

HIGH COURT AT CALCUTTA

In the Circuit Bench At Jalpaiguri

CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 874 of 2019

Ranbir Singh

Versus

Union of India & Ors.

For the petitioner : Mr. Debajit Kundu
...Advocate

For the Union of India : Mr. Ajoy Kumar Singhania
...Advocate

Heard on : 20.04.2022

Judgment on : 22.04.2022

JAY SENGUPTA, J.:

1. This is an application praying for a direction upon the respondent authorities to forthwith consider the promotion of the petitioner to the post of Sub Inspector (GD).

2. Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is an Assistant Sub Inspector (GD) of BSF Commandant, 45 Battalion, BSF Head Quarters, Rani Nagar, West Bengal. He is presently posted at Tura, West Garo Hill, Meghalaya. The petitioner has made several representations, the last one on 15.09.2018, before the concerned authority for his promotion to the post of Sub Inspector (GD) on the basis of seniority and service as per rules. But, the same has not been taken into consideration. In the communications made from one office to the Head Quarter office, it has been indicated that the petitioner was placed in P2 category and that he was fit for all duties anywhere except at difficult and solitary locations, preferably where ART facilities are available. On 05.04.2019, the Commandant, 45 Battalion, BSF Head Quarters, Rani Nagar, West Bengal intimated to the petitioner that his case was examined at FHQ BSF in consultation with Medical Dte, but it was rejected being devoid of merit. Although the petitioner was diagnosed with a serious disease and had to undergo medical treatment for a period of time, at present he cannot be treated as unfit for duty. In fact, medical records are there to show that the petitioner is medically fit at the present. No reason was cited for rejecting the claim of the petitioner. Although, the claim of the petitioner was rejected in 2019, till date he has not been examined by a medical board on a subsequent date.

3. Learned counsel appearing on behalf of the respondents submits as follows. The petitioner was enrolled with the BSF on 20.12.1985 for the post of Constable (GD). After serving at various units, he was promoted to the

rank of an ASI (GD) on 05.04.2012. Every BSF personnel has to undergo annual medical examination. As would be evident from the medical report annexed with the opposition, the petitioner was placed with low medical category, permanent in nature, as on 24.02.2020 (S1H1A1P2E1) and the next date for undergoing medical examination at that point was fixed on 24.02.2022. When the petitioner had applied/submitted his willingness to undergo Platoon Leader Course (PLC) at his own risk, he had given an undertaking that he would not make any claim or hold BSF liable for any physical loss. The petitioner was permitted to undergo the said course on the condition that he will not be responsible for any health issue and he will not be granted any type of promotion until his medical category is upgraded to "SHAPE-I". Para 4.13 (Vol.-IX) of Supplementary Health Care System CPMFs which dealt with promotion of all combatised personnel, provided that medical category SHAPE-I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMFs. Even for those whose illness was of temporary nature, the DPV will grade them as "fit for promotion" subject to attaining SHAPE-1 medical category. The representation of the petitioner dated 20.01.2017 had already been considered and rejected by the competent authority being devoid of merit. The DPC assessed the petitioner as "unfit due to Permanent Low Medical Category". Therefore, unless the petitioner is awarded SHAPE-I by the medical board, he cannot be promoted as per law. Another medical examination of the petitioner would be due this year. In case he is able to

fulfil the criteria as aforesaid for claiming promotion, he would automatically be promoted in accordance with law.

4. I have heard the submissions of learned counsels appearing on behalf of the parties and have perused the writ petition, the affidavits filed and the written notes of submissions filed on behalf of the parties.

5. First, admittedly the best case of the petitioner is that he can perform all duties except in certain situations. In 2020, the medical board of the BSF had found him permanently in a low category so as to deny him any promotion. Therefore, his representations for promotion, as referred to in the writ petition, have already been taken into consideration by the respondent authorities.

6. It appears from the report of the medical board that another medical examination would be due this year. If the petitioner is found to have attained the medical category of SHAPE-1, his case for promotion would automatically be taken into consideration by the authorities.

7. However, as per the provisions referred to above regarding promotion vis-a-vis the medical conditions, it is quite clear that if an incumbent does not fit into the given criteria, he cannot be promoted to any rank or group. Therefore, at present the petitioner is not entitled to a promotion.

8. Therefore, I do not find any merit in this application.

9. Accordingly, the same is dismissed.

10. However, there shall be no order as to costs.

11. Urgent Photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

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

(Jay Sengupta, J.)

P. Adak