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

+ **W.P.(C) 1575/2016**

RAJIB CHAKRABORTY Petitioner
Through Mr. Anshul Mahajan, Advocate

versus

DIRECTOR GENERAL, INDO-TIBETAN BORDER POLICE &
ANR Respondents
Through Mr. Kirtiman Singh, CGSC with
Ms. Shruti Dutt, Advocates
Mr. Arun Bhardwaj, Advocate for
Respondent/UOI

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
24.04.2019

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1. The Petitioner got selected for the post of Constable (General Duty) in the selection held on 19th May, 2007 and joined duties with the 37th Battalion on 6th June, 2007.

2. On 27th October, 2009 a communication was addressed by the Commandant of the base hospital at Tigiri Camp, New Delhi to the Commandant of the 32nd Battalion stating that the Petitioner had been placed under a low medical category at E-5 on account of colour blindness.

3. The Petitioner underwent medical examination at the base hospital, New Delhi on 23rd February, 2010 where it was confirmed that he was suffering

from colour blindness. The board recommended that he be medically boarded out of service.

4. On 31st December, 2010 the Petitioner was discharged from active services of the ITBP. Following decisions of this Court in several matters, a circular had been issued by the Ministry of Home Affairs, (Police-II Division) on 27th February, 2013 issuing new policy guidelines regarding retention of personnel in the Central Armed Police Forces, who have defective vision including colour blindness. Clause 3 of the new policy guidelines read as under:-

“(iii) It is however, clarified that the present directions will only apply prospectively. Those personnel recruited earlier and thereafter found to be colour blind will not be boarded out on account of colour blindness. But, it is reiterated that, any person recruited herein after, if found colour blind even after recruitment shall promptly be boarded out of service. Keeping in view the directions of the Hon'ble High Court and in public interest, the services of the colour blind personnel recruited prior to 18.05.2012, would be utilised for the jobs where public safety issues are not involved. Some of the posts/cadres identified for such personnel by CAPFs are enlisted in the Annexure-I.”

5. Clause (iv) states that an undertaking shall be taken from selected candidates in future at the time of joining that if they are found to be colour blind, they will be boarded out as per the SHAPE policy in vogue. However, in terms of clause (iii) above, those who were recruited prior to 18th May, 2012 would not be boarded out and their services will be utilised “for the jobs where public safety issues are not involved”. In the present case with the Petitioner having been recruited prior to 18th May, 2012, the benefit of the above policy guidelines is available to him.

6. In that view of the matter, the impugned order dated 31st December, 2010 passed by the Respondents discharging the Petitioner from active service of the ITBP is hereby set aside. Consequently, further impugned order dated 22nd July, 2014 passed by the Respondents declining to reinstate the Petitioner in service is also hereby set aside.

7. The Respondents will issue the necessary orders reinstating and re-deploying the Petitioner in a job where public safety issues are not involved within a period of twelve weeks from today. The Petitioner would be entitled to all consequential benefits but there would be no arrears of pay for the period from 1st January, 2011 till the date of his reinstatement. The period between the date of his boarding out and the date of reinstatement would not be constituted as a break in service but on duty.

8. The petition is allowed in the above terms.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 24, 2019

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