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

% Date of decision: 06th October, 2023

+ W.P.(C) 13008/2023

VIRENDER SINGH

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Udhav Shanker Maurya, Advocate.

For the Respondents: Mr. Akash Verma, SPC for UOI with
Mr. Abhishek Khanna, GP, Mr. Reynil
Johans, DIG, Law, Mr. A.K. Rai, DIG,
JAG ITBPF, Dr. Chandan Debnath,
Dy. Director, Ms. Kamallesh Rani,
Dy. JAG, ITBP.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.51273/2023 (exemption)

Exemption allowed subject to all just exceptions.

W.P.(C) 13008/2023 & CM APPL. 51272/2023 (stay)

1. Issue notice. Notice is accepted by learned counsel appearing for respondents.



2. With the consent of the parties, petition is taken up for final disposal today.

3. Petitioner seeks quashing of order dated 15.09.2023 whereby petitioner has been given a show cause notice for termination. Petitioner seeks a direction to respondent No.3 i.e., Commandant, 9th Bn, ITBPF to complete basic training. He further seeks a direction to the respondents to rehabilitate petitioner as per Standing Order No.1/2013 dated 28.03.2013 on the subject “Disposal of Permanent Low Medical Category cases and Rehabilitation of Permanent LMC Personnel of ITBP Force”.

4. Petitioner applied for the post of Constable (Motor Mechanic) and was allotted the 9th Battalion and sent for training to the Basic Training Centre, Panchkula. During training petitioner sustained an injury, i.e., fracture neck of right femur.

5. A court of inquiry was constituted on 11.01.2021 and the injury was declared by the Court of Inquiry as “during bonafide Govt. training and attributable to risk of service”. Special Medical Board was conducted from 27.07.2022 to 05.08.2022 and it was held that petitioner was unfit for training. Petitioner was thereafter sent before the Rehabilitation Board. The Rehabilitation Board, on 03.05.2023, noticed that petitioner had fractured right neck of Femur and was operated with screws fixation and after two years of operation fracture had not healed and was having non union right neck of femur and was declared unfit for training. The Rehabilitation Board recommended



the case of petitioner for Invalidation Board. The Invalidation Board, on 13.07.2023, concurred with the opinion of the Special Medical Board/Departmental Rehabilitation Board/Orthopedic Surgeon, TRIHMS that petitioner was unfit for training and thus opined that he was unfit for further service in ITBPF and recommended petitioner to be invalidated/boarded out of service.

6. Learned counsel for the petitioner contends that thereafter a disability certificate has also been issued certifying that petitioner has 29.5% disability.

7. The Invalidation Board has opined that petitioner is permanently unfit for training hence unfit for further service of any kind in the department to which he belongs, i.e, ITBPF.

8. Learned counsel for the petitioner submits that petitioner is covered by Standing Order 1/2013 and benefit of the same should be accorded to petitioner.

9. Learned counsel for the petitioner further submits that by communication dated 13.07.2023 the Commanding Officer of the petitioner has certified that petitioner has been working with dedication and showing good efficiency.

10. Standing Order 1/2013 dated 28.03.2013 has admittedly been applied to the case of the petitioner and petitioner has been referred to the Rehabilitation Board in terms of the Standing Order. However, clause 6 of the Standing Order reads as under:-



“6. This Board will subject the person concerned to critical examination with a view to determine his physical/mental capability, aptitude, job requirement etc. and after assessing capability and health condition of the person, will recommend specifically that:-

(i) Whether, he/she can be rehabilitated within the Force by assigning the jobs mentioned in para 7 below as per his /her physical and mental health condition.

Or

(ii) The person is not fit for any kind of duty in the department (with specific reasons) therefore recommended to be invalidated out.”

11. Clause 6 of the Standing Order requires the Board to critically examine the physical/mental capabilities, aptitude, job requirement etc. and the health condition of the person and thereafter make a recommendation as to whether said individual can be rehabilitated within the force by assigning jobs mentioned in para 7 thereof or if the person is not fit for any kind of duty in the Department, provide specific reasons therefore and recommend individual to be invalidated out.

12. The record of the Departmental Rehabilitation Board as well as Invalidation Board proceedings show that though they have considered the physical/mental capability and opined that he is unfit for training, however, the consideration as required by clause 6 of the policy is not reflected in the orders. The order of the DRB and the Invalidation Board do not state as to whether petitioner is fit for any kind of the jobs mentioned in para 7 of the Standing Order and if unfit



for any of those jobs, the reasons therefore.

13. The impugned show cause notice dated 15.09.2023 has been issued in terms of Rule 26 of the Indo Tibetan Border Police Force Rules, 1994.

14. However, we are of the view that prior to the applicability of Rule 26 of the Rules the conditions as required under clause 6 of the Standing Order 1/2013 should have been complied with.

15. Accordingly, in view of the said deficiency, we set aside the show cause notice dated 15.09.2023 and direct the respondents to reconsider the case of the petitioner in line with clause 6 of the Standing Order 1/2013 and thereafter proceed further in accordance with the Rules.

16. Petition is disposed of in the above terms.

17. Needless to state that in case petitioner is aggrieved by any order passed by the respondents, petitioner would be at liberty to take further remedies in accordance with law.

18. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

OCTOBER 06, 2023
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