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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CM APPL. 12363/2024
IN
+ W.P.(C) 14309/2023
SUMIT TYAGI

..... Petitioner

Through: Ms. Saahila Lamba and
Mr. Tanmay Cheema, Advs.
versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Naginder Benipal, Sr. PC with
Mr. Ankit, Ms. Anjali Pandey, Advs.
for UOI with Dr. Dipankar
Chakraborty, Commandant (Medical)

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER
09.04.2024

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CM APPL. 12363/2024 (for early hearing)

This is an application filed by the petitioner seeking early hearing of the petition.

With the consent of the learned counsel for the parties, we have heard the matter finally. The application is disposed of.

W.P.(C) 14309/2023

1. On the last date of hearing, we have passed the following order:

“1. On the last date of hearing we passed the following order:

CM APPL. 12363/2024

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



"In the facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court be pleased to:-

(i) Issue a writ of certiorari quashing Review Medical Examination Report dated 12.10.2023 whereby petitioner has been rejected in respect of recruitment in Sashastra Seema Bal under File No.338/RC/SSB/Combined Advt./Cts/2020;

(ii) Issue a writ of mandamus directing the respondents to appoint the petitioner to the post of Constable (Driver) in Sashastra Seema Bal in case the name of the petitioner figures in the merit list of successful candidates prepared in respect of recruitment under File No.338/RC/SSB/Combined Advt./Cts/2020

(in) Pass any such other orders as it may deem fit to this Hon 'ble Court in the facts and circumstances of the case. "

2. One of the submissions of Ms. Saahila Lamba, learned counsel appearing for the petitioner by drawing our attention to page 37 of the paperbook is that the petitioner has been found unfit on the basis of Gynaecomastia which provision state as under:

"2) Gynaecomastia: Will lead to rejection in the initial medical examination, if the diameter of the mass is more than 4 cm. During review medical examination, ultrasound examination is to be done to rule out whether it is due to fatty tiss or breast tissue. Candidates are to be rejected if found to have breast tissue."

3. According to her, the Medical Board has not commented about the size of the mass and whether the same is found to have breast tissue.

4. Learned counsel for the respondents seeks sometime to consult the Medical Expert in the department.

5. At bis request, re-notify on March 5, 2024."



2. Today, the learned counsel for the petitioner by drawing our attention to the guidelines as referred to in the last order states, the Review Medical Board has not concluded that the Gynaeomastia as a ground of rejection, had a breast tissue.

3. The learned counsel for the respondents, who had taken instructions submit that though the ultrasound report was examined but it is not clear that the petitioner's case was rejected because of the existence of breast tissue.

4. At this stage, Ms. Lamba has drawn our attention to page 35 to contend that in the month of February, 2022 the same presiding officer who had rejected the case of the petitioner now had declared the petitioner fit for Gynaeomastia.

5. In other words, it is her submission that the two reports are at variance for the reasons best known to the Medical Board/Doctor.

6. In view of the above, we deem it appropriate to direct Dr. Dipankar Chakraborty, Commandant (Medical), the presiding officer of the Medical Board which examined the petitioner on February 12, 2022 and also on October 12, 2023 to file an affidavit on the variance in the medical report submitted by the Review Medical Board of which he was part of. The affidavit shall also state that whether the examination held on October 12, 2023 was in terms of the guidelines issued by the respondents of which a reference has been made in the last order.

7. The affidavit shall be filed within a period of three weeks.

8. It is made clear that this order shall not come in the way for the respondents through the Medical Board to examine the petitioner again and submit a report to the court on the next date of hearing.

9. Renotify on April 09, 2024."

2. Dr. Dipankar Chakraborty, Commandant (Medical) / Presiding Officer of the Medical Board is present in person.

3. During the course of hearing, we have been informed that the respondents have decided to re-examine the petitioner by constituting a fresh



Medical Board on April 15, 2024.

4. If that be so, no further orders are required to be passed in the writ petition. Suffice to state, the parties shall be bound by the conclusion drawn by the Medical Board to be held on April 15, 2024. If the petitioner is found fit, his appointment shall be made subject to availability of vacancies on the post of Constable (Driver).

5. The affidavit in terms of order dated March 5, 2024 has been filed and the same is taken on record. The same be scanned and be made part of the record.

6. The date already fixed, i.e., April 29, 2024 stands cancelled.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

APRIL 9, 2024/aky