



2025:DHC:6352-DB



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

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Date of decision: 28th JULY, 2025IN THE MATTER OF:+ **W.P.(C) 9716/2018**

DY. COMDT. BHIKKAN SHARMA

.....Petitioner

Through: Mr. Anuj Aggarwal, Mr. Vikrant
Chawla & Mr. Mayank Chauhan
Advocates.

versus

UNION OF INDIA AND ORS.

....Respondents

Through: Mr. Rajesh Kumar, SPC with Mr.
Rahul Kumar Sharma, Advocate and
MR Vinod Sawant, Law Officer with
Mr. Athurv, Inspector and Mr. Ram
Niwas Yadav from CRPF.**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****HON'BLE MR. JUSTICE SAURABH BANERJEE****J U D G M E N T (O R A L)**

1. By way of the present writ petition under *Article 226* of the Constitution of India, the petitioner is seeking quashing of the order dated 02.04.2018 passed by the respondent no.2, whereby the petitioner's plea for convening review Departmental Promotion Committee (*DPC*) has been rejected, as also directions to the said respondent no.2 for holding review *DPC* and further direction to the respondents to issue all the retirement benefit(s) to the petitioner with effect from his superannuation as on 31.05.2017 as he would have obtained, had he rightly superannuated from the post of '2-I/C / *Second-in-Command*'.



2. Brief facts leading up to the present writ petition are that the petitioner was enlisted as an Assistant Sub-Inspector (Ministerial) in the Central Reserve Police Force (*CRPF*) on 20.08.1983. Thereafter, during his duty in the year 2012, the petitioner was bitten by some insect which led to the petitioner's body being covered in rashes. He was, thus, referred by composite hospital, *CRPF*, Guwahati to Guwahati Medical College and Hospital, whereby he was diagnosed to be suffering from '**Psoriasis**' on 17.12.2012. While being treated for '**Psoriasis**', he was declared to be 'P2' (permanent) medical category by the Board of Medical Officers, *CRPF* on 08.04.2014.

3. With time, as the rashes were resurfacing again and again, the petitioner was referred to dermatology OPD, Safdarjung Hospital, New Delhi on 16.07.2016 for further evaluation, wherein, the incumbent doctor *vide* his medical opinion dated 06.08.2016 was of the view that the petitioner is physically fit and he was suffering from '**Endogenous dermatitis**' and not '**Psoriasis**'.

4. On 05.10.2016, since the DPC was being held for promotions of the officers, given the re-examination of his skin disease, the petitioner sent a representation dated 10.10.2016 to the Director General, *CRPF* seeking review of his medical condition. Then, *vide* letter dated 03.11.2016, he also sought audience with the Director (Medical), *CRPF* regarding his re-examined medical examination. Thereafter, considering the reassessment of his skin disease, the respondent no.2 upgraded the medical category of the petitioner as '**SHAPE-I**' on 02.12.2016.

5. In view of the aforesaid, the petitioner sent representations dated 07.12.2016 and 13.02.2017 to the Director General, *CRPF*, seeking



promotion to the post of 2-I/ C/ *Second-in-Command* since the doctors of the Medical Board constituted by the respondent no.2 themselves have declared the medical category of the petitioner to be *SHAPE-I* which indicated that the petitioner is fit for all kinds of duties.

6. Hearing nothing from the respondent no.2, the petitioner filed *W.P.(C) 4909/2017* before this Court seeking quashing of the respondent no.2's Medical Board's finding dated 17.12.2012 categorizing the petitioner as *P2* (permanent) owing to '***Psoriasis***' and claimed ancillary benefit(s) flowing from the post of 2-1/C/ *Second-in-Command*. *W.P.(C) 4909/2017* was disposed of by this Court *vide* order dated 09.01.2018 directing the respondents to hand over the actual copy of the internal order dated 05.07.2017 with liberty to assail the same, if aggrieved, in accordance with law.

7. Not having received the said order dated 05.07.2017, the petitioner addressed a representation dated 05.02.2018 to the respondents to comply with the above directions of this Court *vide* order dated 09.01.2018. Subsequently, the respondents gave a copy of the impugned order dated 02.04.2018, sans the minutes/ internal file noting of the Ministry of Home Affairs (*MHA*) dated 05.07.2017, which formed the basis of the order dated 02.04.2018.

8. Being aggrieved, the petitioner has preferred the present writ petition.

9. Learned counsel for the petitioner submits that the petitioner was incorrectly diagnosed by the respondent no.2's doctor for having '***Psoriasis***' since the petitioner was actually suffering from ***Endogenous dermatitis***. Due to the aforesaid, the medical category of the petitioner was wrongly downgraded as *P2* (permanent) from *SHAPE-I* which led to him becoming



ineligible for promotion to the post of 2-I/C/ *Second-in-Command* and thereby losing all the ancillary benefit(s) thereof.

10. Learned counsel then submitted that, on 02.12.2016, the respondent no.2 themselves updated and declared the petitioner to be in *SHAPE-I* but failed to give the consequential benefit(s) to the petitioner, which he would have been entitled to, if the doctors had not wrongly diagnosed his skin disease. Reliance in this regard is placed upon the order passed by a Co-ordinate Division Bench of this Court in a matter entitled ***Kamlesh Kumar Kamal v. UOI & Ors***¹ wherein it was held that declaration of the medical unfitness of the person ought to be made with due care, as the impact thereof may impact not only immediate prospects but future candidature as well.

11. *Per contra*, the learned counsel for the respondents submits that as per ‘para 4.13’ of CRPF Standing Order 04/2008, the petitioner ought to have been in *SHAPE-I* medical category on the date of the DPC i.e. 05.10.2016, which is an essential element for being promoted to the rank of 2-I/ C/ *Second-in-Command*. Reliance is placed upon ***Union of India & Ors. v. K.V. Jankiraman & Ors.***², wherein the Hon’ble Supreme Court held that promotion is not a matter of right and is contingent on facts and circumstances of each case.

12. Learned counsel then submits that respondent no.2, by considering the overall facts and relevant rules, has rightly rejected the representation of the petitioner.

13. This Court has heard the submissions advanced by the learned counsel for the parties and has examined the documents placed on record along with

¹ Order dated 30.07.2010 in W.P.(C) 1252/2010

² (1991) 4 SCC 109



the case laws cited.

14. What emerges before us is that, *admittedly*, as per expert medical opinion rendered by the incumbent doctor, Safdarjung Hospital, New Delhi, dated 06.08.2016, the petitioner was not suffering from '***Psoriasis***' but from ***Endogenous dermatitis***. The same was confirmed from the fact that given the misdiagnosed skin disease, the petitioner's representation to amend the medical category/ status from *P2* (permanent) to *SHAPE-I* was duly accepted by the respondent no.2 *vide* letter dated 10.10.2016 and the status was accordingly changed by the respondent no.2 on 02.12.2016 from *P2* (permanent) to *SHAPE-I*.

15. Further, it is also an admitted fact that thereafter the petitioner immediately made representations on 07.12.2016 and 13.02.2017 to the Director General, *CRPF* asking for his due promotion. Lack of response to the representations of the petitioner led the petitioner to file *W.P.(C) 4909/2017* seeking directions to hold a review DPC along with other ancillary reliefs. As entailed hereinabove, *W.P.(C) 4909/2017* was disposed of *vide* order dated 09.01.2018.

16. The aforesaid clearly shows an erroneous assessment of the petitioner's skin disease, particularly, since the respondent no.2 itself rectified its mistake and changed the medical status of the petitioner on 02.12.2016 from *P2* (permanent) to *SHAPE-I*. Had the petitioner been assessed properly, he would have been duly promoted and placed on an equal footing with his similarly qualified peers.

17. Under such circumstances, the petitioner cannot be said to be faulted with and thus cannot be allowed/ made to suffer for the inaction/ fault/ wrongdoing of the respondent no.2, more so, when there was no reason for



the respondent no.2 to disbelieve the opinion rendered by the incumbent doctor, Safdarjung Hospital, New Delhi which led it to rectify its mistake and change the medical status of the petitioner from *P2* (permanent) to *SHAPE-I*. There was, thus, no plausible reason for the respondent no.2 to shun away and not give benefit(s) of *SHAPE-I* medical category to the petitioner.

18. In our considered view, the respondent no.2 has taken the case of the petitioner too lightly, when it was to take the same with utmost seriousness, particularly, when it was concerning one of its own personnel. Armed Forces and those in it, have to always tread with care and caution, be it in any field, more so, when dealing with its own self. In the present case, the non-action by the respondent no.2 has resulted in impacting not only the future candidature of the petitioner, but also his promotion and other benefits too. In ***Kamlesh Kumar Kainal (Supra)***, a Co-ordinate Division Bench of this Court held that determination declaring an individual ‘medically unfit’ must be made with the highest degree of care and objectivity, particularly, since a declaration carries significant consequences affecting not only the individual’s immediate eligibility for promotion/appointment but may also cast a long-lasting shadow over future career opportunities.

19. In fact, a Co-ordinate Division Bench of this Court recently in ***M. Samundra Singh v. Union of India & Ors.***³, has held that where there is a mutual consensus between the petitioner and the respondent regarding the petitioner’s medical categorization being in *SHAPE-I* at the time of the DPC, Court cannot deny the benefit of retrospective seniority to the



petitioner, in parity with his peers.

20. Lastly, **K.V. Jankiraman** (*supra*) cited by learned counsel for the respondents is not applicable to the facts involved herein as the same is dealing with the fact, as to whether the DPC ought to consider the facts of the pending case(s)/ proceedings against the appellant for giving promotion whereas the facts herein pertain to wrongful assessment of a medical condition thereby denying promotion to the petitioner herein.

21. In view of the aforesaid reasonings and analysis as also the legal position involved, we are of the opinion the petitioner ought not to be allowed to bear the brunt of non-actions of the respondent no.2. Allowing the same would result in depriving the petitioner of his valuable rights, legitimate benefit(s) and other remedies as available to him in accordance with law as it would also result in travesty of justice and, in fact, inequality.

22. Therefore, the present writ petition is allowed directing the respondents to hold a review DPC *qua* the petitioner within a period of *four weeks*, as if it was done on 05.10.2016 and consider the case of the petitioner in light of what has been held by us hereinabove and proceed in accordance with law.

23. Accordingly, the present petition is disposed of with the aforesaid directions. No order as to costs.

SUBRAMONIUM PRASAD, J

SAURABH BANERJEE, J

JULY 28, 2025/Ab

³ Judgment dated 18.10.2024 in W.P.(C) 5423/2023