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

+ **W.P.(C) 3976/2018**

HITESH KUMAR Petitioner
Through: Mr. Harikesh Singh, Advocate.
versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Vijay Joshi, Advocate with
Dy. JAG. Amit Kumar.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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27.09.2018

1. This order is in continuation of the order passed on 03.8.2018, which is reproduced herein below:-

“1. The grievance of the petitioner is that he had cleared the Physical Efficiency Test (PET), written examination and trade test for the post of Constable (Cook) in the respondents/SSB. Thereafter, he was called for a medical examination. When the petitioner appeared for the medical examination on 23.11.2017, he was declared unfit on the ground of suffering from “haemorrhoids”. Thereafter, the petitioner approached the Government BDK Hospital for an opinion by a Medical Surgeon, who issued a Medical Fitness Certificate dated 27.11.2017, clearly stating therein that the petitioner was not suffering from “haemorrhoids”.

2. Armed with the said report, the petitioner submitted an appeal, for seeking a Review Medical Board, which was accepted by the respondents. Instead of conducting the Review

Medical Board themselves, in the first instance, the respondents referred the petitioner to the Safdarjung Hospital, Delhi. The petitioner appeared before the concerned doctor at the Hospital as an out patient on 23.03.2018. His case sheet history records that it is a “known case of piles/haemorrhoids”. The said report was submitted by the petitioner to the respondents for conducting a Review Medical Board, but it is alleged that without referring to the report of the doctor at Safdarjung Hospital, the Review Medical Board had declared the petitioner unfit on the same ground.

3. On a perusal of the case sheet history of the petitioner at the Safdarjung Hospital, we find that the handwriting is not legible and we are not sure as to whether learned counsel for the petitioner has correctly translated the same at page No.46.

4. We have enquired from learned counsel for the respondents as to whether the Review Medical Board had taken the report submitted by the Safdarjung Hospital into consideration and if so, then explain why the same does not find mention in the Review Medical Examination report of 24.03.2018. We have also enquired from learned counsel for the respondents as to whether any of the three doctors, who were a part of the Review Medical Board, are specialist in the field of General Surgery. Learned counsel seeks time to obtain instructions.

5. At the request of the counsel for the respondents, list on 27.09.2018.

6. In the meantime, it is directed that any appointment made by the respondents to the subject post shall be subject to the outcome of the present petition. If appointments have been made by now, then a written intimation of the above order shall be communicated to the person(s) appointed.”

2. Learned counsel for the respondents states that he has obtained instructions from the department to the effect that while preparing the report dated 24.03.2018, the Review Medical Board had taken into consideration the report submitted by Safdarjung Hospital, Delhi. He further clarified that none of the three Doctors, who were a part of the Review Medical Board, were Specialist in the field of general surgery.

3. A perusal of the Review Medical Examination Proforma dated 24.03.2018 does not bear out the submission made by learned counsel for the petitioner to the effect that the report dated 23.3.2018 from Safdarjung Hospital, where the petitioner had been referred by the SSB, was taken into consideration, thus leaving some scope of doubt in this regard.

4. Mere reliance placed by learned counsel for the respondents on the averments made by the petitioner in paras 13 and 14 of the writ petition to the effect that the petitioner was not examined by the Doctor, who had conducted his physical examination on 23.03.2018 at Safdarjung Hospital, is not sufficient for us to reject outright the submission made by the petitioner and accept the submission of learned counsel for the respondents that while submitting the report dated 24.3.2018, the Review Medical Board had duly taken into consideration the report dated 23.03.2018 by the Doctor at Safdarjung Hospital.

4. We have enquired from learned counsel for the respondents as to whether the petitioner can be referred for a fresh medical examination at any hospital of the Armed Forces. Learned counsel states, on instructions, that the petitioner can be referred to any Composite Hospital of the CAPF at Delhi.

5. In view of the aforesaid submission, the respondents are directed to give a written intimation to the petitioner of the date and time on which he would be required to appear before a specialist Doctor at any Composite Hospital, CAPF in Delhi, for his physical examination, relating to his medical condition, i.e., Haemorrhoids, as noted in the impugned report dated 24.3.2018. The entire process shall be completed within four weeks. The parties shall be bound by the recommendations given by the specialist doctor at the Composite Hospital.

6. If the petitioner is found free from the condition of “*Haemorrhoids*”, then he shall be recruited to the subject post, i.e. Constable (Cook) along with his batch mates with all consequential benefits, except for back wages.

7. The petition is disposed of.

DASTI.

HIMA KOHLI, J

REKHA PALLI, J

SEPTEMBER 27, 2018

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