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

+ **W.P.(C) 7124/2018**

MANISH KUMAR

..... Petitioner

Through Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through Ms.Barkha Babbar with Ms.Dipanjali Tyagi, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **24.07.2018**

1. The petitioner is aggrieved by an order dated 03.05.2018 passed by the respondent no.2/SSB cancelling his candidature for the post of 'Constable Driver' on the ground that the 'appeal form' submitted by him as issued by the Community Health Centre, Meerpur, Riwari, Haryana had been inadvertently accepted alongwith his application for seeking a Review Medical Examination, whereas the said appeal form should have been rejected as the Community Health Centre is below a district level hospital and such a fitness certificate was not in consonance with the guidelines for accepting an appeal form for a Review Medical Examination.

2. Briefly stated, the facts of the case are that in the year 2016, the respondent no.2 had issued an advertisement for inviting applications for

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the post of 'Constable Driver'. The petitioner being eligible, applied for the said post and successfully qualified the first three stages of the examination upto the stage of trade test.

3. On 07.11.2017, the petitioner was called for a Detailed Medical Examination (DME) at the Composite Hospital, SSB Gorakhpur, where he was found unfit on the ground that there was a '*Keloid on his right arm*'. Pursuant thereto, the petitioner got himself medically examined at the Community Health Centre, Meerpur, Riwari, Haryana, where he was declared medically fit. Armed with the said certificate, the petitioner submitted an appeal for his medical examination by the Review Medical Board. The said appeal was accepted and the petitioner was called for a Review Medical Examination on 06.03.2018 at the 25th Battalion, SSB, Ghitorni, New Delhi. In the Review Medical Examination, the petitioner was declared fit with a specific finding of fact that '*no keloid seen on right arm. Wound scar healthy*'.

4. On 19.03.2018, when the final selection list was issued by the respondent no.2/SSB, the petitioner's name featured in the OBC category at Serial No. 48. However, on 03.05.2018 to the utter shock of the petitioner, the respondents issued the impugned order cancelling his candidature on the ground that 'the medical fitness certificate submitted by him alongwith his appeal for a Review Medical Examination was not in order'.

5. On the last date of hearing, we had requested learned counsel for the respondents to obtain instructions from the Department.

6. Today, Ms.Barkha Babbar, learned counsel for the respondents hands over a copy of the letter dated 23.07.2018 addressed to her by the respondents, stating *inter alia* that as per revised medical guidelines, the candidates declared unfit in the DME have a right to prefer an appeal against the decision of the DME board alongwith a fitness certificate from a district level hospital pointing out an error of judgment in the DME's findings. It is further stated that '*the petitioner had applied for a Review Medical Examination alongwith a fitness certificate issued by the Community Health Centre, Meerpur, Haryana, which was inadvertently accepted by the Board detailed for sorting of appeal forms for conduct of Review Medical Examinations*'. On account of the said error, the petitioner was issued an admit card for a Review Medical Examination, that was conducted on 06.03.2018, in which he was declared fit and subsequently his name was included in the final selection list.

7. The respondents have stated further that in the meantime, one Shri. Kamal Singh, filed a writ petition in this Court (W.P.(C)2595/2018) claiming that the fitness certificate issued in favour of the petitioner herein by the Community Health Centre had been accepted by the respondent no.2/SSB for conducting a Review Medical Examination, whereas a similar certificate submitted by him for seeking a Review Medical Examination, was rejected. It was only when the said petition came to be filed that the respondents discovered the error made within the Department and as a result the impugned order was issued cancelling the petitioner's appointment.

8. We are not impressed with the explanation sought to be offered by the

respondents particularly when at the end of the day, the Review Medical Examination conducted in respect of the petitioner, had found him fit. It is not a case where the medical certificate submitted by the petitioner alongwith his appeal form had declared him fit and the Review Medical Board had held otherwise. In our view, the so called inadvertent mistake on the part of the respondents cannot be a ground to cancel the petitioner's candidature, when the respondent no.2/SSB's own Review Medical Board had declared him fit for the condition referred to when the petitioner had been initially declared medically unfit.

9. On the contrary, the Review Medical Board confirmed the position as stated in the medical fitness certificate submitted by the petitioner alongwith his appeal form for a Review Medical Examination. This being the position, the impugned order dated 03.05.2018 is not sustainable and liable to be quashed and set aside. Ordered accordingly.

10. The present petition is, therefore, allowed. The respondents are directed to issue an appointment letter in respect of the petitioner to the post of Constable Driver, with effect from the date other similarly placed person were appointed. We further direct that while the seniority of the petitioner shall be protected, he shall not be entitled to any backwages.

11. The petition is allowed and disposed of as above.

HIMA KOHLI, J

REKHA PALLI, J

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