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

W.P.(C) 6717/2018

H. C. RAM NARESH

..... Petitioner

Through: Mr. R.K. Shukla & Mr. D.S. Badiyar,
Advts.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC
with Mr. Kushagra, Adv. with Mr.
Sanjay Yadav (D JAG ITBP).

AND

+ W.P.(C) 3906/2020 & CM APPL. 13970/2020 (for interim relief).

H.C. RAM NARESH

..... Petitioner

Through: Mr. R.K. Shukla & Mr. D.S. Badiyar,
Advts.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jayant Bhatt, Sr. Panel Counsel
with Ms. Deepali Suri, Mr. Mohit
Dagar and Mr. Waize Ali Noor, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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24.07.2020

[VIA VIDEO CONFERENCING]

W.P.(C) 6717/2018 and W.P.(C) 3906/2020 & CM APPL. 13970/2020
(for interim relief).

1. W.P.(C) No.6717/2018 was filed seeking a mandamus to the respondents Indo-Tibetan Border Police (ITBP) to obtain a third medical opinion to find out the truthfulness of the finding of Alcohol Dependence Syndrome (ADS) returned by the Medical Board and the Appeal Medical Board, by referring the petitioner either to All India Institute of Medical

Sciences (AIIMS) or to Dr. Ram Manohar Lohia (RML) Hospital or to any other hospital and to extend to the petitioner all the benefits of the orders passed by this Court in W.P.(C) No.7875/2017 titled *Sanjay Yadav Vs. Union of India*.

2. It was the case of the petitioner in W.P.(C) No.6717/2018, (i) that he joined the respondents ITBP in March, 2002 as Head Constable (Telecom); (ii) that in the year 2017 he was placed under medical category and examined by the concerned doctor and on the basis of examination by the psychiatrist the petitioner was subjected to a Medical Board; (iii) that the Medical Board declared the petitioner suffering from disease of ADS and recommended for invalidation out from service of ITBP with immediate effect; (iv) that a Show Cause Notice dated 21st December, 2017 was issued to the petitioner advising him to submit representation/appeal within 30 days, against the Medical Board decision; (v) that on 5th January, 2018 the petitioner got himself medically examined from the Principal Medical Officer of R.B.D.K. Hospital, Jhunjhunu, Rajasthan, who vide certificate dated 5th January, 2018 opined that the petitioner was not suffering from ADS; (vi) that the petitioner submitted a representation dated 7th January, 2018 along with the aforesaid medical certificate and in the month of April, 2018 a Review Medical Board was constituted and the petitioner “was properly checked by the Review Medical Board considering the medical opinion of the Civil Surgeon, Jhunjhunu” and after examination the petitioner was assured that there was nothing against him; (vii) that on 16th June, 2018, a letter was communicated to the Commandant where the petitioner was posted, advising that the petitioner may not be granted any leave or permitted to leave the compound as the order of Invalidation Board

Out from service was to be issued; (viii) that therefrom it was clear that the petitioner was intended to be invalidated from ITBP; and, (ix) that the petitioner is medically fit and is not alcohol dependent.

3. W.P.(C) No.6717/2018 came up first before this Court on 27th June, 2018, when *status quo* with regard to the service of the petitioner was ordered to be maintained. Vide subsequent order dated 9th July, 2018, notice of the petition was issued and vide order dated 28th February, 2019 interim order made absolute. The said petition was listed last on 26th November, 2019 when it was adjourned to 30th April, 2020 and whereafter owing to the prevalent COVID-19 situation, the petition stands adjourned and we are told is scheduled to be listed next on 25th August, 2020.

4. The petitioner filed W.P.(C) No.3906/2020 impugning the order dated 23rd April, 2020 of his transfer from Allahabad, where he is presently posted, to Leh-Ladakh. It is the case of the petitioner therein that the respondents could not on the one hand find the petitioner to be alcohol dependent and on the other hand post him to Leh-Ladakh.

5. W.P.(C) No.3906/2020 first came up before this Court on 2nd July, 2020 when it was observed that the petitioner, who is in Telecommunication Wing of the respondents ITBP, could at Leh-Ladakh also perform his duty as he has been doing in Allahabad and could not on the one hand find fault with the finding of his alcohol dependency and on the other hand challenge his transfer. However owing to the pendency of W.P.(C) No.6717/2018, both petitions were directed to be listed together today and with the consent of the parties, the petitioner was ordered to be examined by Base Hospital, 18th Battalion, Allahabad.

6. Today it is informed that the Base Hospital, 18th Battalion, Allahabad

also, after clinically examining the petitioner and considering the recent behaviour report and investigation produced, has opined that the examination of the blood of the petitioner showed that the petitioner had raised GGTP, deranged lipid profile and the petitioner was also found to have fine tremors in B/L hand due to consequences of ADS for a long period. It is further informed that since the medical examination had opined that the petitioner is unfit for duty as a combatant soldier, the order of transfer of the petitioner from Allahabad to Leh-Ladakh has been recalled.

7. With the recall of the order of transfer, W.P.(C) No.3906/2020 has become infructuous and is disposed of.

8. We have also heard the counsels on W.P.(C) No.6717/2018. The contention of the counsel for the petitioner is that no proper medical tests, to determine the alcohol dependency of the petitioner have been carried out. Main reliance of course is placed on *Sanjay Yadav* supra, petitioner wherein was also found to be suffering from ADS but was referred for examination to AIIMS and was not found to be suffering from the said syndrome and thus taken on duty.

9. We have perused the latest report dated 15th July, 2020 of the Base Hospital 18th Battalion, Allahabad and find the petitioner to have been diagnosed from ADS on the basis of high levels of GGTP, deranged lipid profile and fine tremors in B/L hand.

10. Our rudimentary knowledge tells us that the raised levels of GGTP and deranged lipid profile can also be for causes other than alcohol dependence. The same is our opinion with respect to tremors in hand as well.

11. We have also enquired from the counsel for the respondents ITBP,

what has been the behaviour and conduct of the petitioner since the grant of interim order directing *status quo* to be maintained i.e. whether the behaviour and conduct of the petitioner reflects alcohol dependence.

12. The counsel for the respondents ITBP states that he will need to take instructions.

13. In the circumstances it is deemed expedient to, in the interregnum, also have the petitioner examined by the Army Research and Referral Hospital, Dhaula Kuan, New Delhi, which is directed to depute a doctor or more than one doctor, as may be deemed fit, to report whether the petitioner suffers from ADS, on account whereof the petitioner is intended to be invalidated out from service of the respondents ITBP.

14. The petitioner is directed to report to Mr. Sanjay Yadav, Deputy Judge Advocate General at ITBP Headquarters, Delhi, on or before 11th August, 2020 and the petitioner to thereafter be examined as aforesaid and report of the said examination along with the status report of the behaviour and conduct of the petitioner since the date of the interim order i.e. 27th June, 2018, be placed before us before the next date of hearing.

15. List W.P.(C) No.6717/2018 on 25th August, 2020, for hearing via video conferencing.

16. The report of the medical examination of the petitioner carried out by the Base Hospital, 18th Battalion, Allahabad be tagged to the files of both the petitions.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JULY 24, 2020/‘pp’