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

Date of Decision: 29.11.2021

+ **W.P.(C) 13456/2021**

SANDEEP

..... Petitioner

Through Mr.Sachin Chauhan, Adv.

versus

INDO TIBETAN BOARDER POLICE FORCE & ORS

..... Respondents

Through Mr.Arn timer Kumar, Sr. Panel
counsel, UOI.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

CM APPL. 42436/2021 (Exemption)

Allowed, subject to all just exceptions

Application stands disposed of.

WP(C) 13456/2021 & CM No.42435/2021

1. This petition has been filed by the petitioner challenging the report of the Review Medical Examination dated 15.09.2021 of the petitioner, declaring the petitioner 'unfit' for appointment as Constable (Driver) with the Indo-Tibetan Border Police Force (hereinafter referred to as 'ITBP Force') due to defective vision of 6/12 (right eye) and 6/12 (left eye).

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Signed By:SHALOO BATRA

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2. The petitioner further challenges the order dated 01.11.2021 passed by the respondent no.4 dismissing the petitioner's representation against the decision of the Review Medical Board. The petitioner prays for a direction to the respondent to carry out a Review Medical Examination of the petitioner in any independent Medical Institution and if found fit, appoint the petitioner as a Constable (Driver) in the ITBP Force with all consequential benefits.

3. The learned counsel for the petitioner submits that the petitioner had applied for the post of Constable (Driver), under the Scheduled Caste category pursuant to the advertisement for recruitment issued by the ITBP Force in the year 2017. The petitioner qualified the Physical Efficiency Test (PET) and the Physical Standard Test (PST) as also the written test. The petitioner was thereafter subjected to a Detailed Medical Examination at Referral Hospital, ITBP Campus, PO-Surajpur, Greater Noida, Gautam Budh Nagar, Uttar Pradesh on 13.09.2021 and was declared unfit on the following two counts:

- (i) Low Eye Vision 6/9 BE
- (ii) Varicose vein in left foot

4. The petitioner was thereafter subjected to a Review Medical Examination in the same hospital and was declared fit for '*Varicose vein in left foot*' but declared unfit due to '*defective eye vision 6/12 BE*'.

5. The learned counsel for the petitioner submits that the Review Medical Examination was carried out in a hush-hush manner without even understanding the unfitness of the petitioner. The petitioner has

thereafter obtained medical fitness certificates from doctors at Dr. Ram Manohar Lohia Hospital, New Delhi, Guru Nanak Eye Centre, New Delhi and All India Institute of Medical Sciences, New Delhi reporting the eye vision of the petitioner to be normal.

6. The petitioner therefore, made a representation dated 19.10.2021 to the respondents, however, by the impugned order dated 01.11.2021, the representation of the petitioner has been rejected without considering the submissions made by the petitioner.

7. The learned counsel for the petitioner submits that recently the petitioner has also been found 'fit' by the Delhi Transport Corporation (hereinafter referred to as 'DTC') in its selection process for the post of Driver.

8. The learned counsel for the petitioner places reliance on the judgment dated 21.05.2018 of this Court passed in ***Deepak Pahal vs. Staff Selection Commission***, W.P.(C) No. 6753/2017 and ***Vijay Malik vs. Staff Selection Commission***, W.P.(C) No. 6575/2017, to submit that the petitioner is ready and willing to be subjected to the medical examination by an Army hospital.

9. We have considered the submissions made by the learned counsel for the petitioner, however, find no force in the same.

10. This Court in its judgment dated 21.12.2020 in ***K.M. Priyanka v. Union of India & Ors***, W.P.(C) 10783/2020, has held that once no *mala fide* is attributed and the doctors of the Forces, who are well aware of the demands of duties of the Forces in the terrains in which the recruited personnel are required to work, have formed an opinion that a candidate is not medically fit for recruitment, the opinion of private or other government doctors to the contrary cannot be accepted.

11. In ***Joginder v. Union of India & Ors***, W.P.(C) 522/2021, this Court has held that training and military operations are extremely demanding in terms of the medical fitness of a candidate and a private doctor or a doctor working in a Government hospital may not be in a position to comment on the required medical standards for the Force.

12. In ***Priti Yadav v. Union of India***, W.P.(C) 3930/2020, in the context of medical test for recruitment in the Officer cadre of Indian Air Force, this Court held that fitness for serving requisite duties in the Air Force is a matter of opinion and if in the opinion of the authorities constituted under the Rules of the Indian Air Force (hereinafter referred to as 'Rules'), the petitioner is unfit, a report of a medical practitioner of another organization which does not intend to recruit the petitioner and which will not be affected by the medical unfitness of the petitioner, cannot be the basis for interfering with the assessment by the Indian Air Force. It was further held that medical opinion can vary from professional to professional and once the Rules

provide for finality and are found to have provided for a review to eliminate the possibility of human error, the finality has to be accepted, unless a case for interference is made out.

13. In the present case, even the report from Dr. RML Hospital, which shows the vision of the petitioner as 6/9 (right eye) and 6/6 (left eye), and the report of Guru Nanak Eye Centre, which shows the vision of the petitioner as 6/6 (right eye) and 6/5 (left eye), do not show the petitioner meeting the standards of 6/6 (both eyes) prescribed by the respondents for appointment as a Constable (Driver) in the ITBP Force.

14. Equally, the mere fact that the petitioner has been declared fit by the DTC (though no such averment is made in the petition and no document in support thereof has been produced) is also not relevant as it is for DTC to determine the eligibility of the candidates in its selection process. However, DTC cannot determine the eligibility of the candidates for ITBP Force.

15. In view of the above, we find no merit in the present petition and application, the same are dismissed.

NAVIN CHAWLA, J

MANMOHAN, J

NOVEMBER 29, 2021/RN/AB

Signature Not Verified

Signed By: SHALOO BATRA

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