



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

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Date of decision: January 11, 2024

+ W.P.(C) 16444/2023, CM APPL. 66236/2023, CM APPL. 66237/2023

HITESH SAINI

..... Petitioner

Through: Mr.Saurabh Sharma, Advocate

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Syed Abdul Haseeb, SPC with
Mr. Hilal Haider, GP

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J. (ORAL)

1. The petition has been filed by the petitioner for the following prayers:

“It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

i. To issue the writ of Mandamus or Any Other Appropriate Writ, Order or Directions to the Respondent No. 1 And 2 to Quash The Review Medical Dated 07.12.2023 As Illegal And Arbitrary Which Resulted In Eliminating The Candidature Of Petitioner Due To Overweight By 9.7 Kgs;

ii. To Direct the Respondents to Conduct the Fresh Medical Of Petitioner And If Petitioner Found Fit,



Petitioner May Be Considered Against The Post of Inspector (Librarian) In BSF.

iii. Pass such other and further orders as this Hon,ble Court may deem fit and proper in the interest of justice.”

2. In effect, the petitioner has challenged the decision of the Medical Board, disqualifying the petitioner as unfit for appointment to the post of Inspector (Librarian) in BSF on the ground that he is overweight.

3. It is a conceded position that the Medical Board has in its Report stated that the petitioner is overweight by 15 kgs at the time of initial Medical Examination. Even the Review Medical Board has stated his weight as 84.7 kg and as such he is overweight by 9.7 kgs.

4. Mr. Sharma and the petitioner, who have been heard by us would contend that, as per the prescription of the Venkateshwar Hospital dated December 14, 2023, the petitioner weight is 73.2 kgs. Their plea is that the petitioner should be relegated back to the Medical Board for fresh measurement of the weight. Mr. Sharma has relied upon order dated June 01, 2023 passed by a Co-ordinate Bench of this Court in W.P.(C) 8136/2023 titled as ***Surender Singh vs. Union of India***, to contend that, on identical facts, the Court has directed the respondents therein to measure the weight of the petitioner again and act accordingly.

5. On the other hand, Mr. Haseeb, learned counsel for the respondents would contest the petition by stating that the two medical boards having come to a similar conclusion that the petitioner is overweight by 15 kgs/9.7 kgs, i.e. beyond 75 kg, the permissible limit, the petition is liable to be dismissed.



6. He further submits on instructions that the result of the selection was declared on January 02, 2024, when it is found that no candidate has qualified in the selection to the post of the Inspector (Librarian), BSF. He seeks the dismissal of the petition.

7. Having heard the learned counsel for the parties, we are of the view that there being no challenge to the findings of the Medical Board / Review Medical Board, the prayers cannot be granted. The petitioner is overweight by 15/9.7 kgs which are much beyond the permissible limit. The plea that has been urged by Mr.Sharma/the petitioner for re-examination by relying on the weight measured by Venkateshwar Hospital cannot be granted for the same reason as stated above.

8. For the petitioner to succeed in the petition, it is necessary that he should have challenged the findings of the Medical Board stating that the same were mala fide/for extraneous reasons. He should have made the members of the Medical Board as party/respondents in the petition for the Court to seek their stand on the allegations. Since the same has not been done, the relief(s) as sought cannot be granted. It follows the findings of the Medical Board, in the absence of the challenge, need to be accepted.

9. In so far as the reliance placed by Mr. Sharma on the judgment in *Surender Singh (supra)* is concerned, the same do not decide any question of law. In fact, it appears that there was no Review Medical Board constituted to determine the weight of the petitioner therein. So a direction was given to measure the petitioner's weight afresh. It is not such a case here, as two Medical Boards have found that the petitioner is overweight. So it must be construed the judgment was in the facts of that case.



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10. In view of the above discussion and in the facts of this case, we are of the view that relief as prayed for in the petition cannot be granted. The petition, alongwith the pending applications, is dismissed.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 11, 2024/So