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

% Judgment delivered on: 07.12.2023

W.P.(C) 13306/2023 & CM APPL. 52499/2023

HARSH CHAUHAN

..... Petitioner

versus

BORDER SECURITY FORCE & ANR.

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Ajay Garg, Advocate (Through VC), Ms. Tripti Gola & Ms. Lhingdeihat Chongloi, Advocates

For the Respondents: Mr. Farman Ali Magrey (SPC), Ms. Usha Jamnal, Mr. Krishan Kumar, Advocates with Dr. Sanjay Kumar Jha (CMO) (SG), BSF

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks quashing of cancellation of the provisional appointment of petitioner by letter dated 26.07.2023 intimated to the petitioner on 03.08.2023.

2. Pursuant to an advertisement issued by the respondent for recruitment to the posts of Head Constable (Radio Operator) and Head Constable (Radio Mechanic). Petitioner applied and was successful in the qualifying examination. Detailed Medical Examination was also



conducted and petitioner was declared fit. Thereafter by the impugned letter dated 03.08.2023, petitioner was informed that he has been declared medically unfit to continue in BSF due to “AMPUTATION OF TERMINAL PHARYNX OF YOUR LEFT INDEX FINGER”.

3. Learned counsel for petitioner submits that once petitioner had been declared medically fit in the Detailed Medical Examination, at the time of his recruitment, petitioner could not have been re-examined for any pre-existing ailment and he could have only been examined for an ailment sustained post the Detailed Medical Examination. Learned counsel submits that since the finding is that there is amputation of terminal pharynx of left index finger which was also present at the time of Detailed Medical Examination, respondents could not have terminated petitioner.

4. Per contra, learned counsel for respondents submits that medical is only provisional medical and all serving officers and personnel below officer rank are subjected to medical examination from time to time and it is only subject to their fitness that they continue in the Force. He further submits that petitioner at the time of filling up of the application form had also given mis-declaration that there was no injury to his finger. He submits that it was disclosed only later that there was an injury to the finger and as per advertisement and the application form, wrong declaration itself is a disqualification and the candidature is liable to be terminated.



5. The original record of petitioner has been produced in the Court. In the original application form with regard to a question as to whether the applicant ever had or has “broken bone (fracture), united without any surgery or required surgery to repair”, the petitioner has categorically stated “Answer – No”. The application form also contains a declaration at the end to the effect that all the answers are true and correct and confirms that the candidate shall be liable for action under law for any material infirmity in the information furnished or suppression of relevant material information. It further certifies that furnishing false information or suppression of any factual information would be a disqualification and liable to render the candidate unfit for employment under the government. There is a further declaration that if false information had been furnished or that there had been suppression of any factual information which comes to notice at any time during service, the service would be liable to be terminated.

6. We notice that even in the advertisement, (copy of which has been annexed as Annexure P-1), there is a condition under the heading “Medical Guidelines for Recruitment” which reads as under: -

“A declaration is to be given by candidate in a proforma which will be provided to candidates at the time of Medical Examination regarding history or presence of diseases and treatments taken, if any, evidence of which is not readily obtainable during the medical examination. Any false declaration in this aspect, discovered later at any stage of service will make the candidate liable for disciplinary action including termination from service”.

7. In the instant case, we notice that petitioner has given an incorrect declaration about not sustaining any injury or fracture prior



to the filling up of the application form. The application form was signed on 23.02.2023 and in the declaration given later, he has certified that he had sustained an injury in the year 2016. The subject injury, which has become a ground for disqualification, was sustained much prior to filling up of the application form, clearly there is suppression of a material fact by the petitioner with regard to an injury sustained earlier.

8. Reference may also be had to the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles as on May 2015 which only make an exception of accepting “loss of only soft issue of terminal pharynx of little finger to one or both hands”. In the instant case, petitioner has lost a part of pharynx of the index finger which is not a minor acceptable defect as per the Recruitment Medical Examination Guidelines.

9. Clearly petitioner suffered from an ailment which was a disqualification under the said Rules and petitioner was not liable to be appointed being unfit. Mere fact that a provisional appointment is given to the petitioner would not enure to the benefit of petitioner as the provisional appointment itself was contrary to the medical guidelines and being provisional in nature could have been revoked till confirmed as has happened in the instant case.

10. The judgment relied upon by the learned counsel for petitioner of a Co-ordinate Bench dated 24.05.2017 in W.P. (C) 3208/2016 titled *Ravi Kumar Vs. Union of India* would not be applicable to the facts of the present case in as much as there is clear concealment and



misrepresentation made by petitioner in the application form which in itself is a ground for disqualification. Relief under Article 226 is a discretionary relief and discretion cannot be exercised in favour of a person who has clearly made a misrepresentation and secured provisional appointment based on a misrepresentation and incorrect declaration.

11. In view of the above, we find no merit in the petition. The petition is consequently dismissed.

12. Original record, which has been produced, has been perused and returned to the counsel for respondents.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

DECEMBER 07, 2023/dr

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