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

+ W.P. (C) 2779/2021, CM APPL. 8342/2021

HC RAM NARESHPetitioner

Through: Mr. R.K. Shukla, Advocate.

Versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Sahaj Garg and Mr.
Kushagra Kansal, Advocates for UOI.

% Date of Decision: 02st March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging office memorandum dated 24/2/2021 whereby the petitioner has been asked to submit his no dues certificate before being boarded out of service from ITBP on account of Alcohol Dependence Syndrome [ADS].
2. Petitioner seeks a direction to the respondents to conduct a special review medical board in ITBP Base Hospital Tigri Camp, New Delhi as done in the case of *Sanjay Yadav v. Union of India and Ors. WP(C) 7875/2017*.
3. Having perused the paper book, this Court finds that all the grounds urged in the present petition have already been considered and adjudicated

upon by the learned predecessor Division Bench of this Court in not one, but two separate writ petitions being WP(C) 6717/2018 and WP(C) 10853/2020 vide orders dated 8th December, 2020 and 22nd December, 2020 respectively.

4. In fact, the learned predecessor Division Bench of this Court vide order dated 22nd December, 2020 in W.P.(C) 10853/2020 had made very ‘telling observations’. The same are reproduced herein below:-

*“4. Though we are honoured, by the petitioner preferring this petition in the form of an appeal against our order, before us only, but are afraid, in law, the same amounts to re-litigation and which has been held to be an abuse of the process of the Court. Reference in this regard may be made to **K.K. Modi v. K.N. Modi** (1998) 3 SCC 573, **Sardar Estates Vs. Atma Ram Properties Private Limited** (2009) 6 SCC 609 and **Chandra Gupt Vs. Bharat Gupt** 2018 SCC OnLine Del 9510.*

5. The petitioner, earlier found to be suffering from Alcohol Dependence Syndrome, now appears to be suffering from Litigation Dependence Syndrome.....

9. In view of the aforesaid statement of the counsel for the respondents, this petition does not lie. The petitioner earlier approached this court against the findings of the Medical Board, without waiting for the administrative decision, if any, of the respondents to board out the petitioner from service and against which decision, if any, the petitioner would have had departmental remedies. By filing that petition and during the pendency of which there was an interim stay, the petitioner deferred/delayed the decision making, if any, by the respondents qua boarding out of the petitioner, obviously to his own advantage. The petitioner, by filing this petition is again attempting to delay decision making by the respondents, thereby perpetuating his own continuance in service, even if of no utility to the respondents. The petitioner cannot be permitted to frustrate the action, if any, liable to be taken against him, in this manner and it is high time that such attempts are put to a stop.

If we entertain this petition at this interim stage of the action, if any, to be taken by the respondents against the petitioner, the same will again defer the decision, if any, to be taken against the petitioner. Interfering at the interim stage with the disciplinary proceeding, has always been W.P. (C) 10853/2020 Page 4 of 4 deprecated by the Supreme Court and this court in exercise of jurisdiction under Article 226 of the Constitution of India, in its discretion, ought not to vest the petitioner with any advantage. The petitioner, if any decision prejudicial to him is taken, will have the departmental remedies available to him and if remains dissatisfied, shall then have the right to invoke Article 226.”

(emphasis supplied)

5. At this stage, learned counsel for the petitioner wishes to unconditionally withdraw the present writ petition. He expresses regret for having filed the present writ petition.

6. Since this is another instance of re-litigation, the present writ petition is dismissed with cost of Rs. 50,000 to be paid by the petitioner to the respondent/ITBP within four weeks. In the event, the amount is not paid, the same shall be deducted from petitioner's salary or from amounts due and payable to the petitioner.

7. With the aforesaid directions, the present petition along with pending application, being bereft of merits is dismissed.

MANMOHAN, J

ASHA MENON, J

MARCH 2, 2021

AS