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

+ **W.P.(C) 6189/2024 & CM APPL. 25733/2024 Stay.**

SUSHIL KUMAR

..... Petitioner

Through: Mr. S.S.Pandey, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Manoj Kumar Tyagi, SPC for
respondents.
Maj. Anish Murlidhar.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

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27.05.2024

1. This petition has been filed by the petitioner with the following prayers:

“(i) Issuance of an appropriate writ of Certiorari, calling for the civil Writ Petition under article 226 of the Constitution of India for the issuance of an appropriate Writ of Certiorari, calling for the records including orders dated 15.01.2024 and 23.01.2024, and all other medical examination, communications based on which the Petitioner was declared medically unfit in the medical board at MH Allahabad and records based on which Petitioner has not been provided necessary documents or a Review Medical Board asked by him and including Records based on which Letter dated 22.02.2024 and 04.04.2024 has been issued and thereafter quash the same;

(ii) Issue a Writ of Mandamus by directing the Respondents to provide the Petitioner an opportunity by conducting a Review Medical Board to adjudge his fitness and in the event the Petitioner is declared fit on Medical Grounds, the Respondents be directed to issue joining instructions to the Petitioner based on his position in merit with all consequential benefits;



(iii) Issue any other/further direction as this Hon'ble Court may deem fit in the facts and circumstances of the case.”

2. In effect the petitioner challenges the communication dated January 29, 2024 whereby the petitioner has been declared unfit for appointment as Havaldar Surveyor Automated Cartographer.

3. Suffice to state that the petitioner was medically examined by the Medical Hospital Prayagraj. The impugned communication states that the petitioner has been found unfit on the ground of ‘*Cubitus Valgus Bilateral*’. According to the learned counsel for the respondents, the same is primarily a deviation in the hand below the elbow. According to him, the permissible limit is upto 15 degrees i.e anything beyond 15 degrees is a ground for unfitness. The counsel who has placed before us the review medical certificate issued by the Medical Board would concede to the fact that the degree of deviation has not been reflected in the report.

4. If that be so, we are of the view that the Medical Board should have reflected the degree of deviation below the elbow so that the petitioner is aware of the nature for his unfitness. Having not done that, we have no other option but to set aside the communication dated January 29, 2024, and refer the petitioner to the Army Hospital, RR for fresh examination. The Army Hospital shall constitute a Board as permissible under the Rules for examination of the petitioner, and the Board which examines the petitioner, shall give detailed findings for the respondent authorities to act on the same. The respondents shall give a notice of four days to the petitioner for his appearance before the Board. Based on the conclusion drawn by the Medical Board, further action shall be taken in accordance with law.



5. The petition stands disposed of.
6. The aforesaid exercise shall be completed within a period of four weeks from today.

V. KAMESWAR RAO, J

RAJNISH BHATNAGAR, J

MAY 27, 2024/ib