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

+ **W.P.(C) 6135/2021**

SAMSHER SINGH

..... Petitioner

Through: **Mr. Udhav Shanker Maurya, Adv.**

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: **Ms. Suman Chauhan, Adv. with Mr.
Sanjay Yadav, Law Officer, ITBP.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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06.07.2021

[VIA VIDEO CONFERENCING]

CMs No.19423/2021 & 19424/2021 (both for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.
2. The applications are disposed of.

W.P.(C) 6135/2021 & CM No.19425/2021 (for stay)

3. The petitioner joined the respondents Indo-Tibetan Border Police Force (ITBP) as a Constable (General Duty (GD)) on 29th July, 2013 and proceeded for training. However during the training, on 7th December, 2013, the petitioner sustained an injury. On 25th February, 2014, a Court of Inquiry was constituted, which found that the petitioner's injury "was sustained during executing of government duty which is serious and can later become reason for disability" and recommended that the petitioner "should be relegated and for further treatment be sent back to his parent

unit". The petitioner was accordingly sent back to his unit. The petitioner, on recovering, was again sent for completion of his training, but again on 3rd April, 2017 sustained an injury and on 10th December, 2020 declared to be unfit for training.

4. A show cause notice dated 23rd June, 2021 was issued to the petitioner, asking the petitioner to show cause why, considering the fact that he had been unable to complete the training and was therefore unfit for service, he should not be removed from service. Time till 26th June, 2021 was given to the petitioner to respond and the petitioner was informed that if no response was received by 26th June, 2021, it would be assumed that the petitioner had nothing to say and one-sided action shall be taken.

5. The petitioner instead of responding to the show cause notice, has preferred this petition impugning the notice dated 23rd June, 2021 to show cause and seeking mandamus to the respondents ITBP to rehabilitate the petitioner as per paragraph 7 of the Standing Order No.01/2013 dated 28th March, 2013 issued on the subject of "Disposal of Permanent Low Medical Category cases and Rehabilitation of Permanent Low Medical Category of Indo-Tibetan Border Police Force". Reliance by the petitioner in the petition itself is placed on the order dated 10th April, 2019 of the High Court of Punjab and Haryana in C.W.P. No.9608/2019 titled ***Chander Pal Vs. Union of India.***

6. We have enquired from the counsel for the petitioner, whether, pursuant to the notice dated 23rd June, 2021 to show cause, services of the petitioner have been terminated.

7. While the counsel for the petitioner evades answer, the counsel for the

respondents ITBP appearing on advance notice states that vide order dated 30th June, 2021, the services of the petitioner have already been terminated and the said order delivered to the petitioner and the petitioner has concealed the same.

8. We have enquired from the counsel for the respondents ITBP appearing on advance notice, whether against the termination of service, the petitioner has any departmental remedy.

9. While the counsel for the respondents ITBP seeks time to study, Mr. Sanjay Yadav, Law Officer of the respondents ITBP present during the hearing states that the petitioner has remedy under Rule 28 of the Indo-Tibetan Border Police Force Rules, 1994, of preferring an appeal against the order of termination of his services.

10. The counsel for the petitioner states that the principle of law is, that the rights are to be decided on the date of presentation of a petition in the Court. It is stated that since at the time when this petition was filed, the petitioner had not been terminated, the termination of the petitioner be stayed. The counsel for the petitioner otherwise seeks to demonstrate that the action of the respondents ITBP of termination of services of the petitioner is contrary to the policy of the ITBP. Though not filed, reference is also made to some order dated 14th May, 2019 of the Supreme Court in SLP(C) No.4901/2019, where also it is stated that stay of termination has been granted pending the proceedings. Reference is again made to the order dated 10th April, 2019 of the High Court of Punjab and Haryana in ***Chander Pal*** supra.

11. The orders of the High Court of Punjab and Haryana and of the

Supreme Court, merely issuing notice and/or granting interim relief, do not constitute precedents. The position in law, in our opinion, otherwise is that ordinarily no interim stay of termination from a public post/public office, as the post of Constable (GD) in the respondents ITBP is, can be granted, inasmuch as the same would result in, in the event of ultimate dismissal of the petition, usurpation of a public post, without any authority of law and on account of interim order of the Court. On the contrary, if the challenge to the termination succeeds, the petitioner can always be restored the benefits which would be due to him. Reference in this regard can be made to *State of Haryana Vs. Suman Dutta* (2000) 10 SCC 311, *State of U.P. Vs. Sandeep Kumar Balmiki* (2009) 17 SCC 555, *Bhankra Byas Managing Board Vs. Suresh* (2009) 7 SCC 515, *The Co-operative Store Ltd., Superbazar Vs. Superbazar Karamchari Hitesh Sangathan* MANU/DE/5089/2012 (DB), *Air India Ltd. Vs. Aditya Beri* MANU/DE/2781/2012 and *Rohit Sharma Vs. Union of India* 2021 SCC OnLine Del 2444 (DB).

12. Need is not felt to consider the challenge made by the petitioner on merits to the order of termination, inasmuch as there is an alternate remedy provided under the statutory rules thereagainst. The counsel for the petitioner of course contends that the said statutory remedy of departmental appeal is not efficacious inasmuch as may not be decided immediately.

13. Our experience is that such departmental appeals are decided without undue delay and we have no reason to suspect that the appeal if any preferred by the petitioner would not be decided expeditiously. Moreover, if the appeal is not decided expeditiously, the petitioner again shall have

remedies in accordance with law.

14. The petition is accordingly disposed of, with liberty to the petitioner to take appropriate legal remedies against the order of his termination and leaving open all pleas of law as taken by the petitioner herein.

15. The counsel for the petitioner at this stage states that the petitioner submitted a reply dated 24th June, 2021 to the notice dated 23rd June, 2021 to show cause, though has not filed copy thereof along with this petition.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

JULY 6, 2021

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