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

+ **W.P.(C) 4028/2017**

SHUBHASH KHICHAR

..... Petitioner

Through: Mr. Sudhir Naagar and Mr. Arif
Khan, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondent

Through: Mr. Prasanta Varma, Senior Central
Govt. Counsel with Mr. Amrit S.
Khalsa, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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28.11.2019

1. The following order was passed by this Court on 13th December, 2017:

“1. The petitioner seeks directions to the respondent no.2/BSF to conduct his fresh review medical examination for being considered for promotion to the post of Sub-Inspector in BSF.

2. Learned counsel for the petitioner states that the petitioner had joined the services in BSF on the post of Constable in the year 2009.

3. In the year 2016, when a notification was issued by the respondent no.2 for recruitment to the post of Sub-Inspector through Limited Departmental Competitive Examination (LDCE), the petitioner had applied for the same and upon clearing the written examination followed by physical test, he

was called for medical examination which was conducted on 10.11.2016, wherein he was found 'unfit' due to "Right Testicular Atrophy and Varicocele left".

4. Within a week thereafter the petitioner got himself operated for his aforesaid medical condition of "Right Testicular Atrophy and Varicocele left". After undergoing surgery for the aforementioned medical condition the petitioner requested for a review medical examination, which was conducted on 18.12.2016, but his candidature was again turned down by the Review Medical Board that declared him unfit on the ground of "operated unfit".

5. Learned counsel for the petitioner submits that respondents have conducted his medical examination as if he was applying for a fresh appointment in the BSF, which is incorrect as the petitioner was already working on the post of a Constable and had only applied for promotion to the next higher post of a Sub-Inspector, through LDCE. He submits that Annexure P-6 filed alongwith the present petition comprises of Medical Category Certificates issued by the respondent in favour of the petitioner in the years 2016 and 2017 and both the Said certificates show that he had been placed in medical category 'SHAPE-L. In such circumstances, the respondents could not have rejected the petitioner merely on the ground of his having undergone a surgery as the medical yardsticks applicable to him would be entirely different from those applicable to fresh recruits. In support of his submissions, learned counsel for the petitioner refers to the judgments in the case of *Man Singh v. Union of India* reported as 2012 see (ONLINE) DEL 6360 and *Satvir Singh & Ors. v. Union of India & Ors.* reported as 2015 See (ONLINE) DEL 7272.

6. Copies of the said decisions have been handed over to the counsel for the respondents who states that he may be permitted to examine the said decisions and the legal position set out therein before addressing arguments.

7. At the request of counsel for the respondent list on 21.02.2018.”

2. As it transpires, the requisite period of waiting after the surgery is long over. However, the Respondents are not prepared to have a further Review Medical Board, as it is not provided for in the rules.

3. The Court notes that the earlier Review Medical examination declared him ‘unfit’ only on a technical ground that a period of 6 months had not elapsed after his surgery. Therefore, the Court considers it to be in the interests of the justice that the Petitioner be again examined by another Review Medical Board.

4. A direction is issued to the Respondents to subject the Petitioner to a Review Medical examination within four weeks. The date and time of such examination will be informed to the Petitioner at least four days in advance. If found fit in the Review Medical examination, the Petitioner will get his promotion as Sub-Inspector from the date of being found fit against the current vacancy and will not claim seniority or other incidental benefits along with his batch mates who may have cleared the test in 2016 itself.

5. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 28, 2019/pa