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

+ **W.P.(C) 7935/2018 & C.M. NO. 30426/2018**

MD. AZAD UDDIN Petitioner
Through: Mr. Rashid Hussain, Advocate.

versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. Akshay Makhija, CGSC with
Ms. Seerat Deep Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 31.07.2018

1. The petitioner seeks quashing of the order dated 05.7.2018, passed by the respondents/BSF retiring him from service under Rule 25 of the BSF Rules, 1969 on medical invalidation, with effect from 31.7.2018 (afternoon).
2. Learned counsel for the petitioner states that the petitioner was recruited as Constable on 16.1.2003 and has been serving in the said force for the past 17 years. On 18.4.2018, the petitioner was produced before the Medical Board held at Composite Hospital, BSF Kadamtala and was placed in medical category 'S5H1A1P1E1' 'UNFIT'. In other words, the petitioner was declared unfit for being retained in the service of the BSF on the ground that he was suffering from 'Schizoaffective disorder'. Thereafter, the petitioner was served with a notice to show cause dated 29.5.2018 by the

respondents, calling upon him to show cause as to why he be not retired from service in terms of Rule 25 of the BSF Rules, 1969, on account of the recommendation of the Medical Board, which had found him unfit for service in BSF on account of his suffering from '*Schizoaffective disorder*'. He was also informed that if he wished to make any representation and request for a Review Medical Board, then he must do so to the DIG Sector, Headquarter, BSF Dubri (Assam) within 15 days from the date of receipt of the said notice.

3. Learned counsel for the petitioner states that on receiving the notice to show cause dated 29.5.2018, the petitioner had submitted a representation dated 13.6.2018 to the DIG stating that his case may be reconsidered and he may not be invalidated, but the impugned order has been passed without getting the petitioner examined by a Review Medical Board, in accordance with Rule 25(5) of the BSF Rules, 1969.

4. On the other hand, learned counsel for the respondents states that though, the petitioner was granted a period of 15 days to seek a Review Medical Board for review of his health, he failed to seek a Review Medical Board. Resultantly, the impugned order came to be passed. He further clarifies that the request submitted by the petitioner claiming to be medically fit was subsequently made on 16.7.2018. Learned counsel states that even in the said representation dated 16.7.2018, the petitioner had failed to make a request for constituting a Review Medical Board to examine his medical condition.

5. Having regard to serious consequences of the impugned order whereunder, the respondents have decided to medially invalidate the petitioner and retire him from service, in the interest of justice, it is deemed appropriate to direct the respondents to constitute a Review Medical Board for examining the petitioner's health condition and based on the recommendations of the said Board, take appropriate action in accordance with law.

6. In view of the orders passed hereinabove, the impugned order dated 05.7.2018 is quashed and set aside. The respondents are granted liberty to take a fresh decision based on the findings returned by the Review Medical Board for which, the respondents will call upon the petitioner to appear before the said Board, on the date, time and venue, as may be indicated in the notice to be issued to him.

7. The petition is disposed of along with the pending application.

Dasti to learned counsels for the parties under the signatures of the Court Master.

HIMA KOHLI, J

REKHA PALLI, J

JULY 31, 2018

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