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Neutral Citation Number: 2023:DHC:2470-DB

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

% *Reserved on: February 22, 2023*

Pronounced on: April 12, 2023

+ W.P.(C) 1666/2015

WG CDR C PADMANABHAN (RETD.), COMMANDANT
PILOT, BSF Petitioner

Through: Mr. S.C. Malhotra & Mr. Kunal
Kishore, Advocates

Versus

COMMANDANT (PERSONNEL), BORDER SECURITY FORCE
& ORS. Respondents

Through: Mr. Jaswinder Singh, Advocate
Mr. Paramveer Singh, AC (Law)
BSF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The petitioner had joined the Indian Air Force as a Commissioned Officer in the Flying Branch on 06.12.1986 as an Ex Indian Air Force Officer (Helicopter Pilot). He had joined the Border Security Force ('BSF') initially on deputation as Commandant/ Co-Pilot on 06.10.2008 and subsequently appointed as a Commandant Pilot in BSF in Feeder Cadre, subject to his relieving from Indian Air Force. The petitioner, after his relieving from Indian Air Force w.e.f. 30.01.2011, assumed charge in

BSF on 31.01.2011.

2. The petitioner claims to have become eligible to the rank of Deputy Inspector General (DIG) on 01.01.2013, subject to his fulfilling requisite conditions under Recruitment Rules (RR) dated 11.11.2011 issued by the Central Government. The petitioner further claims to be fulfilling the requisite conditions as per RR except the condition of 2 years “residency” clause, falling short of 30 days as on date of consideration i.e. 01.01 2013. The petitioner applied for waiver of the said condition vide his representation dated 21.11.2012 in terms of Clause- 10 of RR dated 11.11.2011 which provided for relaxation of any of the provisions of these Rules with respect to any class or category of persons. Having received no response, petitioner made another request to the BSF authorities vide representation dated 01.03.2013 seeking waiver of condition of two years’ of residency.

3. According to petitioner, four vacancies for the post of DIG were available for the year 2013-14, however, Departmental Promotion Committee (‘DPC’) was not constituted till December, 2013. Subsequent upon issuance of an open advertisement dated 07.02.2013 by the BSF for the post of Senior Operations Officer – DIG, the petitioner finding himself fit applied for the same and alternatively waited for convening of DPC for the year 2013-14 and also waiver of this deficient residency period. A similar advertisement dated 20.09.2014 was published by the BSF for the same post of Senior Operations Officer-DIG, however, the conditions for the said post were changed, which according to petitioner was in violation of Recruitment Rules and had been done to accommodate Air

Commandant Sanjay Sharma (Retd.), who was appointed as Senior Operations Officer-DIG in October, 2014. The petitioner was granted waiver of 30 days' "residency" on 09.01.2014 and after a lapse of more than one year, the DPC was convened on 20.02.2014, wherein petitioner was empanelled for promotion to the post of DIG. However, on 18.02.2014, around the time of first death anniversary of petitioner's daughter, aged 14 years, he got emotionally stressed and fell into a state of semi consciousness and was rushed to Moolchand Khairatiram Hospital at Lajpat Nagar by his wife. Thereafter, the petitioner was referred to Army R & R Hospital and was discharged on 24.02.2014. However, the discharge note of the Army R & R Hospital stated "Seizure Disorder, Type 2 DM, with HTN dyslipidemia", whereas no such remark was given by the doctors at Moolchand Khairatiram Hospital.

4. Even though as per RR dated 11.11.2011 there was no requirement of any medical fitness/test as eligibility criteria, especially in case of promotion from Commandant to DIG, however, On 03.03.2014 petitioner was verbally asked to report to FHQ hospital before a Medical Board for his promotion to the DIG rank. The Medical Board presided over by CMO (SG), FHQ HOSPITAL from 03.03.2014 to 25.04.2014 declared him Shape-1, which was approved by IG Medical on 29.04.2014. However, thereafter, on 08.07.2014, petitioner was again asked to report FHQ Hospital - 1, BSF before a fresh Medical Board; which he was informed was based upon his treatment from 18 to 24.02.2014. Despite the fact it was less than three months to the previous Medical Board, which was valid for a period of one year as per para 5.3.6 of IAP 4303, which

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regulates procedure for Medical Examinations for the Air Crew Flying Military registered Air Craft, the petitioner was made to undergo various medical tests with the *mala fide* intention to cause physical and mental agony. The Medical Board vide letter dated 09.07.2014 lowered his category to SI HI A1 P3 E1 (T-24), temporarily for 24 weeks. On 20.11.2014, petitioner received a letter from the competent authority of BSF conveying rejection of letter dated 03.04.2014 for his claim of promotion to the rank of DIG. Against the wrongful denial of his promotion to the rank of DIG, the petitioner has approached this Court by way of present petition.

5. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that in the Medical Board, carried out from 03.03.2014 till 25.04.2014, the petitioner was declared Shape-I by panel of four doctors, including two doctors whose opinion was given in Part-1 and the said opinion was approved by the Director/IG Medical on 29.04.2014 and the said opinion was valid for one year i.e. upto 24.04.2015. Accordingly, the petitioner was eligible for promotion as the precondition of 'residency' was waived of on 09.01.2014 by the respondents. Thus, denial of promotion to the petitioner is in violation of RR dated 11.11.2011 as well as fundamental rights of petitioner envisaged under Article 16 of the Constitution of India.

6. Learned counsel for petitioner submitted that firstly, for the year 2013-14, the DPC should have been convened at least four months prior to accrual of vacancy in terms of DoPT letter dated 11.03.2011. The DPC for the year 2013-2014 was convened on 20.02.2014, wherein petitioner

was empanelled for promotion. Secondly, as per RR dated 11.11.2011, there is no requirement of any medical fitness/test as eligibility criteria specifically in case of promotion from Commandant to DIG. Still petitioner was asked to appear before the Medical Board from 03.03.2014 till 25.04.2014 and petitioner was declared Shape-1 on 29.04.2014 by the Medical Board constituted on 20.02.2014. The petitioner was subjected to another Medical Board on 08.07.2014 wherein he was *mala fide* declared Shape-3 (Temp for 24 weeks), whereas the first Medical Board was valid for a period of one year as per Para 5.3.6 of IAP 4303, an Indian Air Force Publication which regulates the procedure for Medical Examinations for the Air Crew Flying Military registered Air Craft.

7. Learned counsel submitted that in 35 years of his service, petitioner has more than 6000 hours of accident/ incident free flying to his credit. Petitioner has flown extensively during IPKF operations in Sri Lanka and was commended by Chief of Air Staff in 1992 and has been flying VVIPs i.e. Hon'ble Home Minister and Ministers of Central and State Governments. However, since 13.02.2014, petitioner has not flown as he is not allowed by the respondents.

8. Learned counsel for petitioner submitted that respondents had deliberately not considered petitioner's application for the post of SOO against the advertisements published by the BSF on 07.02.2013 as well as 20.09.2014; made him through medical tests and when he was declared Shape-1, with the *mala fide* intention to deny him promotion, petitioner was made to go through another Medical Board against the principles of natural justice.

9. Lastly, submitted that respondents be directed to quash the findings of the Medical Board dated 29.04.2014 and promote the petitioner to the rank of DIG from the date he became eligible after waiver of the shortfall of 'residency period', with further consequential benefits.

10. Denying the averments made on behalf of petitioner, learned counsel appearing on behalf of respondents submitted that the allegation of *mala fide* alleged by the petitioner deserve to be rejected because relaxation in the residency period is not mandatory under the provisions of RR, however, petitioner's request for relaxation of one month's residency service was considered and allowed by the respondents. Also, on 01.1.2013 i.e. the date for considering the promotion in that year, petitioner had completed one year eleven months regular service in the grade of Commandant against two years regular service as is required in existing Recruitment Rules and as such he was neither eligible nor could be considered by the DPC for promotion to the rank of DIG.

11. Learned counsel for respondents submitted that on 20.10.2013 petitioner was Medical Category Shape-1 but he did not maintain it and, therefore, in the DPC held on 21.02.2014 his case for promotion to the rank of DIG was not considered. The petitioner suppressed the factum of having diagnosed with "diabetes with hypertension and seizure disorder Type-II DM with HTN and Dyslipidemia" and intimated the Medical Board that he was asymptomatic and was fit to perform his duties, but this does not amount to be treated as Shape-1.

12. Learned counsel further submitted that since petitioner failed to bring on record documents of his treatment, the BSF officials obtained

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documents from Army Hospital through a responsible officer. Consequently, a fresh Medical Board was constituted on 01.07.2014 and in the Medical Board assembled on 14.07.2014, petitioner was declared S1H1A1P3(T-24) D1 for 24 weeks. It was submitted that since the petitioner ceased to be Shape-1, he does not deserve to be considered for promotion and therefore, the present petition deserves to be dismissed.

13. In rebuttal, learned counsel appearing on behalf of petitioner submitted that in all the periodic medical examinations petitioner has always been declared Shape -1 till the second Medical Board conducted on 14.07.2014. It was submitted that respondents are falsely accusing the petitioner of suffering from Type -II DM with Hypertension and managing the same conservatively by medicines from outside sources for the last 6 years belying their own medical examinations conducted on the petitioner during his deputation period as well as re-employment, wherein he was declared Shape-I every year. Also, petitioner's illness suffered between 18.02.2014 till 24.02.2014 was due to extreme emotional, mental and physical stress due to first death anniversary of his daughter. Also submitted that petitioner stayed in Delhi since 2008 and probably when the doctor gave his opinion, he erroneously mentioned that "petitioner has history of six years" though petitioner or his wife or any other relative were never asked nor they said anything on petitioner's previous illness.

14. Lastly, learned counsel for petitioner submitted that respondents have been denying petitioner his legitimate right of promotion against his eligibility for the year 2013-2014, whereas petitioner was Shape-1 in the year 2013 and are trying to cover up their fault in the garb of false medical

condition of the petitioner and, therefore, the present petition deserves to be allowed.

15. Upon extensive hearing and on perusal of material placed before this Court we find that petitioner had joined the BSF initially on deputation on the post of Commandant Pilot on 06.10.2008 and was subsequently absorbed in permanent feeder cadre on 31.01.2011 and had thus, become eligible for further promotions in BSF. Petitioner became eligible for promotion to the rank of DIG on 01.01.2013. However, since petitioner did not fulfil the eligibility criteria with regard to “residency period”, he requested the Director General, BSF to waive off one month’s requisite period of residency for the purpose of his promotion to the rank of DIG. The respondents waived of 30 days’ “residency” period of petitioner on 09.01.2014. The DPC for the post of DIG convened after a lapse of more than one year on 20.02.2014, wherein petitioner was also empanelled for promotion. The petitioner in his annual medical test held on 29.10.2013 was declared Shape-I and was fit to be considered for promotion.

16. The petitioner between the period 18.02.2014 till 24.02.2014 was admitted to Moolchand Khairatiram Hospital and Army R.R. Hospital and he claims to have given this information to the then DIG, who asked him to appear before the FHQ Hospital -1, BSF, for a Medical Board on 03.03.2014 in connection with his promotion to the rank of DIG.

17. It is pertinent to mention here that the undisputed position is that there is no requirement of going through any medical fitness test for promotion from the post of Commandant to the post of DIG. However,

respondents have pleaded that the petitioner had remained admitted in Moolchand Khairatiram Hospital and Army R.R. Hospital from 18.02.2014 till 24.02.2014, therefore, the petitioner was made to undergo Medical Board.

18. This Court has gone through the discharge slip issued by the Moolchand Khairatiram Hospital dated 18.02.2014 wherein in Column 15 it is recorded that “*patient is suffering from sudden weakness in the left side of body with tightening of limbs*”. In Column 22, condition of petitioner’s vitals monitored have been recorded. In Column 23 it is noted *patient wants to taken to ECHS panel (Military) Hospital*”. The issue between the parties revolves around on the observation of the doctor stating that “*suffering from DM & HT for six years*”. The petitioner has pleaded that his relatives, who had accompanied him, had not given any such information to the doctor and, therefore, the reason behind doctor’s aforesaid noting is not known. The respondents on the other hand have alleged that the petitioner has concealed the factum of undergoing treatment for last six years.

19. We note, on the asking of the petitioner, he was referred to RR Hospital on the very same day. We have also gone through the Hospital Discharge Slip dated 24.02.2014 issued by the Army Hospital (R&R) Delhi Cantt, wherein in Column 25 he has been diagnosed with *SEIZURE DESORTED TYPE2 DM WITH HTN DYSPEDEMIA*”. Petitioner’s medical condition was reviewed on 07.08.12014, wherein he has been assessed as “*clinically has no deficits, fit for duty*”.

20. During the course of arguments, learned counsel appearing on

behalf of petitioner had drawn our attention to the Medical Certificate dated 07.08.2014 issued by Dr. Anita Arora, MBBS MS, who at the first instance had attended the petitioner on 18.02.2014 when the said medical emergency had occurred. She had also accompanied the petitioner along with his wife to the Mool Chand Khairatiram Hospital. She has very specifically stated that on the said day, petitioner was in “*altered state of unconsciousness*”, there were no signs of eyes rolling or frothing from his mouth or any rigidity of his limbs. The doctors at Mool Chand Hospital suspected petitioner’s case of heart attack and gave preliminary treatment but later suspected it a case of Coronary Thrombosis or haemorrhage, as all parameters such like BP, Pulse, ECG were normal. Only signs of left side weakness were observed and within few minutes petitioner had started moving his left leg. The CT scan undertaken to find out possibility of haemorrhage was found to be negative by the Neurologists. Thereafter, petitioner was shifted to the RR Hospital.

21. Upon analysing the discharge slip of Mool Chand Hospital and RR Hospital, this Court finds that had the petitioner been suffering from DM & HT for last six years, it would have come to the knowledge of the doctors examining the petitioner during annual medical checkups. The petitioner had initially joined BSF on deputation and thereafter, he joined BSF on permanent position in the year 2011. It is an admitted case of both the sides that prior to the year 2013, in the annual medical checkups of petitioner held in the year 2011 and 2012, he has been declared Shape-1. The diseases like seizure, diabetes etc. cannot be hidden for a long time. Moreover, respondents have not placed any document on record to

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support their claim of petitioner's prolonged illness for six years.

22. Furthermore, on the directions of the respondents, the petitioner had appeared before the Medical Board and FHQ Hospital, wherein he was declared Shape-1, which was approved by IG Medical on 29.04.2014. When pursuant to his treatment in Mool Chand Hospital and RR Hospital, petitioner had already appeared before the Medical Board on 03.03.2014, the respondents issued another direction to undergo second Medical Board on 08.07.2014, which is highly unacceptable in view of the fact that the Medical Board dated 03.03.214 was valid for one year.

23. So far as plea of respondents that as on 01.01.2013, the petitioner was not eligible for the post of DIG, we find that as on 01.01.2013, the petitioner was having a total of 26 years of Group 'A' service as against a total requirement of 20 years of Group 'A' service as stipulated in the Rules and had served in BSF in the rank of Commandant Pilot for a total period of 04 years 04 months including a period of 02 years 04 months of deputation and 01 year 11 months on re-employment and also the condition of one year's "residency" was waived off by the respondents. Hence, the petitioner as on 01.01.2013 met with the eligibility criteria for promotion to the rank of DIG.

24. The respondents have not been able to satisfy this Court on what premise in the second advertisement issued on 20.09.2014 for appointment to the post of Senior Operations Officer-DIG, the Recruitment Rules of 2011 were relaxed and the requirement of having 2000 flying hours on multi engine aircraft or helicopters was reduced to 1529 hours and requirement of flying 1000 hours on BSF type of aircraft

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was omitted. We have no hesitation to hold that the respondents have foul played in denying promotion to the petitioner which he deserves.

25. We have been informed that during pendency of the present petition, the petitioner has been promoted to the post of DIG against the vacancy of the year 2018.

26. In the light of aforementioned observations, the present petition deserves to be allowed. Accordingly, the respondents are directed to, within four weeks, pass necessary orders promoting the petitioner against the vacancy for the year 2013-14 from the date when he was declared Shape-1 pursuant to his Medical Assessment on 03.03.2014 and refix his seniority and grant consequential financial benefits resultantly.

27. With directions as aforesaid, the present petition is accordingly allowed and disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 12, 2023

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