be permitted to take advantage of their own lapse and thereby deny the petitioner his claim for shifting back his promotion to the year 2003-04 on basis of the same resubmitted opinion of the Medical



Board dated 04.06.2003. The same could not have been made the basis of consideration of the petitioner’s claim for shifting back his date of promotion to year 2003-04. If there is no other material on the basis of which the petitioner could be denied consideration for promotion on the post of Deputy Commandant, the same has to be considered. This Court on the petitioner’s earlier writ petition has already protected the petitioner’s right to claim promotion with effect from 25.08.2004 to 14.07.2003 with all consequential benefits dependent upon such shifting back.

10. The respondents are accordingly directed to consider the petitioner’s claim for shifting back his date of promotion to the post of Deputy Commandant from 25.08.2004 to 14.07.2003 with all consequential benefits. Let the whole exercise be completed within a period of eight weeks from the date of receipt/production of a copy of this order.

11. With the aforesaid observations and directions, the writ petition is allowed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	17.1.2018
Transmission Date	NA

