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

Date of decision: 6th October, 2020

+ **W.P. (C) 7056/2020**

ARUN KUMAR

.....Petitioner

Through: Mr. Mohan Kumar, Advocate

versus

UNION OF INDIA & ANR.

...Respondents

Through: Mr. G.D. Sharma, Advocate/SPGC

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, having joined the respondents Indo-Tibetan Border Police (ITBP) on 12th June, 2012 as a Sub-Inspector (SI) [General Duty (GD)], has filed this petition seeking mandamus to the respondents ITBP, to produce the annual dossier of the petitioner before this Court and to grant promotion to the next rank to the petitioner with all perks, privileges and seniority.

2. It is the case of the petitioner, (i) that though at the time of recruitment also he was medically examined and found to be in

SHAPE I medical condition but on 20th July, 2014, his medical category was downgraded to S1H1A1P2 (Temporary-12) E1 and on 21st December, 2016, his medical category was declared as S1H1A1P2 (Permanent) E1, owing to stuttering and on account thereof the petitioner has been denied promotion; (ii) though the petitioner has represented on 11th December, 2018, 12th February, 2019, 22nd February, 2019, 15th June, 2019 and has also got served a legal notice dated 2nd January, 2020, again by way of representation, but no response has been received thereto.

3. Having not found the petitioner to have pleaded anything wrong in the denial of promotion to him, we have brought the same to the notice of the counsel for the petitioner and have enquired, that once the medical category of the petitioner is S1H1A1P2 (Permanent) E1 and which medical condition/ category also is not disputed in the petition, under which Rule is the petitioner claiming to be still entitled to promotion.

4. The counsel for the petitioner, probably without reference to the medical manual, vaguely states that there is nothing in the Medical Manual with respect to stammering/ stuttering. It is also stated that the petitioner was in the same medical condition at the time of recruitment also but was nevertheless recruited and once having been recruited, cannot be denied promotion.

5. Medical Manual as well as Promotion Rules are statutory in nature and even if the petitioner has been wrongly recruited, the

same will not estopp the respondents ITBP from, once the medical condition of the petitioner has been detected and which is not disputed today also during the hearing, denying the promotion to the petitioner unless the petitioner, under the Rules relating to promotion, is entitled thereto. The petition has obviously been filed, without reference to the relevant Recruitment and Promotion Rules also.

6. We have thus offered to the counsel for the petitioner to file fresh petition after studying the Medical Manual and the Rules, inasmuch as a reading of the petition does not disclose the wrong, if any, done to the petitioner.

7. The counsel for the petitioner then states that even the representation of the petitioner has not been dealt with.

8. The counsel for the respondents ITBP appearing on advance notice states that the proper representation was only by way of legal notice dated 2nd January, 2020, which could not be dealt with owing to the prevalent pandemic.

9. We thus deem it appropriate to dispose of this petition merely with a direction to the respondents ITBP to, within three months herefrom, by a speaking order setting out the reasons, dispose of the representation dated 2nd January, 2020, Annexure P-4 to the petition, of the petitioner.

10. Needless to state that if the petitioner remains aggrieved, he shall have remedy in accordance with law.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

OCTOBER 06, 2020

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