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

% Judgment delivered on: 30.11.2023

W.P.(C) 1946/2018

DHEERAJ YADAV

..... Petitioner

versus

UNION OF INDIA & ORS

.... Respondents

Advocates who appeared in this case:

For the Appellants: Ms. Saahila Lamba, Advocate

For the Respondents: Mr. Rajesh Kumar, SPC with Ms. Ramneet Kaur,
Ms. Mishika Pandita, Advocates and Mr. Nakul
Kumar, RPF.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks a direction to the respondents to pay full salary to the petitioner for the period from September 2013 to August 2014 along with interest thereon.

2. Petitioner was enrolled as a Constable in Railway Protection Force in the year 2005.

3. On 08.07.2013, Petitioner was examined at the Medanta Cancer Institute, Medanta-The Medicity, Gurgaon and it was opined that petitioner had diffuse Large B-Cell Lymphoma. On 07.09.2013,



Additional Chief Medical Superintendent, Northern Railway, Delhi referred the petitioner to the Chief Medical Superintendent for constitution of a Medical Board for further advice. Thereafter, petitioner was once again examined on 11.09.2013, 07.10.2013 and 05.03.2014 and each time constitution of a Medical Board was advised.

4. No Medical Board was constituted to examine the petitioner. Petitioner gave several representations, one of which is dated 18.03.2014, requesting that a Medical Board be constituted so that petitioner could be assigned duties.

5. Subsequently, a Medical Board was constituted and petitioner was examined on June 2014, the Medical Board recommended placing petitioner “unfit for the post of Constable/RPF”.

6. However, he was declared fit in his original medical category ‘Bee one and below’ for alternative employment, not involving strenuous physical exertion. Aforesaid recommendation of Medical Board were accepted vide order dated 05.08.2014. It is an admitted position that thereafter the only, petitioner was granted alternative employment in Northern Railways.

7. During the period September 2013 when petitioner was detected to be suffering from Lymphoma till August 2014, when he was placed permanently in low medical category, petitioner was denied salary. It was, however, stipulated that during the said period, he would be liable to avail of his medical and other admissible leaves.



8. Case of the petitioner, is that petitioner was always willing to be assigned duties appropriate to his medical condition and in view of the respondent not constituting a Medical Board, petitioner was constrained to remain on leave and thus he was denied the salary during the said period.

9. We notice that there was no fault of the petitioner, on the other hand, there was delay on the part of the respondents in constituting a Medical Board for examining the petitioner in terms of the recommendations that were given by the Medical Officers who examined the petitioner from time to time.

10. The Medical Board when constituted, found petitioner fit for duty however, recommended him alternative employment, not involving strenuous physical exertion and thereafter petitioner was assigned duties and he continued to perform the same. Had respondents constituted a Medical Board expeditiously said issue would not have arisen.

11. Reference may be had to the judgment of a Co-ordinate Bench of this Court dated 04.08.2017 in W.P.(C) 10160/2016 *Prahalad Singh vs Union Of India & Ors.* wherein, in similar circumstances the Bench noticed the lapse on the part of the respondents (which is also the respondents herein) in constituting a Medical Board and assigning duties to the petitioner therein. The Division Bench thereafter noticed that there was no lapse and fault on part of the petitioner therein and accordingly, directed the payment of salary to the petitioner therein.



12. In the instant case also, we find that petitioner has been repeatedly requesting respondents for constituting a Medical Board to assess his medical category and assigning of duties but the respondents failed to constitute a Medical Board expeditiously in terms of several recommendations given by the consulting doctors leading to petitioner remaining absent from work for nearly one year.

13. We also note that during the said period petitioner was not assigned any duties from 30.07.2013 to 06.08.2014 and the said period has been adjusted against his leaves in the following manner:

- “01. W.e.f. 30.07.2013 to 06.09.2013 into LAPs.
02. W.e.f. 07.09.2013 to 05.11.2013 into LHAP.
03. W.e.f. 06.11.2013 to 31.03.2014 as LAP.
04. W.e.f. 01.04.2014 to 06.08.2014 as LWOP.

14. In view of the above, the petition is allowed. It is directed that respondents shall pay to the petitioner the salary for the period that was adjusted as ‘Leave Without Pay (LWOP)’ on medical ground.

15. We are informed that petitioner had been paid salary during the period at S. No. 1 to 3 referred above, wherein leave was adjusted against pay. In respect of period at S. No. 2 referred above, leave was adjusted against half pay.

16. Accordingly, respondents shall pay to the petitioner the salary for the period covered in “leave without pay” on medical ground i.e. 01.04.2014 to 06.08.2014 and full salary for the period 07.09.2013 to 05.11.2013.



17. The leaves that have been exhausted out of his leave account towards leave against pay and leave against half pay i.e. for the period 30.07.2013 to 31.03.2014 shall also be credited to his leave account.

18. In view of the fact that this Court is directing credit of the leaves that were debited from the leave account, we are not inclined to grant any interest to the petitioner for delay in payment of salary that we have directed to be paid for the period 07.09.2013 to 05.11.2013 and 01.04.2014 to 06.08.2014. The amount be paid to the petitioner within a period of 12 weeks from today.

19. It is clarified that in case the amount is not paid within 12 weeks, respondents shall be liable to pay interest on the said amount after the expiry of the period 12 weeks till the time the amount is actually paid @ of 7.5% per annum.

20. Petition is allowed in the above terms.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

NOVEMBER 30, 2023/sw