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

% **Date of decision: 22nd December, 2020**

+ W.P. (C) 10853/2020, CM APPL. No.34028/2020 (of the petitioner for interim relief)

H.C. RAM NARESHPetitioner

Through: Mr. R.K. Shukla with Ms. Bhawna Massey, Advocates

versus

UNION OF INDIA & ORSRespondents

Through: Mr. Ripudaman Bhardwaj, CGSC for UOI with Mr. Kushagra Kumar & Mr. Ashu Pathak, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner had earlier filed W.P. (C) 6717/2018 seeking mandamus directing the respondents no. 3 and 4 Indo-Tibetan Border Police (ITBP) to obtain a third medical opinion to find out the truthfulness of the findings of the Medical Board and the Appeal Medical Board of the respondents no. 3 and 4 ITBP of the petitioner having Alcohol Dependence Syndrome, by referring the petitioner either to All India Institute of Medical Sciences (AIIMS) or to Dr. Ram Manohar Lohia Hospital or to any other hospital and to extend to the petitioner the

benefits of the orders passed by this Court in W.P. (C) 7875/2017 titled ***Sanjay Yadav vs. Union of India & Ors*** decided on 29th January, 2018.

2. W.P. (C) 6717/2018 came up first before this Court on 27th June, 2018 when status quo with regard to service of the petitioner was ordered to be maintained. Finally, the said petition was disposed of by a Bench comprising of us only, by a judgement dated 8th December, 2020, reasoning that the petitioner had been referred for third opinion, seeking which the petition had been filed, and thus the relief claimed in the petition stood satisfied.

3. This petition has been filed though by wording the relief differently, but otherwise finding faults with our judgement dated 8th December, 2020 in the earlier petition bearing W.P. (C) 6717/2018 preferred by the petitioner and seeking an order contrary thereto.

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.

6. However we have allowed the counsel for the petitioner to argue to his heart's contents and he has, in his arguments, contended that the third medical opinion obtained by this Court as well as the status report filed in

pursuance to our directions in the earlier petition, is in favour of the petitioner.

7. Needless to state that both of them were considered by us while passing the judgement dated 8th December, 2020.

8. The counsel for the respondents appearing on advance notice also states that the respondents, before further proceeding against the petitioner, if at all, will take into consideration the medical opinion obtained under orders of this Court as well as the status report.

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

deprecatd 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.

10. There is no merit in the present petition.

11. Dismissed.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

**DECEMBER 22, 2020
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