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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10625/2024**

VIVEK KUMAR

.....Petitioner

Through: Mr.Raghunath Pathak & Ms.Shweta
Priya, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr.Naginder Benipal, Ms.Arпита
Rawat & Mr.Ankit Siwach, Advs. with
Mr.Devender Singh, DC, JAG.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

02.08.2024

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1. The petitioner, who is working as a Constable/Barber in the Indo Tibetan Border Police (ITBP), has approached this Court seeking a direction to respondent no.2 to get a Medical Board constituted by an independent Hospital in Delhi so as to ascertain his present medical condition. The petitioner also seeks a direction to the respondents to immediately transfer him from the 41st Battalion, where he is presently posted and claims to being harassed by his superior officers on account of his earlier approaching this Court regarding denial of MACP to him.
2. Learned counsel for the respondents, who appears on advance notice, submits that the petitioner was examined by a duly constituted



Medical Board held on 06.11.2023 and was found not fit for service in the Armed Forces and thereby the respondents are proposing to take action based on the same against the petitioner as per Rules. He is, however, not in a position to explain as to why no action has been taken for over the last eight months during which period the petitioner continued to be detailed for all kinds of duties.

3. In the light of this plea of the respondents, learned counsel for the petitioner contends that the very fact that the petitioner is being deployed for duties despite the purported medical opinion that he is unfit for further retention in service, in itself shows that the opinion of the Medical Board is erroneous. He, therefore, prays that the respondents be directed to get the petitioner medically examined by an independent Medical Board to ascertain his present medical condition.
4. Having considered the submissions of the learned counsel for the parties and perused the record, even though we find no reason to accept the petitioner's prayer for posting him out of 41st Bn, there is merit in his plea that he should be medically re-examined and that too by a Medical Board other than that of the ITBP.
5. We, therefore, dispose of the writ petition by directing the respondents to get the petitioner examined by any Government Hospital, other than an ITBP hospital, within a period of four weeks from today. A copy of the said medical examination proceedings along with a copy of the Medical Board proceedings held on 06.11.2023 will be furnished to the petitioner as also his learned counsel.



6. The writ petition is, accordingly, disposed of in the aforesaid terms.

REKHA PALLI, J

SHALINDER KAUR, J

AUGUST 2, 2024

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