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

+ **W.P.(C) 9896/2015**

PARDEEP

..... Petitioner

Through: Mr. Dharmendra Sharma with Mr.
Sumit Singh, Advs.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Vivekanand Mishra with Mr.
Vipul Aggarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER
08.07.2019

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The petitioner has preferred the present writ petition being aggrieved by the order of promotion dated 23.05.2012, whereby the juniors of the petitioner were promoted over and above the petitioner. He also seeks a writ of mandamus commanding the respondents to promote the petitioner to the post of AC/GD over and above his juniors and grant all consequential benefits. The matter was heard by the Court on 23.10.2018 when the following order was passed.

“1. After hearing the submissions of learned counsel for the Petitioner, the Picture that now emerges is as under:

i) The Petitioner’s medical category as of 1 st February, 2012 was such that he would not have been entitled to promotion to the next, higher post of Assistant Commandant as of that date. However, his medical categorisation was T-24 which meant

that his next review of medical status was due after 6 months i.e. on 1st August, 2012.

ii) A DPC that was held on 20th April, 2012 purportedly went by the Petitioner's medical categorisation as on 1st February, 2012 and therefore did not consider him for promotion to the next higher rank of Assistant Commandant.

iii) For reasons that are not clear, instead of holding the next review of the medical status of the Petitioner on 1st August, 2012, the Respondents held a pre-mature review on 11th May, 2012 which categorised the medical status of the Petitioner as being 'Shape-1'. This medical category entitled the Petitioner to be considered for promotion to the rank of Assistant Commandant.

iv) The Respondents did not act on the medical categorisation granted to the Petitioner on 11th May, 2012 on the ground that subsequent investigations which began in January, 2013 revealed that the medical review that took place on 11th May, 2012 was illegal.

v) The next review of the Petitioner's medical status took place by means of a fresh Medical Board only from 17th February, 2014 to 22nd February 2014 where his medical categorisation as it was prior to 1 st February, 2012 i.e. 'Permanent Low Medical Category' was retained whereby he was considered to be permanently disabled and the next review was due only after two years. Since then, two more reviews have taken place on 22nd March 2016 and 12th April 2018 whereby this categorisation has been retained.

2. It, therefore, transpires that because of the mistake on part of the Respondents in not conducting a review on 1st August, 2012 as part of the original schedule, where the Petitioner's medical categorisation could have been what it was on 11th May, 2012, viz., 'Shape-1', the Petitioner's chance for being considered for promotion to the rank of Assistant Commandant was forgone.

3. What is however not clear is whether between 20th April, 2012 and January, 2014 any further DPC took place to consider the promotions from the rank of Subedar Major to that of Assistant Commandant.

4. Both the parties are permitted to file affidavits on this

specific aspect at least one week prior to the next date.

5. The records of the Respondents also be kept ready for perusal of the Court on the next date.

6. List on 13th March, 2019.”

The respondents have filed their additional affidavit wherein they have stated that between 20.04.2012 and January, 2014, no DPC was convened due to stay of promotion of technical cadre officers in General Duty Cadre vide order dated 08.01.2013 in W.P. (C) No. 7545/2011, titled ***Saurabh Dubey and Ors. v. Union of India and Ors.***, the respondents have stated that no DPC was convened for promotion to the post of Asst. Commandant. in merged GD cadre where the technical cadre officers were occupying place in the combined seniority list.

Learned counsel for the respondents submit that since no DPC was held between 20.04.2012 and January, 2014 i.e. during the period before the petitioner was placed in permanent low medical category, no prejudice has been caused to the petitioner and he has no claim to stake for promotion. On the other hand the submission of learned counsel for the petitioner is that the DPC was held on 26.07.2014 which considered the candidates for promotion as per the vacancy years. In relation to vacancy year 2013-14 the case of the petitioner was considered at serial No.8 and he was declared to be unfit due to low medical category E-2(P).

Learned counsel submits that for the vacancy year 2013-14, the petitioner's medical categorisation should have been treated as Shape-1 since he was found to be in Shape-1 in May 2012 and the fresh Medical Board took place only in February 2014. Learned counsel submits that the petitioner was in Shape-1 in the Medical Board conducted on 18.10.2012

and 04.10.2013.

We find no merit in this submission of the petitioner. The purpose of the Court requiring the respondents to disclose whether, between 20.04.2012 and January, 2014 no further DPC took place to consider the promotion from the rank of Subedar Major to that of Assistant Commandant was to find out whether the petitioner was put to any disadvantage on account of his not being considered by the DPC, if held during that period since he was, as a matter of fact, in Shape-1 till his medical categorisation was downgraded by the Medical Board held between 17.02.2014 to 22.02.2014. When the DPC considers the candidates for promotion, their medical categorisation, as it exists at the time when the DPC is held, would have to be taken into consideration. If for any reason, the DPC is held on a later date and it considers the cases of candidates who are otherwise falling within the zone of consideration for a particular earlier year, it is not that the medical categorisation, as it existed during the year for which consideration is taking place, would be considered. In any event, for the year 2013-14, the Medical categorisation of the petitioner stood downgraded to “Permanent Low Medical Category” in February 2014 itself which falls within the financial year 2013-14.

We, therefore, find no merit in this petition.

Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 08, 2019

N.Khanna