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

% Judgment delivered on: 30.11.2023

W.P.(C) 1934/2018

GIRISH KUMAR

..... Petitioner

versus

UNION OF INDIA & ORS

.... Respondents

Advocates who appeared in this case:

For the Appellants: Ms. Saahila Lamba, Advocate

For the Respondents: Mr. Rajesh Kumar, SPC with Ms. Ramneet Kaur, Ms.
Mishika Pandita, Advocates and Mr. Nakul Kumar, RPF.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks a direction to the respondents to pay full salary to the petitioner for the period from June 2015 to June 2016 along with interest thereon.

2. Petitioner was enrolled as a Constable in Railway Protection Force in the year 2012. In the year 2015, petitioner started experiencing certain problems in hearing which were aggravated.

3. On 23.06.2015, Petitioner was examined at the Northern Railway Composite Hospital, New Delhi as well as the All India

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Institute of Medical Sciences and it was opined that petitioner had moderate to severe hearing loss in the left ear and profound loss in his right ear. The OPD card records that petitioner was thereafter referred to the Chief Medical Officer for constitution of a Medical Board to decide his duty chart. Thereafter, petitioner was once again examined on 09.07.2015, 10.09.2015 and 16.09.2015 and each time constitution of a Medical Board was advised.

4. No Medical Board was constituted to examine the petitioner. Petitioner gave several representations *inter alia* dated 07.09.2015, 05.10.2015, 06.10.2015, 19.05.2016 and 30.03.2016 requesting that a Medical Board be constituted so that petitioner could be assigned duties.

5. Subsequently, a Medical Board was constituted and petitioner was examined on 21.06.2016, the Medical Board recommended placing petitioner in a “permanently unfit medical category Bee-one, Bee-two but fit in medical category Cey-one and below with hearing aid.” It is in admitted position that thereafter petitioner was assigned duties as Booking Clerk.

6. During the period June 2015, when petitioner was detected to be suffering from hearing problem, to June 2016, when he was placed permanently in low medical category, petitioner was denied salary. It is stipulated that during the said period petitioner would be liable to avail of his medical and other admissible leaves.



7. Case of the petitioner, is that petitioner was always willing to be assigned duties appropriate to his medical condition and in view of the respondent not constituting a Medical Board, petitioner was constrained to remain on leave and thus he was denied the salary during the said period.

8. We notice that there was no fault of the petitioner, on the other hand, there was delay on the part of the respondents in constituting a Medical Board for examining the petitioner in terms of the recommendations that were given by the Medical Officers who examined the petitioner from time to time.

9. The Medical Board when constituted, found petitioner fit for duty however, placed him in permanently low medical category and thereafter petitioner was assigned duties and continued to perform the same.

10. Had respondents constituted a Medical Board expeditiously said issue would not have arisen. Reference may be had to the judgment of a Co-ordinate Bench of this Court dated 04.08.2017 in W.P.(C) 10160/2016 *Prahalad Singh vs Union Of India & Ors.* Where in, in similar circumstances the Bench noticed the lapse on the part of the respondents (which is also the respondents herein) in constituting a Medical Board and assigning duties to the petitioner therein. The Division Bench thereafter noticed that there was no lapse and fault on part of the petitioner therein and accordingly, directed the payment of salary to the petitioner therein.



11. In the instant case also we find that petitioner has been repeatedly requesting the respondents for constituting a Medical Board to assess his medical category and assigning of duties but the respondents failed to constitute a Medical Board expeditiously in terms of several recommendations given by the consulting doctors leading to petitioner remaining absent from work for nearly one year.

12. We also note that during the said period petitioner was absent from 26.06.2015 to 27.06.2016 and the said period has been adjusted against his leaves in the following manner:

- “01. W.e.f. 26.06.2015 to 13.12.2015 into LAPs.
- 02. W.e.f. 14.12.15 to 29.01.2016 into commuted leave.
- 03. W.e.f. 30.01.2016 to 27.06.2016-into extra ordinary leave on medical ground.”

13. In view of the above, the petition is allowed. It is directed that respondents shall pay to the petitioner the salary for the period that was adjusted as extra ordinary leave on medical ground.

14. We are informed that petitioner had been paid salary during the first two periods wherein leave was adjusted against pay or/and was converted into commuted leave.

15. Accordingly, respondents shall pay to the petitioner the salary for the period covered by the extra ordinary leave on medical ground i.e. 30.01.2016 to 27.06.2016.

16. The leaves that have been exhausted out of his leave account towards leave against pay and commuted leave i.e. for the period 26.06.2015 to 29.01.2016 shall also be credited to his leave account.



17. In view of the fact that this Court is directing credit of the leaves that were debited from the leave account, we are not inclined to grant any interest to the petitioner for delay in payment of salary that we have directed to be paid for the period 30.01.2016 to 27.06.2016. The amount be paid to the petitioner within a period of 12 weeks from today.

18. It is clarified that in case the amount is not paid within 12 weeks, respondents shall be liable to pay interest on the said amount after the expiry of the period 12 weeks till the time the amount is actually paid @ of 7.5% per annum.

19. Petition is allowed in the above terms.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

NOVEMBER 30, 2023/sw