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

+ **W.P.(C) 9642/2017**

DR. ANIL KUMAR BARANWAL CMO (SG) Petitioner
Through Mr. Aditya Dewan, Advocate

versus

UNION OF INDIA & ORS Respondents
Through Mr. Rajesh Kumar, Ms. Santwana,
Advocates with Mr. M.Viswakarma,
Inspector, BSF

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **30.09.2019**

Dr. S. Muralidhar, J.:

1. A medical officer serving with the Border Security Force ('BSF') has filed the present petition challenging the proceedings, opinion and finding of the Staff Court of Inquiry ('SCOI') dated 29th August, 2015 which held that the spinal injury suffered by the Petitioner was during the Senior Medical Officer Management Course ('SMOMC') at Tekanpur in January-February, 2009 and not in the course of his election duty at Chhattisgarh in November 2008. As a result, it was concluded that the injury sustained by the Petitioner was not attributable to bonafide government duty.

2. The facts in brief are that the Petitioner joined the BSF in Tekanpur as Medical Officer on 25th July, 1994. On 31st July, 1999 he joined the 151st

Battalion, BSF on permanent posting from the 108th Battalion.

3. On 7th November, 2008 on instructions the Petitioner travelled by road in an official Gypsy to Sukma, Dantewada, Chhattisgarh for election duty. According to the Petitioner the road was quite uneven and bumpy. He suffered not just severe exhaustion but developed certain internal back injuries. The Petitioner states that during the course of the election duty in Chhattisgarh he underwent symptomatic treatment at various hospitals at Sukma, Gagdapur, Raipur and Bilaspur. The Petitioner states that prior thereto he never had any back problems.

4. The Petitioner returned from Bilaspur after completion of his election duty on 22nd November, 2008. The composite hospital of the BSF at Kolkata referred him to the Nil Ratan Sarcar Medical College and Hospital on 24th November, 2008 for treatment. He received treatment there till 22nd December, 2008. The Petitioner thereafter reached the 108th Battalion at Farakka where his condition worsened. He was admitted to the Government Hospital, Malda from 17th to 22nd December, 2008.

5. Around the period between December, 2008 to January, 2009 the Petitioner was detailed for SMOMC at Tekanpur which began on 12th January, 2009. The Petitioner's request for deferring his participation in the SMOMC on medical grounds was not acceded to. After reaching Tekanpur for attending the course he submitted an application to the DIG, Tekanpur. However, on instructions of the Commandant, the Petitioner was constrained to continue the course.

6. As part of the course between 12th January, 2009 and February, 2009 the Petitioner was required to travel a lot by vehicles, attend PT and undertake other rigorous physical work all of which strained his back. The Petitioner's back ache resurfaced and developed into an acute Lower Back Pain. The Petitioner consulted an orthopaedic at the Composite Hospital at Tekanpur on 20th January, 2009. He was advised to take symptomatic treatment and physiotherapy at the Composite Hospital's ('CH') Department of Physiotherapy for 10-15 days. The Petitioner states that he somehow completed the SMOMC by attending important classes, but remaining in rest most of the time.

7. On 8th March, 2009 the Petitioner returned to the 108th Battalion but again developed a severe back ache. Since the back pain did not subside, the Petitioner was admitted to the Calcutta Medical Research Institute, Kolkata ('CMRI'), on being referred by the CH, Kolkata, between 13th and 24th March, 2009 for treatment of Prolapsed Intervertebral Disc ('PIVD') and Spondylitis. At the CMRI the Petitioner was diagnosed as a case of "PIVD L5S1 with spondylosis in MRI of Lumbosacral Spine" and also "left maxillary sinusitis in CT Brain PNS" during a thorough medical examination. The petitioner was advised physiotherapy as SWD and USW with spinal exercise for 5-7 days there and surgery for sinusitis. On medical advice he was at bed rest after discharge between 25th March and 7th April, 2009.

8. The Petitioner states that he was detailed for the Amarnath Yatra with effect from 12th June, 2009 although he had recovered only partially. He requested his Commandant (Medical) to categorise him as SHAPE-1 but this

was not acceded to. He also requested that he should be given duty in a low plane area. However, he was posted at Sheshnag at the height of 12000 feet above sea level with temperatures below the freezing point. As a result of the frequent uphill and tiresome local conditions the Petitioner's back injury resurfaced in an aggravated form.

9. After returning to his new unit with the 151st Battalion at Farakka on 31st July, 2009 the Petitioner was again under constant medical supervision, advice and guidance of orthopaedics and neurologists. The Petitioner's condition, however, did not improve. He went to the CH, Kolkata for Annual Medical Examination 2009, where he was awarded 'LMC S1H1A3(T-24) P1E1' as a case of PIVD L5S1 by the Medical Board. This was approved by the IG (Medical), Frontier Head Quarters ('FHQ'). Later, with effect from 15th September, 2010 the Petitioner was again awarded LMC S1H1A3(T-48) P2(T-48) E1 by the Medical Board at Kolkata.

10. The Petitioner submitted an application for justification in respect of the PIVD injury suffered during election/Government duty at Chhattisgarh in November, 2008 that was further aggravated during the SMOMC at Tekanpur in January/February, 2009. On 9th May, 2011, Dinesh Chand Singh, Deputy Commandant/Adjutant of the 151st Battalion was ordered to conduct the Court of Inquiry ('COI') to investigate the circumstances under which the Petitioner had sustained the PIVD injury. In other words, to inquire whether the injury was sustained during election duty in Chhattisgarh in November, 2008 and aggravated during the SMOMC at Tekanpur in January, 2009. However, the Petitioner states that the COI

proceedings were not shared with him.

11. By a note dated 18th May, 2011 the Commandant, 151st Battalion agreed with the findings and opinion of the COI and held as under:

“a. Petitioner sustained injury in his back on 07.11.2008 while going in gypsy vehicle from Sukma to Dantiwara (sic) due to jerks on Kachha road during election duty in Chhattisgarh when he was part of Adhoc Bn and posted to 108 Bn BSF.

b. Petitioner's injury was diagnosed as PIVD at CH Tekanpur on 20.01.2009. He remained in hospital for PIVD treatment:

1. Between 20.01.2009 and 07.03.2009
2. Between 13.03.2009 and 24.03.2009, and
3. On rest between 25.03.2009 and 07.04.2009.

c. As the Petitioner, a doctor, sustained injury on his back while being on bona fide active Government duty, it was directed that:

i. The period for which the Petitioner remained admitted in hospital and under rest would be treated as Commuted leave.

ii. Petitioner would appear before a medical board for assessing disability, if any.

iii. All the financial benefits, as admissible under rules, would be available to him.

iv. Expenditure on his treatment would be borne by the state.”

12. On 3rd July, 2013 the Petitioner sent a letter to the Commandant (Training), STC, BSF, Kharkan Camp, Punjab requesting an extract of the COI which had not been provided to him. The Petitioner sought the said information in order to approach the Director General (‘DG’), BSF for

justification in respect of the PIVD injury. The Petitioner states that by Signal No. A/1745 dated 21st August, 2013 of the FHQ (Medical) he was asked about the medical category for DACP and for grant of grade pay allowable to CMO (SG). However, since by this time the opinion of the COI was pending with the Respondents, the Petitioner was not considered for DACP.

13. In a representation dated 1st September, 2013 to the DG, BSF the Petitioner gave the complete background of the injury sustained by him during active Government duty and requested that he may be considered for DPC under the DACP for grant of grade pay in light of his PIVD injury under Low Medical Category (LMC).

14. The Commandant (Medical) FHQ, BSF in a letter dated 4th November, 2013 to the STC, BSF, Kharkan, Punjab informed the latter about the receipt of documents of the Petitioner pertaining to the DACP scheme from the FHQ for comments on the basis of COI extract. The Petitioner in the meanwhile on 13th January, 2014 sent another representation to the DG, BSF for considering PIVD injury under LMC category and again requested for a DPC under the DACP for grant of grade pay. He also submitted the requisite documents by a letter dated 2nd February, 2014. The COI proceedings were forwarded by the DC, 151st Battalion, BSF to the SHQ, BSF, Behrampur on 11th April, 2014.

15. On 23rd April, 2014, a Signal was sent by the DIG, STC, BSF to the 151st Battalion for forwarding the COI proceedings through proper channel

along with remarks of the FTR, IG and Special DG (WC). Late in 2014, the Petitioner learnt of the acceptance of the COI by the DIG, SHQ, Srinagar on 16th October, 2014 and the IG, FTR HQ, BSF, Kashmir on 19th December, 2014.

16. However, the Petitioner after seven months received a copy of an order dated 25th July, 2015 directing him to remain present for a fresh SCOI at the FHQ, BSF, Rajasthan under a different DIG. This was for again considering whether the PIVD injury sustained by the Petitioner was during active Government duty at Chhattisgarh in November, 2008 and SMOMC at Tekanpur in January, 2009.

17. The Petitioner states that there was no reason assigned for ordering a fresh SCOI. Nevertheless, the Petitioner appeared before the fresh SCOI on 29th July, 2015 and got statements recorded as Witness No.1. He explained in detail however he had suffered the back injury while travelling in Chhattisgarh on 7th November, 2008 which was aggravated during his election duty and SMOMC at Tekanpur.

18. The Petitioner states that the fresh SCOI was not conducted by a medical specialist. The impugned opinion dated 29th August, 2015 was rendered by the SCOI stating that the Petitioner had developed his medical problem not during election duty at Chhattisgarh but in the course of the SMOMC at Tekanpur in January/February, 2009 and therefore the injury was not sustained by the Petitioner during active Government duty. This was approved by the IG, BSF, Rajasthan Frontier on 21st September, 2015 and

the remarks of the Special DG was shared with the Petitioner by a communication dated 10th December, 2015.

19. The Petitioner sent a detailed representation to the DG, BSF. The Petitioner was aggrieved by the denial of the grade pay of Rs. 8,900/- and sent a legal notice to the DG, BSF on 27th April, 2016. A reply was sent on 15th December, 2016 by the Respondents rejecting all of the Petitioner's prayers and adding a fresh allegation about the Petitioner showing lack of maturity while dealing with a female colleague, using abusive language in the presence of ladies etc. The Petitioner states that this was contrary to the APAR for the period 1st April, 2015 to 11th January, 2016 where the Petitioner was rated consistently as 'Very Good' by the DIG (Medical), Jodhpur and 'Excellent' by the IG (Medical) and Additional DG. He was also informed of the award of DG's displeasure on 1st December, 2015. The Petitioner states that this was without any official notice or inquiry and had no relevance in the context of the issue on hand, which related to non-acceptance of the COI report in 2011. It is in the above circumstances that the present petition was filed.

20. Pursuant to the notice issued in the petition, a counter affidavit has been filed by the Respondents. The stand taken by the Respondents is that the Petitioner did not report about his alleged injury till two years had lapsed and this appeared therefore to be an afterthought "just to justify his injury and obtained service benefits". It is maintained that the injury sustained by the Petitioner was not attributable to bona fide Government duty and therefore he is not entitled to the DACP benefit. Mention is also made about

the DG's displeasure on 26th November, 2015 *inter-alia* for showing immaturity in conduct while interacting with his colleague Lady Medical Officer; using abusive language without caring for the presence of ladies; "slightly gender biased" and interfering with the Junior Officer's work. It is stated that the Petitioner's name was forwarded for grant of Dynamic Assured Career Progression ('DACP') Scheme for 2010-11 but the Petitioner was not found fit by the DPC for grant of grade pay of Rs. 8900/-.

21. As regards holding the fresh COI, the COI proceedings initially conducted were against the instructions issued by the FHQ, BSF on 19th/20th April, 2007 read with an order dated 11th September, 2014. In other words, it should have been ordered by the concerned IG of the Frontier and the COI proceedings that were conducted had to be sent to the FHQ for approval of the DG (BSF) but that was not so done.

22. It is not disputed by the Respondents that the Petitioner did receive treatment as stated by him in the petition on various dates. However, with regard to the claim of the Petitioner that he suffered injury during election duty at Chhattisgarh, it is averred that during the SCOI no documentary proof was produced by the Petitioner in support of such a claim. The few OPD slips produced by the Petitioner related to fever, nausea etc. and were therefore considered not relevant. It is maintained that the Petitioner sustained his medical injuries only when he attended the SMOMC at Tekanpur in January, 2009. It is alleged that the Petitioner seeks "illegal advantage of the benefits conferred by Government".

23. This Court has heard the submission of learned counsel for the parties. The Court has also perused the original records.

24. It is not disputed by the Respondents that the first SCOI did confirm that the Petitioner suffered a PVID injury during active Government election duty at Chhattisgarh in November, 2008. The objection to the said SCOI by the Respondents appears to be a hyper technical one. There is no reason to doubt the diagnosis of the problem being undergone by the Petitioner by the first Medical Board which was approved by the IG. There is no reason why the Petitioner was disbelieved subsequently by another medical board when he stated that he had suffered the injury during election duty at Chhattisgarh in November, 2008. It is a competent authority that detailed the DC to conduct the COI by an order dated 9th May, 2011. Those proceedings were in fact approved by the DIG, SHQ, Srinagar on 16th October, 2014 and by the IG, FTR Headquarters, Kashmir on 19th December, 2014. The averment to this effect is made in paragraph 26 of the writ petition in reply to which there is no denial except to state that the medical documents relating to the treatment of the injury produced by the Petitioner before the SCOI were indeed considered by the Commandant of the FHQ, BSF, Rajasthan. In other words, it has not been able to be disputed by the Respondents that the concurrent view expressed by the DIG and the IG accepting the first SCOI was that the Petitioner did suffer the injury while on active Government duty in Chhattisgarh in November 2008 while on election duty.

25. The Court finds that the explanation by the Respondents for constituting a fresh SCOI after the earlier one had been approved by the IG is not

convincing. As noticed earlier, it is a purely technical objection that is being raised that it should have been ordered by the concerned IG and then sent to the FHQ for approval of the DG. Since the superior officers had indeed endorsed the earlier findings, there was no occasion to constitute a fresh SCOI which virtually reversed the earlier opinion of the first SCOI, which was also based on the medical records of the treatment received by the Petitioner from time to time. The conclusions of the earlier SCOI have not been disputed by the Respondents even in the counter affidavit.

26. The fact that the Petitioner may have been awarded the DG's displeasure for reasons completely unrelated to the issue at hand should not come in the way of the Petitioner being granted the benefit of the DACP and revision of his grade pay.

27. As a result, the Court concludes that the subsequent SCOI held at the instance of the HQ, BSF, Rajasthan and the conclusions reached by it in the impugned proceedings dated 29th August, 2015 are unsustainable in law and are hereby set aside. Consequently, the remarks of the IG, BSF dated 21st September, 2015 accepting the second SCOI are also set aside.

28. A direction is issued to the Respondents to act on the first SCOI which has been accepted both by the DIG and IG and grant the Petitioner the benefit of the grade pay of Rs. 8900/- as part of the DACP benefit and issue the necessary orders not later than four weeks from today. The arrears would be paid to the Petitioner within twelve weeks failing which he would be entitled to 6% simple interest on the said amount for the period of delay.

29. The petition is allowed in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 30, 2019

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