

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

SMRITI
2017.11.15 10:49
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CWP-20027-2015

Date of Decision: 08.11.2019

Anuj Kumar

... Petitioner

vs.

Railway Protection Special Force Office

.. Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Jitenter S. Kundu, Advocate for
Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Karminder Singh, Advocate
for the respondent.

ARUN MONGA, J.(ORAL)

1. *Inter alia*, issuance of a writ in the nature of *certiorari* has been sought for quashing of impugned communication contained at Annexure P-7 vide which the petitioner was ordered to be discharged from service.
2. In the present case, the petitioner, being successful in selection process to the post of Constable, was subjected to medical examination, wherein he was declared unfit. However, as per his right to seek review of his medical fitness, a Review Medical Board was constituted which found him medically fit. Notwithstanding, while petitioner was a Constable trainee, the competent authority in ostensible *suo-moto* exercise of his powers subjected the petitioner yet again to another round i.e. third round, to review the opinion of the Review Medical Board. Based thereon he was declared unfit.
3. Resultantly, vide a cryptic and summary order contained at Annexure P-7, impugned herein, services of the petitioner were dispensed with.

4. A candid stand has been taken by the respondents in Civil Miscellaneous application i.e. CM-16774-CWP-2017 that there is no provision for third round of medical examination to review the opinion of a Review Medical Board.

5. In view of clear and conceded stand of the respondents that there is no power to conduct third round of medical fitness, particularly, after the petitioner has been found fit by the Review Medical Board constituted by the respondents themselves, it was not open to subject the petitioner for third medical examination.

6. Accordingly, the action of the respondents in subjecting the petitioner to third medical examination is clearly ultra vires vis-a-vis procedure applied on other candidates who were successful in the selection process. Furthermore, petitioner has clearly been meted out with hostile discrimination as other candidates were not subjected to any third medical examination round as has been done in the case of petitioner.

7. Impugned order (Annexure P-7) is, accordingly, quashed. Respondents are directed to take the petitioner back in service alongwith all consequential benefits including continuity of service. However, it is made clear that for the period the petitioner remained out of service, he shall not be paid the salary, on the principle of 'no work no pay'.

8. Disposed of in above terms.

08.11.2019
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No