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

+ **W.P.(C) 5560/2017 and CM APPL. 23354/2017 (stay)**

SANTOSH PATHAK

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Barkha Babbar, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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12.02.2020

1. The Petitioner, who serves in the Central Reserve Police Force ('CRPF') challenges the order dated 28th June, 2017 passed by the Respondents, withdrawing the local rank of Assistant Commandant ('AC') conferred on the Petitioner with effect from 1st May, 2011. The Petitioner also seeks a direction to the Respondents to give effect to the signal dated 6th December, 2012, by which the Petitioner was granted regular promotion to the rank of AC.

2. The background to the present petition is that the Petitioner initially joined the Navy in the rank of Sailor and rose to the rank of Chief Petty Officer. He superannuated in that rank from the Navy on 31st January, 2000.

3. Thereafter, the Petitioner applied through the Staff Selection Commission

(‘SSC’) as an ex-serviceman candidate to the post of Sub-Inspector (‘SI’) in the CRPF. Upon being so selected, he joined the CRPF as SI on 28th February, 2003 at Muthkher, Maharashtra. The Petitioner was subsequently promoted as Inspector on 10th July, 2007 and posted to the 16th Battalion CRPF at Mathura, UP. The Petitioner was detailed for and underwent the SSIC course, which was the pre-promotional course for the next higher rank of AC.

4. Even before the Petitioner got his regular promotion as AC, the CRPF issued a signal on 18th February, 2011, seeking willingness of eligible persons for conferment of the local rank of AC. This was on account of there being an acute shortage of manpower. Rule 76 (B) of CRPF Rules, 1955 was decided to be invoked.

5. When the Petitioner’s willingness for being conferred the local rank of AC, without any entitlement to pay and allowances attached to that rank, was sought, he expressed his unwillingness. Nevertheless, by a signal on 8th March, 2011, and a subsequent signal on 11th May, 2011, the local rank of AC was conferred upon the Petitioner. He was posted to the 79th Battalion, CRPF at Srinagar.

6. As far as the Petitioner’s regular promotion to the rank of AC was concerned, upon having been found fit, by a signal dated 6th December, 2012 he was granted such promotion. It must be noted at this stage that prior to this regular promotion, the Petitioner underwent an Annual Medical Examination (‘AME’) on 24th September, 2012. A copy of the health card,

annexed as 'Annexure P-6' with the petition, shows the Petitioner to be in the SHAPE-I category as on 24th September, 2012.

7. The case of the Respondents, on the other hand, is that while it is correct that the Petitioner was granted regular promotion as AC by the aforementioned signal dated 6th December, 2012, this was made subject to him being in the SHAPE-I medical category. It is pointed out that even before the Petitioner could take charge as a regularly promoted AC; he was admitted and stayed in the TRH Hospital between 19th November, 2012 and 23rd November and between 24th November, 2012 and 10th December, 2012 at the Composite Hospital. It is pointed out that he was again admitted at the NM Wadia Hospital between 11th December, 2012 and 11th January, 2013. He thereafter went on medical leave between 12th January, 2013 and 6th April, 2013 and joined duty on 8th April, 2013.

8. A reference has been made to the letter dated 18th April, 2013 written by the Petitioner himself requesting that the period during which he was admitted in hospital should be regularised and the total period of hospital admission and medical rest i.e. 138 days, should be treated as commuted leave.

9. The stand taken by the Respondents is that since the Petitioner did not assume charge after being regularly promoted as AC and, thereafter, when he was again subjected to a medical examination on 23rd May, 2013, he was downgraded to SHAPE-III, he became illegible for consideration for promotion when the next DPC met on 17th January, 2014 for the vacancy

year 2013-2014. It is pointed out that for the subsequent DPCs he remained in the medical category below SHAPE-I and, that, therefore, he continued to be regarded unfit by the DPCs that met.

10. It is sought to be explained that in view of the Petitioner continually remaining in a low medical category, he could not claim to continue in the local rank of the AC as a matter of right and that, therefore, the impugned order was passed cancelling such conferment. It is stated that in the meanwhile, since the Central Government decided not to continue the arrangement under Rule 76 (B) of the CRPF Rules, 1955, it was decided not to allow the Petitioner to serve in the local rank of AC and that it was in those circumstances that the same came to be withdrawn by impugned order dated 28th June, 2015.

11. Having heard the learned counsel for the parties, the Court is of the view that with the Petitioner having been regularly promoted as AC on 6th December, 2012 itself, and with him being in the SHAPE-I medical category as of that date, it was incumbent on the Respondents to acknowledge that fact, particularly, since the Petitioner was placed in a lower medical category only subsequently on 23rd May, 2013.

12. The submission of the learned counsel for Respondents that because the Petitioner remained hospitalized even as of 6th December, 2012, he could not be said to be in the SHAPE-I medical category, cannot be accepted for the simple reason that in terms of Clause 4.10 (d) of the Standing Order No. 04/2008 ('SO') dated 15th December, 2008, the medical category granted

pursuant to an AME remains valid for one year. Consequently, the SHAPE-I medical category given to the Petitioner after the AME that took place on 24th September, 2012 was valid for one year and it covered the period during which he was granted regular promotion i.e. 6th December, 2012.

13. The change in the Petitioner's medical category took place only subsequent thereto, when he was again examined on 23rd May, 2013. In other words, till 23rd May, 2013, the Petitioner's SHAPE-I medical categorisation continued. Merely because the Petitioner happened to be hospitalised during some part of this period, would not automatically result in a change in his existing medical categorisation of SHAPE-I. Such change would have to be, in terms of the aforementioned SO only pursuant to an examination before a properly constituted medical board in accordance with the procedure devised by the Respondents.

14. In that view of the matter, the Court directs the Respondents to give effect to the order dated 6th December, 2012, whereby the Petitioner was granted regular promotion as AC with all consequential benefits. In view of this order, there is no need for the Court to express anything on the validity of the order dated 28th June, 2015, withdrawing the conferment of local rank of AC on the Petitioner. In any event, the Petitioner will have to be granted the pay and allowances attached to the regular rank of AC, which has already been conferred on him by the signal dated 6th December, 2012, from that date, particularly since he has continued to discharge his functions as AC ever since. The period from 6th December, 2012 onwards will be accounted for the purpose of future promotions as well.

15. The arrears of pay will be paid to the Petitioner not later than 12 weeks from today.

16. The petition is allowed in the above terms. The pending application is also disposed of.

S.MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 12, 2020/nk