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

% ***Date of decision: 17th May, 2023***

+ **W.P.(C) 6582/2023**

PRINCE SAH Petitioner

Through: Ms. Saahila Lamba, Advocate

versus

UNION OF INDIA AND ORS Respondents

Through: Ms. Radhika Arora, Senior Panel Counsel with Mr. Gitanjali, GP and Mr. Hemendra Singh, DC (Law), BSF.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. Vide the present petition, petitioner prays as under:

“(i) Issue a writ of certiorari quashing order/letter dated 31.01.2023 issued by the respondents;

(ii) Issue a writ of mandamus directing the respondents to appoint the petitioner to the post of Constable (Ward Boy) in Border Security Force with all consequential benefits and make payment of salary to the petitioner for the period the petitioner remained posted and worked in Border Security Force awaiting issuance of formal appointment order i.e. the period from 01.08.2022 to 01.02.2023.”

2. Petitioner claims to have received appointment to the post of Constable (Ward Boy) for BSF pursuant to qualifying in a rigorous selection

process. He was directed to appear before Composite Hospital, BSF Tekanpur, Gwalior on 01.08.2022 for medical examination vide letter dated 24.06.2022 issued by respondents. Petitioner claims to have accepted the aforesaid offer of appointment and reported for duty on 01.08.2022. Petitioner was selected, however, instead of assigning work to the petitioner as Constable (Ward Boy), he was deployed at the residence of Commandant, Composite Hospital, BSF Tekanpur for doing miscellaneous and menial domestic jobs, to which he objected. When the petitioner appeared before the Medical Board on 29.08.2022, Medical Officer, after ascertaining his medical fitness, certified him as medically unfit on account of '**Low Vision and Colour Blindness**'. Petitioner was not sent to Basic Recruitment Training (BRT) scheduled to be commenced from 31.10.2022. Thereafter, petitioner made several representations to the respondents and vide letter dated 19.01.2023, he was informed that his case has been taken up by the higher authorities and he shall be informed about the outcome thereof.

3. Petitioner was again examined by the Review Medical Board on 07.11.2022 which opined that he was medically unfit on account of '**Defective Distant Vision**'. Thereafter, vide letter dated 31.01.2023, the respondents informed the petitioner that in view of opinion of Review Medical Board, he cannot be permitted to join the services. Thereafter, vide another letter dated 07.02.2023, respondents again informed the petitioner that due to result of Review Medical Examination Board, he cannot be appointed in BSF.

4. According to petitioner, he got himself examined at the OPD of RP Centre, AIIMS, New Delhi on 09.03.2023 by Dr. Tavish Gupta who opined the petitioner fit and both his eyes are within the normal limits (OPD Card

of petitioner is annexed as Annexure P-8). Pursuant thereto, petitioner claims to have made representations dated 13.03.2023 and 22.03.2023 seeking his reinstatement in service, however, vide letter dated 22.03.2023, respondents reiterated the stand that he cannot be appointed due to result of Review Medical Examination Board.

5. Since there are two different medical opinions, therefore, without going into the controversy, we dispose of the present petition by directing the RR Hospital to constitute a Medical Board and assess the petitioner's eye sight within four weeks. The respondents shall facilitate the petitioner to get medically examined.

6. As agreed by the learned counsel for the petitioner on instructions, the report of the RR Hospital shall be final and binding.

7. We hereby make it clear that in case the petitioner found medically fit, petitioner shall be allowed to join further selection process.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MAY 17, 2023/rk