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

+ **W.P.(C) 12184/2021**

VIKASH KUMAR

..... Petitioner

Through **Mr.Sanjay Mani Tripathi, Advocate.**

versus

**DIRECTOR GENERAL, INDO-TIBETAN BORDER POLICE
FORCE & ORS.**

..... Respondents

Through **Mr.S.S.Rai, Senior Panel Counsel.**

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Date of Decision: 26th November, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

C.M.No.38083/2021 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

W.P.(C) 12184/2021 & C.M.No.38084/2021

1. Present writ petition has been filed seeking directions to the Respondents to appoint the petitioner against the post of Constable (Driver)-2018 in the Indo-Tibetan Border Police (ITBP) Force.
2. Learned counsel for the petitioner states that the petitioner applied for the post of Constable (Driver) under OBC category and successfully qualified PET/PST, written test and documentation and practical (skill) test.
3. He states that subsequently the petitioner was called on 14th September 2021 at the Referral Hospital, ITBP, Surajpur, Greater Noida for

a detailed medical examination wherein he was declared unfit on the ground of a tattoo embossed on his right arm.

4. Learned counsel for the petitioner contends that the tattoo mark on the petitioner's right arm is his own name and it does not cause any prejudice to anyone and the same is within the permissible limits as provided under the rules. He also states that none of the government guidelines prohibit tattoo as a medical disqualification.

5. He also states that the conditions/requirements laid down by the respondents are also not in accordance with the norms followed by the Indian Army.

6. Having perused the paper book, this Court finds that the recruitment of the petitioner for the post of Constable (Driver) in ITBP is taking place in accordance with Advertisement No.2/2018, a copy of which has been filed at page 16 of the paper book. Clause 4.4(iv) of the said Advertisement stipulates the permissible categories of tattoos as under:-

4.4	<p><i>Minimum Medical Standard:-</i> xxx xxx xxx</p> <p>(iv) <u>Tattoos:-</u></p> <p>(a) <u>Content:</u> <i>Being a secular country, the religious sentiments of our countrymen are to be respected and thus, tattoos depicting religious symbol or figures and the name, as followed in Indian Army are to be permitted.</i></p> <p>(b) <u>Location:</u> <i>Tattoos marked on traditional sites on the body like inner aspect of forearm but only left forearm, being non saluting limb or dorsum of the hands are to be allowed.</i></p> <p>(c) <u>Size:</u> <i>Size must be less than 1/4 of the particular part (Elbow or Hand) of the body.</i></p>
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(emphasis supplied)

7. The petitioner admittedly has a tattoo on his right arm, which is the saluting arm. Consequently, the petitioner is not eligible as per Clause 4.4(iv)(b) of the Advertisement.

8. The petitioner's reliance on the Indian Army policy is misconceived as the petitioner is seeking recruitment in ITBP and the advertisement on the basis of which he had applied contained the disqualification in Clause 4.4(iv). Having participated in the advertisement without demur the petitioner cannot challenge the said disqualification at this stage.

9. In any event, this Court is of the view that the stipulation of disqualification of tattoo on the right arm is a classification that is based on an intelligible differentia and the intelligible differentia has a rationale relation to the object sought to be achieved, namely, that the tattoo is visible while saluting. Consequently, the petitioner's candidature has been rightly rejected.

10. In view of the aforesaid, present writ petition along with pending application is dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

**NOVEMBER 26, 2021
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