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

+ **W.P.(C) 10120/2024**

SUMIT KUMAR

.....Petitioner

Through: Mr.Nikunj Arora, & Mr.Binney
Chopra, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr.Puneet Yadav, SPC with
Mr.Ravinder, GP & Mr.Shrabanta Sarkar, SI, SSB.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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24.07.2024

CM APPL. 41427/2024

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 10120/2024 & CM APPL. 41426/2024 (interim directions)

3. The petitioner, who is aspiring to join the Sashastra Seema Bal (SSB) as a Head Constable (Communication), has approached this Court by way of the present petition under Article 226 of the Constitution of India, seeking the following reliefs:-

“a) Issue a writ of certiorari for quashing the medical report of Detailed Medical Board dated 15.06.2024 and Review Medical Board dated 22.06.2024 whereby petitioner was declared medically unfit by the respondents; and

(b) Issue a writ of mandamus directing the respondents to allow the petitioner to appear for a fresh medical examination before an independent board set up by the respondents in consonance with the Medical Standards and found fit, be appointed as Head



Constable(Communication) with seniority all consequential benefits;”

4. Learned counsel for the petitioner submits that upon applications being invited for the post of Head Constable (Communication) on 09.05.2023, the petitioner applied for the same and based on his performance in the selection test, his name was placed in the merit list. Even though the petitioner was found fit both in the Physical Standard Test (PST) and the Physical Endurance Test (PET), he has not been appointed on the ground that he was not found to be medically fit. He submits that the petitioner was examined by the initial Medical Board on 15.06.2024, which opined that he was suffering from “Trismus” - a disease where the persons suffers from contraction of jaw muscles making it difficult for him to speak properly. Being aggrieved, the petitioner then preferred an appeal and was, accordingly, examined by the Review Medical Board on 22.06.2024, which also declared him unfit on the same ground.
5. He submits that since the petitioner is a young man who is fit in every way and not suffering from “Trismus” or any other disease, he approached the Sawai Mansingh Hospital at Jaipur on 29.06.2024 and the Government Hospital at Jhunjhunu on 01.07.2024, where he has been declared medically fit by specialists including an ENT specialist, who have both specifically opined that he is not suffering from “Trismus”. He, therefore, contends that it is clear that there was an error of judgment on the part of the Medical Boards conducted by the respondents and therefore, prays that the respondents be directed to get the petitioner examined again by an independent medical board in



a time bound manner and in case, he is found fit, he be appointed as a Head Constable (Communication) with all consequential benefits.

6. Issue notice. Learned counsel for the respondents accepts notice and oppose the petition by urging that the findings given by both the initial Medical Board and the Review Medical Board to the effect that the petitioner is suffering from “Trismus” are based on clinical examination of the petitioner and cannot, therefore, be said to be incorrect. Furthermore, merely because the petitioner has been declared fit by two civil hospitals, cannot be a ground to accept his plea that he is not suffering from “Trismus”. He, therefore, prays that the writ petition be dismissed.
7. Having considered the submissions of learned counsel for the parties and perused the record, we find that as per the medical opinion given by two Government Hospitals i.e. the Sawai Mansingh Hospital, Jaipur on 29.06.2024 and the Government Hospital at Jhunjhunu on 01.07.2024, it has been specifically reported that the petitioner was not suffering from “Trismus”. We also find that no ENT specialist was included either in the initial Medical Board or in the Review Medical Board. Had the respondents included an ENT specialist, he would have been in a position to conclusively opine as to whether the petitioner was suffering from “Trismus” or not. Further, we can also not ignore the categorical opinion of the specialists in the two Government Hospitals, who have opined that the petitioner is not suffering from “Trismus”.
8. In these circumstances, even though the respondents are correct in urging that the findings of civil hospitals cannot be a ground to



determine the medical fitness of persons for joining the Armed Forces, we are of the view that an error of judgment on the part of the Medical Boards conducted by the respondents cannot be ruled out especially when no ENT specialist was associated with either of the Medical Board proceedings. It would, therefore, be in the interest of justice to direct the medical examination of the petitioner by an independent Medical Board at Army Hospital (R&R), New Delhi.

9. We, therefore, allow the writ petition by directing the respondents to get the petitioners examined by a three member Medical Board at the Army Hospital (R&R), New Delhi within four weeks and accordingly, request the Medical Superintendent, Army Hospital (R&R), New Delhi to constitute a three member Medical Board including an ENT specialist at the earliest to examine the petitioner and give opinion regarding his medical fitness.
10. The writ petition is, accordingly, allowed in the aforesaid terms by making it clear that the decision taken by the Medical Board at the Army Hospital (R&R), New Delhi, will be binding on both sides and in case, the petitioner is declared medically fit to join the SSB, he will be appointed as a Head Constable (Communication) within six weeks from the date he is declared fit with notional seniority and pay fixation subject to his fulfilling all other eligibility criteria.

REKHA PALLI, J

SHALINDER KAUR, J

JULY 24, 2024/kk