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

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NIRAJ KUMAR

W.P.(C) 6233/2018

..... Petitioner

Through: Mr Anurag Chuodhry, Mr Saurabh
Jain and Ms Sarika, Advocates.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr Manish Mohan, CGSC for UOI
with Ms Manisha Saroha, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

19.02.2019

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1. The prayers in the writ petition read as under:

- “(a) direct the Respondent to accord notional seniority and all other consequential benefits to the Petitioner with immediate effect, as has been granted to two other officers namely Mr. Man Singh [W.P. (C) No. 2887/2012] and Mr. Ajay Tripathi [W.P. (C) No. 2893/2012]) in the LDCE 2010-11 selection pursuant to the notification dated 16th April, 2011;
- (b) issue directions to the Respondent to treat the seniority of the Petitioner in par with the other selected candidates of LDCE 2010-11 with immediate effect;
- (c) allow the present petition of the Petitioner in the interest of justice;
- (d) quash the reply/letter dated 11.05.2017 issued by the Respondent (i.e. Annexure P-8) being contrary to the principles of natural justice and law of parity;

- (e) pass any further order/orders, direction/directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”

2. There is a history to the litigation. The Petitioner applied for the post of Assistant Commandant (General Duty) for which he competed in the Limited Departmental Competitive Exam ('LDCE') even while working as Sub Inspector ('SI') in the Central Industrial Security Force ('CISF').

3. The examination was held on 19th June, 2011. The Petitioner successfully cleared the written examination. However, when he underwent medical examination on 20th September, 2011, he was declared medically unfit on account of 'Ptosis in the right eye'. The defect apparently results in lowering of the eyelid. Given the nature of the disability, the Respondents concluded that he could not be selected and promoted to the post of AC (GD).

4. Subsequently, the Petitioner got himself examined at AIIMS by Dr. M.S. Bajaj who declared him medically fit. He appealed to the Review Medical Board on 17th October 2011 and the board suggested "Posis Re" surgery at AIIMS. Admittedly, the Petitioner underwent surgery on 9th December, 2011 for the defective vision. When he was again examined post surgery on 14th December, 2011, he had a normal eye vision.

5. In the first round, the Petitioner filed W.P.(C) No.2756/2013, questioning the cancellation of his candidature. By a detailed order dated 28th July, 2015, this Court allowed the writ petition with the directions to the Respondents to constitute a fresh Medical Board for examining the Petitioner. This Court, in

the last portion of the judgment dated 28th July, 2015 further observed as under:

“...In case the petitioner is found fit and the respondents are unable to accommodate him for want of vacancies, a direction is issued to adjust him in respect of later/future vacancies given that he was successful having regard to the above guidelines. The writ petition is allowed in the above terms..”

6. Unfortunately, the Medical Board was not constituted within the time stipulated. This led to the filing of the CM No.24272/2015 by the Respondents. Whilst the Court was assured that the medical examination would be done within two weeks from that date, the Court extended the time for that period and disposed of the application by the order dated 19th October, 2015.

7. Ultimately, the Petitioner was taken in as an AC, but with a subsequent batch of 2017 where vacancies were available.

8. The central plank of the Petitioner's submission, as recorded in the order dated 31st May, 2018 passed by this Court is that there were two other persons, namely, Mr Man Singh and Mr Ajay Tripathi, who had filed W.P.(C) Nos. 2887 and 2893 of 2012 respectively. According to the Petitioner, since those two Petitioners had a similar grievance as the Petitioner and have been granted the relief of fixation of notional seniority by 2011 onwards when they were selected, and this happened pursuant to the intervention of this Court in the aforementioned writ petitions, the Petitioner cannot be treated differently by the Respondents.

9. In response, it is pointed out by learned counsel for the Respondents that the two Petitioners in W.P.(C) Nos. 2887 and 2893 of 2012 (Mr Man Singh and Mr Ajay Tripathi) were earlier disqualified on the medical ground of having a 'squint'. The Review Medical Board found that they did not have any 'active squint', which alone constituted a disqualification. There was a case of 'latent squint' and no correction in the medical condition had to take place on account of any surgery. It was under those circumstances that the fixing of the notional seniority of Mr Man Singh and Mr Ajay Tripathi along with the 2011 batch was understandable.

10. The Petitioner's case, however, is on a different footing. After the written test, in order to correct his low vision, he underwent surgery and it is only after the result of this medical examination became known, that he qualified for being selected as AC (GD). Conscious of this possibility, that there may be no vacancies to accommodate the Petitioner with the 2011 batch, in the first round, this Court had in its order dated 28th July, 2015, clearly stated that if the Respondents were unable to accommodate the Petitioner for "want in vacancies", he should be adjusted in "against later / future vacancies". It is not the Petitioner's case that there were any vacancies in 2011 batch against which he could have been accommodated, after he was declared medically fit. Having undergone the surgery after the written test, and having been cleared of the disability only on 9th December, 2011, the Petitioner cannot possibly expect to be treated on par with Mr Man Singh and Mr Ajay Tripathi, whose case is, as noted hereinabove, stood on a different footing.

11. It is also not the Petitioner's case that there was any other vacancy prior to 2017 when he was ultimately adjusted against the said vacancy. He, therefore, cannot claim notional seniority from the date of grant of such seniority to Mr Man Singh and Mr Ajay Tripathi.

12. The Court finds that no error having been committed by the Respondents in declining the prayer of the Petitioner that he should be given notional seniority from 2011 batch. There is, therefore, no merit in the writ petition and the same is accordingly dismissed. No costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 19, 2019
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