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

% *Date of Decision: 21st May, 2018*

+ W.P.(C) 4658/2018 and CM No.17964/2018

SHIVANSHU SHARMA

..... Petitioner

Through: Mr. Abhinav Sharma & Ms. Sneha
Boul, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Bhagwan Swarup Shukla, Adv.
for UOI.
Mr. Naresh Kaushik, Mr. Omung
Gupta & Mr. Devik singh, Advs. for
UPSC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking the following prayers:-

“a. pass an order or direction in the nature of writ for quashing the verbal decision dated 08.02.2018 of the respondents disqualifying the petitioner in the review medical examination thereby rendering him unfit for the post of Assistant Commandant in CAPF;

b) pass an order or direction in the nature of writ for directing the respondents to re-constitute the review medical board consisting of specialist for examining the petitioner and issue a reasoned/speaking order after the examination of the petitioner with regard to the same;

c) pass such further order or orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The necessary facts which are required to be noticed for disposal of this writ petition are as under:-

(i) Between the period 2016-17, the petitioner served as a sub Inspector in the CISF. On 12.04.2017, the Union Public Service Commission (UPSC-respondent No. 4 herein) issued a notification for inviting applications for selection for the post of Assistant Commandant, in the Central Armed Police forces (CAPF). The petitioner appeared in the written examination on 23.07.2017 and thereafter the petitioner was called for the next round i.e, for physical standards/physical efficiency tests and medical examination. The petitioner cleared the physical standards and physical efficiency test. Thereafter on 16.12.2017, the petitioner appeared for review medical examination and was declared unfit on account of Ptosis in the eyes greater than 2 mm.

(ii) The petitioner thereafter filed an appeal against the findings of the Medical Examination dated 16.12.2017 post obtaining necessary medical certificate from an Eye Specialist Medical Practitioner. The petitioner also got himself tested in AIIMS, Rishikesh through an Ophthalmologist as per which the petitioner required no treatment. The petitioner also got himself examined on 21.12.2017 through a Senior Eye Specialist from a District Hospital, Haridwar who also issued a medical certificate as per the prescribed form for filing of an appeal, the petitioner was declared medically fit by the Eye Specialist from the District Hospital as well.

(iii) The petitioner was called to appear for review medical examination to be held on 06.02.2018. The petitioner claims that he appeared before the Medical Examination Board on 06.02.2018 but only two Members out of 3 were present, the Presiding Officer was absent. The petitioner also claims that the two Members examined the petitioner and discussed amongst themselves that the petitioner is fit. The two Members directed the petitioner to remain present again and the petitioner claims that he appeared again on 08.02.2018, when all the three Members of the Board were present but he was verbally informed that his appeal was rejected.

(iv) The petitioner has filed the present writ petition claiming that the medical examination conducted on 06.02.2018 in appeal was conducted by only two Members of the Board while on 08.02.2018 when all the 3 Members of the Board were present, no medical examination was conducted and he was only verbally informed about his disability.

3. On 04.05.2018, Mr Shukla, learned counsel appearing for respondent No. 1, had sought time to seek instructions in the matter. Mr Shukla, on instructions, had submitted that all 3 members were present on 06.02.2018, however, with a view to avoid any controversy regarding the presence of three Members on 06.02.2018 or not and the complaint that no formal hearing was fixed but the petitioner was informed about the disability suffered by him, however, to put the controversy at rest, as agreed we had directed that the petitioner would be examined by a Medical Board comprising of 3 Specialist of the Army R & R Hospital, Subroto Marg,

Dhaura Kuan, New Delhi. The matter was then adjourned from 04.05.2018 to 09.05.2018.

4. On 09.05.2018, we were informed that the Medical Board could not be constituted. We had requested the DGMC of the Army R & R Hospital to constitute a Board within one week and place the report before this Court. We may note that when the matter came up for hearing, we had considered the fact that the petitioner had served as a Sub Inspector in CISF which is one of the Central Armed Police Forces. We had also taken note of the fact that prior to joining as a Sub Inspector in CISF, the petitioner had not only cleared the written examination but physical standard test / physical endurance test and medical examination and the petitioner had been found medically fit. Since the standard of medical fitness of all the Armed Forces would be somewhat similar & keeping in mind that the petitioner had obtained certificates from AIIMS, Rishikesh and also obtained a certificate from a District Hospital, Haridwar, we deemed it appropriate in the facts of the present case to have the petitioner examined by an independent Medical Board of the Army R&R Hospital, Subroto Marg, Dhaura Kuan, New Delhi.

5. The findings of the Review Medical Board have been produced from the Hospital in a sealed cover which has been opened in the presence of the learned counsel for the parties. As per the opinion of the Board, the petitioner does not suffer from Ptosis. The opinion of the Board is scanned below:-

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ANNEXURE P-7

(15)

CAPFs-2017/AC(Direct Entry)/3
FOR CANDIDATE
MEDICAL FITNESS CERTIFICATE

Medical Practitioner to affix Photograph & Thumb impression of candidate



Dr. H. S. Handwar



Certified that Mr/Ms. SHIVANSHU SHARMA
age 25 years, a candidate of AC(Direct Entry) for Central Armed Police Forces
Examination-2017, whose photo and thumb impression are appended above, duly
attested by me was examined by me at Hospital Dist. Hospital, Handwar

On date 21/11/2017

I, the undersigned, have the knowledge that
Mr/Ms. SHIVANSHU SHARMA has been declared Medically Unfit
by the Medical Officer for the post of Assistant Commissioner/SA (Direct Entry) in
Central Armed Police Forces exam-2017 due
to Prosthetic

Prosthetic in my opinion this is an error of
judgment.

After due examination I declare him/her medically fit for the said post.

Date 21/11/2017

SHIVANSHU SHARMA
Signature & Name of the candidate
(In presence of Medical practitioner)
Roll No. 11111111111111111111

Signature & Name with seal of
Specialist Medical Officer of the Armed Forces
Registration No. 11111111111111111111
(MCI/State Medical Council)
Designation Specialist
Name & Address of Govt. Hospital
(District Hospital & above)

Dr. H. S. Handwar
Dist. Hospital, Handwar

Attested by
Specialist Medical Officer
Signature & Seal
Dist. Hospital, Handwar

- Note:** 1) The findings of the Medical should be supported by Medical reports/documents wherever applicable.
2) The Photograph, Thumb impression and signature of the candidates should be witnessed by Medical practitioner giving this medical fitness certificate. Un-attested forms shall be summarily rejected.
3) CAPFs/Nodal force; shall not be responsible for postal delay.

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6. Having regard to the opinion of the Board, the writ petition is allowed. The communication dated 16.12.2017 and the finding of the Review Medical Board dated 06.02.2018 which was produced in Court are quashed. One copy of the finding is kept on the record of the Court, two copies have been handed over to Mr Shukla, counsel for the respondent/UOI and one copy has been supplied to the counsel for the petitioner.

7. The counsel for the Union of India and UPSC submit that the petitioner has provisionally appeared in the interview. The result of the petitioner will be processed in accordance with law.

8. Accordingly, in view of the above, the writ petition as also the pending application stand disposed of, in above terms.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 21, 2018
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