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

+ **W.P.(C) 11365/2024, CM APPL. 52967/2024**

NAYAN PAPPU SAWANT

.....Petitioner

Through: **Mr. Amit A. Katarnaware and Ms.
Karuna S. Wagh, Advs.**

versus

UNION OF INDIA & ORS.

.....Respondents

Through: **Mr. Sahil Munjal and Mr. Hussain
Taqvi, Advs.**

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

11.09.2024

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

“a) This Honourable Court is pleased to issue a writ of mandamus to the respondents, directing them to appoint the petitioner to the post of Head Constable (Communication).

b) This Hon'ble Court is pleased to set aside the detailed medical examination report dated 06.07.2024 and the review medical examination report dated 27.06.2024 of the petitioner, as conducted by the respondent.

c) This Hon'ble Court is pleased to stay the publication of the results in the present matter.

d) This Hon'ble Court is pleased to stay the current recruitment proceedings related to the present matter.

e) Pending the hearing and final disposal of the present petition, ad interim relief is sought in terms of the prayers made in clauses (a) and (b).”

2. Learned counsel for the petitioner submits that upon applications being invited for the post of Head Constable (Communication) by the SSB,



the petitioner applied for the same. 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 27.06.2024, which declared him medically unfit and opined that he was overweight as his Body Mass Index (BMI) was 25.23 and even the value of Thyroxine (T4) in his blood sample was elevated. Being aggrieved, the petitioner preferred an appeal and was examined by the Review Medical Board (RMB) after 09 days on 06.07.2024, even though, as per the laid down guidelines, the RMB ought to be preferably conducted on the very next day.

3. Learned counsel submits that the petitioner is a young man, who is fit in every way and is neither overweight nor suffering from Thyroid of any kind, which is evident from the fact that he had been examined by the Bharati Vidyapeeth Medical College & Hospital, Sangli, Maharashtra on 19.06.2024 when he was found to be fit and was again examined on 15.07.2024 by Hindlabs Diagnostic Centre, Sangli, Maharashtra, wherein he was again declared to be fit. He, therefore, contends that it is a clear case where there was an error of judgment on the part of both 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.

4. On the other hand, learned counsel for the respondents seeks dismissal of the writ petition by urging that the findings given by both the initial Medical Board and the RMB to the effect that the petitioner was suffering from overweight as also elevated levels of T4 were based on his



clinical examination and cannot be said to be incorrect. Furthermore, he contends that merely because the petitioner has been declared fit by two civil hospitals cannot be a ground to accept his plea and that he has been wrongly declared as medically unfit by the Medical Board proceedings held by the respondents. He, therefore, prays that the writ petition be dismissed.

5. Having considered the submissions of learned counsel for the parties and perused the record, we find that as per the medical opinions given by two hospitals i.e. Bharati Vidyapeeth Medical College & Hospital, Sangli, Maharashtra and Hindlabs Diagnostic Centre, Sangli, Maharashtra, one of which is a Government hospital, it has been specifically reported that the petitioner is medically fit ruling out that he is overweight or is having elevated levels of T4. The opinions from these hospitals pertain to the same period during which the petitioner was examined by the respondents. The medical examination of the petitioner having been conducted by Bharati Vidyapeeth Medical College & Hospital, Sangli, Maharashtra, on 19.06.2024, followed by a re-examination was on 15.07.2024 at Hindlabs Diagnostic Centre, Sangli, Maharashtra. We are, therefore, of the opinion that an error of judgment on the part of the Medical Boards conducted by the respondents cannot be ruled out.

6. We also find merit in the petitioner's plea that once the guidelines specifically provided that the RMB should be conducted preferably on the very next day, the respondents ought to have taken expeditious steps to get the petitioner's RMB conducted in a timely manner. The only justification given by the respondents for the delay in holding of the Review Medical Board is that the initial medical examination of some of the other candidates was still underway, the same is also liable to be rejected as the RMB was



required to be conducted by a Board other than the Initial Medical Board.

7. In the light of the aforesaid and the admitted position that the selection process for the post for which the petitioner had applied is still underway. We are of the view that it would be in the interest of justice to direct fresh medical examination of the petitioner by an independent Medical Board at Army Hospital (R&R), New Delhi.

8. We, therefore, allow the writ petition by directing the respondents to get the petitioner examined by a three member Medical Board at the Army Hospital (R&R), New Delhi within two weeks and accordingly, request the Medical Superintendent, Army Hospital (R&R), New Delhi to constitute a three member Medical Board at the earliest to examine the petitioner and give opinion regarding his medical fitness.

9. 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

SEPTEMBER 11, 2024/ss