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17.11.2022
S.D.

W.P.A. 14798 of 2022

**Newsad Ali @ Newsad SK @ Naosad Sekh
Vs.
The State of West Bengal & Ors.**

Mr. Agniswar Chowdhury
... For the Petitioner
Mr. Tapan Kumar Mukherjee, Sr. Adv.,
Mr. Pinaki Dhole
Ms. Debdooti Dutta
..For the State

The case of the petitioner is that he was appointed as a Volunteer on contractual basis by the West Bengal Volunteer Force (in short, "N.V.F."). The petitioner permanently retired from the post of a Volunteer in 2014. The petitioner was declared to be suffering from "Cardiac Asthma" on or about July 22, 2011 by his doctor and on the basis of the same, the petitioner made a representation before the concerned respondent, N.V.F. for his medical check up.

By a Memo dated June 5, 2012, the company Commander of N.V.F, Burdwan requested the Medical Superintendent cum Vice-Principal, Burdwan Medical College and Hospital to take necessary action at an early date for physical check up of the petitioner and for considering whether he was "physically fit" or "incapacitated" for

performance of his deployment duty with uniform and fire arms. The petitioner claims that no steps have been taken by the Medical Superintendent cum Vice-Principal since then. The petitioner made an application for appointment of his son as a N.V.F. Volunteer on compassionate ground since he was medically 'unfit' to continue with his duty.

Mr. Chowdhury, learned counsel appearing on behalf of the petitioner submits that he has made several representations since 2011 including the representations made on March 30, 2017, September 4, 2019 and July 19, 2021, but the respondent authorities failed and neglected to consider the said representations.

He also draws the attention of this Court to the report on affidavit filed on behalf of the State respondents in support of his contentions that in 2012 itself, the Medical Superintendent cum Vice-Principal, Burdwan Medical College and Hospital was requested by the State Commandant and the Company Commander to make necessary arrangements for medical examination of the petitioner and the same was not done by him. As such, the petitioner cannot be penalized for failure on the part of the State authority to carry out the necessary medical examination for the purpose of declaring whether the

petitioner was medically 'fit/unfit' to continue with his services.

Mr. Mukherjee, learned Additional Government Pleader appearing on behalf of the State respondents submits that the present writ petition is not maintainable on the ground of delay. The petitioner has retired from service in 2014 and has not made any attempt to approach the Court in order to agitate his grievance.

Considering the rival submissions of the parties and the materials placed on record, this Court feels that the fact that the respondent authorities did not reply to the several representations made on behalf of the petitioner cannot be ignored. Furthermore, the fact that despite the requests made on behalf of the petitioner he was not medically examined is a fact that is to be considered in favour of the petitioner. The petitioner cannot be held liable for failure on the part of the Medical Superintendent of a Government college to conduct an examination on him despite several requests made by him.

In the light of the discussions above, this Court directs the State Commandant, West Bengal N.V.F. Directorate, Nadia/respondent no. 3 to consider the representation dated July 19, 2021 within a period of eight weeks from date by giving an opportunity of hearing to the petitioner. The said

representation will be disposed of by passing a reasoned order. Such reasoned order is to be communicated to the petitioner within two weeks of taking thereof.

With the directions aforesaid, **W.P.A. 14798 of 2022** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)