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

+ **W.P.(C) 3918/2019**

MD. AZAD UDDIN Petitioner
Through: Mr. M. A. Inayati, Advocate
versus
UNION OF INDIA & ANR. Respondents
Through: Mr. S. D. Windesh, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **30.10.2019**

C.M. APPL. 44155/2019 (delay)

1. For the reason stated in the application, the delay of 24 days in filing the reply is condoned. The application is hereby disposed of.

W.P.(C) No. 3918/2019

2. This is the second round of litigation concerning the de-boarding of the Petitioner from the Border Security Force ('BSF') on medical grounds.

3. In the first round, the Petitioner had come before this Court in W.P.(C) No. 7935/2018 which was disposed of on 31st July, 2018 by setting aside the order dated 5th July, 2018 and granting liberty to the Respondents "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

issued to be issued to him.”

4. Basically, the Court accepted the plea of the Petitioner that in terms of Rule 25 (4) read with 25 (5) of the Border Security Force Rules, 1969 (‘BSF Rules’), the request of the Petitioner for being referred to a Review Medical Board (‘RMB’) ought to have been allowed by the Respondents.

5. Following the order dated 31st July 2018, the Petitioner was sent up before the RMB which gave its report on 27th September, 2018. This time, the RMB diagnosed the Petitioner’s percentage of disability due to ‘schizoaffective disorder’ as 45%. The RMB has opined that the Petitioner is unfit for further service in the BSF.

6. Following the above opinion dated 27th September, 2018 of the RMB the Deputy Inspector General (‘DIG’) passed an order which was communicated to the Petitioner by the Commandant by the impugned order dated 13th October, 2018 retiring the Petitioner from service on medical invalidation with effect from 17th October, 2018.

7. There are two contentions raised by the Petitioner. The first contention is that the order, consequent upon the opinion of the RMB, had to be passed by an officer superior to the DIG. It was however passed by the DIG, on approval of the Inspector General (IG) (Medical). According to the Petitioner it should have been passed by the IG.

8. Counsel for the Respondent on the other hand seeks to submit that since

the DIG had passed the order with the approval of the IG (Medical), the requirement of Rule 25 (6) of the BSF Rules, 1969 was complied with. This Court is unable to agree with the above submission of counsel for the Respondent. The officer immediately superior to the DIG in this hierarchy is not the IG (Medical) but the IG. Since the impugned order was not passed by the IG, it cannot be considered to be in compliance of the requirement of Rule 25 (6) of the BSF Rules.

9. The second contention of the Petitioner is that even in the order dated 24th January, 2019 passed by the IG rejecting the representation of the Petitioner against the impugned order dated 13th October 2018, it was noted in paragraph 8 that the Petitioner had performed the duties of Office Runner in the Unit from 9th August, 2017 to 19th September, 2017 and Exchange Operator at SHQ, BSF, Dhubri from 20th September, 2017 to 6th July, 2018, and that his performance in the above duties was adjudged by the Unit at SHQ, BSF, Dhubri as 'average'. It is contended on this basis that if the Petitioner's work was adjudged 'average' then clearly he could not be held to be permanently unfit. The further contention is that the percentage of disability determined by the RMB as 45% is less than the earlier determination of the original Medical Board of 54% and clearly therefore there is an improvement in the medical condition of the Petitioner.

10. The Court would not like to consider the above submissions on merits made by the Petitioner, since in the considered view of the Court there has been a non-compliance with Section 25 (6) of the BSF Rules for reasons already indicated.

11. Consequently, this Court, while setting aside the impugned order dated 13th October, 2018 of the Commandant communicating the decision of the DIG, and the subsequent order dated 24th January, 2019 of the IG, directs the matter to be placed again before the IG for a fresh decision by the IG himself in compliance with Rule 25 (6) of the BSF Rules. The IG will take into account the above submissions of the Petitioner made on the basis of the initial Medical Board and the subsequent RMB and the service record of the Petitioner which adjudged his performance during the period under consideration as 'average'. A fresh decision of the IG will be uninfluenced by the earlier decision resulting in the impugned order dated 13th October, 2018.

12. If the IG considers it necessary that the current medical status of the Petitioner should be further determined, it will be open to him to constitute yet another medical board for that purpose. It is made clear that if the Petitioner is aggrieved by the order of the IG as a result of this order it will be open to the Petitioner to seek appropriate remedies in accordance with law.

13. Learned counsel for the Respondent on instructions states that the exercise pursuant to the present order will be completed by the Respondents within a period of four weeks from today. The statement is placed on record. The Petitioner's salary during the period since the passing of the impugned order be released to him forthwith.

14. The petition is disposed of in the above terms. Order *dasti*.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 30, 2019

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