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

+ W.P.(C) 8059/2019

VARUN PRABHAT

..... Petitioner

Through: Mr. Bahar U Barqi, Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Dilbagh Singh, Adv. for R-1 to
R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

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26.07.2019

C.M. No. 33358/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 8059/2019 & C.M. No. 33357/2019

The petitioner has preferred the present writ petition to assail the order dated 26.02.2019, passed by the respondents under Rule 17A of the BSF Rules whereby the petitioner has been discharged by the respondent BSF, since, during his probation period, he could not clear the requisite tests conducted by the respondents.

The petitioner was issued a show cause notice dated 09.02.2018

asking him to show cause as to why he should not be discharged since he had failed to clear the testes despite repeated opportunities. The show cause notice takes note of the fact that during his training period, he had sustained injuries in his right hand as he fell down from the stairs of the hostel. Consequently, he was relegated for a period of three months and his tests were conducted thereafter. He could not qualify the test. He was given another opportunity where again he failed. Even though the respondents were not obliged to give him yet another opportunity, leniency was shown to the petitioner and he was yet again given another opportunity. Once again, he failed to qualify in the test. Consequently, the respondents have discharged the petitioner from the force.

The submission of learned counsel for the petitioner is that the petitioner's performance improved during these successive tests. He further submits that two of the officers acted mala fide against him.

We do not find any merit in either of these submissions. It is for the respondents to judge and gauge the performance of the officers/ trainees and it is not for this Court to interfere with the decision of the respondents in this regard. The respondents were conscious of the injury suffered by the petitioner and, consequently, gave him three opportunities after providing for sufficient time for recovery. The petitioner, admittedly, did not clear the tests. The standards adopted by the respondents are not justiciable and this Court cannot interfere merely because the petitioner claims to have failed only in one test in the final attempt.

The allegations of mala fide, in our view, have no merit. The petitioner has neither impleaded the officers against whom he alleges mala fide, nor disclosed as to what role the said officers had to play in his final

assessment. The fact that the petitioner was repeatedly shown indulgence and given an opportunity even after the final opportunity, itself shows that there was no mala fide in the conduct of the respondents.

Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 26, 2019

N.Khanna