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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9829/2016**
RADESH SINGH Petitioner

Through: Mr.Shanker Raju and
Mr.Nilansh Gaur, Advocates
with petitioner in person.

versus

UNION OF INDIA & ANR Respondents
Through: Mr.Dev.P.Bhardwaj, CGSC for
UOI with Mr.Manoj Kumar,
Medical Officer.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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15.03.2018

1. The present petition has been filed by the petitioner, who is aggrieved by the rejection of his candidature in the OBC category in respect of the post of a Constable (Driver) in the respondent No.2/ITBP, pursuant to an advertisement issued in January, 2015, inviting applications for 472 posts of Constable (Drivers) out of which 95 posts were earmarked for OBC candidates.

2. The admitted facts of the case are that in January, 2015, the respondent No.2/ITBP issued an advertisement, inviting applications from the candidates for recruitment to the post of Constable (Driver). The petitioner, an OBC candidate, had applied for appointment to the

subject post on 29.06.2015. He had qualified the written test and the physical test on 14.12.2015. On 20.06.2016, the petitioner was called for a medical examination at Chandigarh. He underwent the medical examination on 22.07.2016, where he was declared unfit on account of a medical infirmity, namely, 'Hypospadias'. On 25.07.2016, the petitioner applied for a re-medical examination. On 31.08.2016, he was summoned by the Appellant Medical Board at the Base Hospital, ITBP, Delhi. Vide order dated 17.09.2016, the Appellate Medical Board referred the petitioner to the Medical Board at Safdurjung Hospital, New Delhi where the attending Doctor (M.S. Surgery – Urology) observed as follows:

“He does not have any problem in erection and has no Chordee/Stricture along. He is medically fit.”

3. Thereafter, the petitioner did not hear from the respondents at all and after waiting till October, 2016 he filed the present petition.

4. Notice was issued on this petition on 24.10.2016 and a counter affidavit has been filed by the respondent stating *inter alia* that after taking into consideration the expert medical opinion obtained from Safdarjung Hospital, New Delhi, and on examining the relevant provisions of the Ministry of Home Affairs Recruitment Revised Guidelines issued in the year 2014, the petitioner was declared medically unfit in view of para XIII (3)(c) which states as follows:-

“Penis should be examined for any wart, ulcer, discoloration discharge or tumour and these cases are to be rejected. The cases of hypospadias and epispadias or meatal stenosis should also be rejected. The individual

be asked to retract the prepural skin and if failed, such cases of phimosis should be rejected.”

5. After examining the counter affidavit filed by the respondents, the predecessor Bench passed an order dated 17.05.2017, directing the respondents to consider the petitioner's representation dated 22.04.2017, notwithstanding the pendency of the present petition and communicate the decision taken within a period of eight weeks.

6. Learned counsel for the respondents states that in compliance with the aforesaid directions, the DIG (Personnel and Recruitment), North-West Frontier Headquarters, ITBP, passed an order dated 22.06.2017, stating *inter alia* that there is no provision to consider a second appeal except in cases where a candidate has been declared medically unfit on account of “*Visual Acuity*”. Learned counsel states that in the instant case, the petitioner has not been declared unfit on account of “*Visual Acuity*” and therefore, he does not come within the ambit of the aforesaid Rules and in the above circumstances, decision of the Review Medical Board of ITBP shall have to be treated as final. A copy of the order dated 22.06.2017 passed by the respondents rejecting the petitioner's representation dated 22.04.2017 is taken on record.

7. Pertinently, the decision taken by the Review Medical Board on receiving the opinion of the Medical Board, Safdarjung Hospital, Delhi has not been placed on record. Nor is learned counsel aware of the said decision. It is also relevant to note that on 06.11.2016, the petitioner had undergone a surgery at the Jindal Super Speciality Hospital at Bharat Pur, Rajasthan for treating the condition of

'Hypospadias'.

8. Mr.Shanker Raju, learned counsel for the petitioner hands over a copy of the petitioner's discharge summary as also a certificate issued by the treating doctor at Jindal Super Speciality Hospital stating that the petitioner was successfully operated for *'Hypospadias'*. The aforesaid documents are taken on record.

9. Learned counsel for the petitioner submits that the petitioner has been pinning his hopes on being selected to the subject post particularly since he had cleared the written test, physical test and skill test. He states that by now the petitioner has crossed the age bar of 26 years prescribed for OBC candidate and if not selected this time, he would not get any further opportunity to apply to the respondent/ITBP for recruitment to the subject post. It is thus requested that in the peculiar facts of this case, the Court may direct the respondents to arrange a Review Medical Board to examine the petitioner at any Force's hospital to verify the status of his medical fitness in respect of *'Hypospadias'*.

10. After carefully considering the submissions made by learned counsels for the parties and examining the pleadings on the record, we are of the opinion that the issue at hand can be resolved if the respondents are directed to approach the Army R & R Hospital, Delhi for constituting a Medical Board to examine the petitioner for the medical condition of *'Hypospadias'* and submit a report with regard to his medical fitness as on date. Ordered accordingly.

11. Directions are issued to the respondent No.2/ITBP to give a written intimation of the date and time, on which the petitioner shall

present himself at the Army R&R Hospital, New Delhi, for being examined for the medical condition of '*Hypospadias*'. Both the parties shall remain bound by the decision taken by the Army R & R Hospital.

12. The report of the Army R&R Hospital shall be forwarded directly to the respondent No.2/ITBP with a copy marked to the petitioner. In the event the said report clears the petitioner of the condition for which he has been disqualified, then the respondent No.2/ITBP shall appoint him to the subject post, subject to his fulfilling all other conditions as prescribed. The petitioner shall however not be entitled to claim seniority or any consequential benefits, if so recruited.

13. The petition is disposed of, with no orders as to costs. We make it clear that the above order has been passed in the peculiar facts and circumstances of the case and shall not be cited as a precedent in the future.

14. A copy of the order be given **DASTI** to the learned counsel for the respondents to make compliance.

HIMA KOHLI, J.

PRATIBHA RANI, J.

MARCH 15, 2018

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