

(2021) 03 DEL CK 0021

In the Delhi High Court

Case No : Civil Writ Petition No. 2779 Of 2021, Civil Miscellaneous Application
No. 8342 Of 2021

HC Ram Naresh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 02-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 03 DEL CK 0021

Hon'ble Judges : Manmohan, J;Asha Menon, J

Bench : Division Bench

Advocate : R.K. Shukla, Ripu Daman Bhardwaj, Sahaj Garg, Kushagra Kansal

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

1. Present writ petition has been filed challenging office memorandum dated 24/2/2021 whereby the petitioner has been asked to submit his no dues

certificate before being boarded out of service from ITBP on account of Alcohol Dependence Syndrome [ADS].

2. Petitioner seeks a direction to the respondents to conduct a special review medical board in ITBP Base Hospital Tigri Camp, New Delhi as done in

the case of Sanjay Yadav v. Union of India and Ors. WP(C) 7875/2017.

3. Having perused the paper book, this Court finds that all the grounds urged in the present petition have already been considered and adjudicated upon

by the learned predecessor Division Bench of this Court in not one, but two separate writ petitions being WP(C) 6717/2018 and WP(C) 10853/2020

vide orders dated 8th December, 2020 and 22nd December, 2020 respectively.

4. In fact, the learned predecessor Division Bench of this Court vide order dated 22nd December, 2020 in W.P.(C) 10853/2020 had made very

telling observations. The same are reproduced herein below:-

4. Though we are honoured, by the petitioner preferring this petition in the form of an appeal against our order, before us only, but are

afraid, in law, the same amounts to re-litigation and which has been held to be an abuse of the process of the Court. Reference in this

regard may be made to K.K. Modi v. K.N. Modi (1998) 3 SCC 573, Sardar Estates Vs. Atma Ram Properties Private Limited (2009) 6 SCC

609 and Chandra Gupt Vs. Bharat Gupt 2018 SCC OnLine Del 9510.

5. The petitioner, earlier found to be suffering from Alcohol Dependence Syndrome, now appears to be suffering from Litigation

Dependence Syndrome.....

9. In view of the aforesaid statement of the counsel for the respondents, this petition does not lie. The petitioner earlier approached this

court against the findings of the Medical Board, without waiting for the administrative decision, if any, of the respondents to board out the

petitioner from service and against which decision, if any, the petitioner would have had departmental remedies. By filing that petition and

during the pendency of which there was an interim stay, the petitioner deferred/delayed the decision making, if any, by the respondents qua

boarding out of the petitioner, obviously to his own advantage. The petitioner, by filing this petition is again attempting to delay decision

making by the respondents, thereby perpetuating his own continuance in service, even if of no utility to the respondents. The petitioner

cannot be permitted to frustrate the action, if any, liable to be taken against him, in this manner and it is high time that such attempts are put

to a stop. If we entertain this petition at this interim stage of the action, if any, to be taken by the respondents against the petitioner, the

same will again defer the decision, if any, to be taken against the petitioner. Interfering at the interim stage with the disciplinary

proceeding, has always been W.P. (C) 10853/2020 Page 4 of 4 deprecated by the Supreme Court and this court in exercise of jurisdiction

under Article 226 of the Constitution of India, in its discretion, ought not to vest the petitioner with any advantage. The petitioner, if any

decision prejudicial to him is taken, will have the departmental remedies available to him and if remains dissatisfied, shall then have the right to invoke Article 226.â??

(emphasis supplied)

5. At this stage, learned counsel for the petitioner wishes to unconditionally withdraw the present writ petition. He expresses regret for having filed the present writ petition.

6. Since this is another instance of re-litigation, the present writ petition is dismissed with cost of Rs. 50,000 to be paid by the petitioner to the respondent/ITBP within four weeks. In the event, the amount is not paid, the same shall be deducted from petitionerâ??s salary or from amounts due and payable to the petitioner.

7. With the aforesaid directions, the present petition along with pending application, being bereft of merits is dismissed.