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

% *Date of Decision : 1st April, 2014*

+ W.P.(C) 2075/2014

RAMESH KUMAR Petitioner
Through: Mr.Romil Pathak, Advocate.
versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Himanshu Bajaj, CGSC with
Mr.M.P.Singh, Advocate for the
Respondent Nos.1 to 3.

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (ORAL)

1. The present writ petition has been filed by the Petitioner Ramesh Kumar, Ex-MT.(Driver) with Indo-Tibetan Border Police, praying for quashing of the order dated 27.04.2006 vide which he was invalidated out of service and order dated 16.05.2011 vide which his representation dated 30.10.2006 was rejected.

2. Heard.

3. In brief, the case of the Petitioner is that he was enrolled in ITBP (Indo-Tibetan Border Police) on 08.11.1990 as Driver MT. While performing official duty, he met with an accident on 15.04.1995 resulting into dislocation of his right hip joint. Subsequently he was placed in low medical category 'C'. Even thereafter he continued to perform his duty as he was detailed to drive heavy vehicles. In February, 2005, while being

detailed to training course namely MT Cadre Class-II, he was upgraded to medical category AYE and was forced to undergo the training course. During the training, he suffered injury which aggravated his already subsisting condition and thus, he was adjudged unfit for service by the Medical Board on account of dislocation of right hip & abscess in thigh. Notice dated 11.03.2006 terminating his service under Rule 26(3) of the Indo-Tibetan Border Police Force Rules 1994 was served on the Petitioner, communicating the recommendation of the Medical Board and his right to file an appeal against the said recommendation within 30 days of the receipt of the notice. The Petitioner obtained a certificate from Dr.Y.S.Thapliyal, Orthopaedic Surgeon, Doon Hospital, Dehradun in respect of his fitness to drive a vehicle and thereafter he submitted a representation for constituting a Review Medical Board. However, the representation was rejected by the Respondent vide order dated 27.04.2006 on the ground that the contra opinion obtained by the Petitioner was not given by a Civil Surgeon as per the requirements of ITBP Rules.

4. Since the Petitioner was of the belief that he was fit to perform his duties to the satisfaction of the Respondent, he filed W.P.(C) No.5939/2010 against the rejection of his representation. The grievance of the Petitioner was duly redressed by this Court vide order dated 23.09.2011. For our purpose, the relevant paragraphs of the said order are extracted as under :

'4. Filing the instant writ petition, petitioner urges various points, but at the hearing today learned counsel for the petitioner states that the petitioner would be satisfied if another opportunity is granted to him to seek Review Medical Board for the reason due to lack of education the petitioner never understood the requirement of the rules as per which the petitioner has to obtain a contra opinion from a civil surgeon.

5. *Needless to state rules of procedure are the handmaid of justice and not the mistress of justice. The petitioner, due to lack of education, did not understand the manner in which he should have exercised his right of appeal.*

6. *Accordingly, we dispose of the writ petition declaring that if within 30 days from today the petitioner can obtain a contra medical opinion pertaining to his physical fitness to serve in ITBP, he would file an appeal enclosing the said certificate and in said eventuality the petitioner would be brought before a Review Medical Board. Rest would follow depending upon the decision of the Review Medical Board.* (emphasised by us)

5. Pursuant to the order dated 23.09.2011 of this Court, a Review Medical Board was constituted, and the Petitioner was re-examined. On re-examination of Petitioner, the Review Medical Board opined as under :

“In keeping view of the above circumstances and considering the opinion of the orthopaedic specialist of ITBP, the individual is unfit for duties as there is no improvement in his disabilities (As per orthopaedic Specialist opinion enclosed) till date, while long period has already passed and there is no chance of reasonable improvement in his disabilities.

Due to the above mentioned reasons, the individual is unfit for duties in ITBP force.”

The Petitioner obtained the copy of the report of Review Medical Board vide RTI application dated 23.09.2013 which was supplied to him vide reply dated 17.10.2013.

6. Still feeling dissatisfied and confident of his ability to perform his duties in the force, the Petitioner filed the present petition praying for constitution of another Review Medical Board.

7. The main contention of learned counsel for the Petitioner is that the Petitioner is capable of driving heavy vehicles without any problem and in

the given circumstances, this court should pass a writ of certiorari thereby quashing the orders dated 27.04.2006 and 16.05.2011 and directing the Respondent to re-instate the Petitioner in service on the post of Driver. Needless to state that the Petitioner has already approached this Court vide W.P.(C) No.5939/2010 whereby his request for sending his case to a Review Medical Board was acceded to.

8. During the course of hearing, we have specifically questioned learned counsel for the Petitioner that considering the nature of the duties required to be performed by the Petitioner of carrying troops in the official vehicle over rugged terrains, naxal/terrorist infested areas and disastrous conditions, if this Court grants the prayer of the Petitioner, would it not be playing with the life of the Petitioner as also with the lives of troops in the vehicle driven by a person who has been declared unfit to perform his duty in ITBP Force by the Medical Board as well as Review Medical Board.

9. Learned counsel for the Petitioner had no answer to the above question.

10. In our opinion, the grievance of the Petitioner has already been redressed by this Court in W.P.(C) No.5939/2010 and we do not find any reason to pass an order for constitution of another Review Medical Board.

11. Resultantly, the writ petition is hereby dismissed.

12. No order as to costs.

PRATIBHA RANI, J

REVA KHETRAPAL, J

APRIL 01, 2014/ 'st'