

(2017) 01 JH CK 0134
In the Jharkhand High Court
Case No : 1389 of 2016

American Ravidas

APPELLANT

Vs

The State of Jharkhan & ORS.

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 16](#), [Article 19\(i\)\(g\)](#) - Appointment of Commission to inquire into and report on the administration of autonomous districts and auton

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Hon'ble Judges : Dr. S.N. Pathak

Bench : SINGLE BENCH

Advocate : A.K. Singh, H.P. Singh

Final Decision : Disposed

Judgement

1. The petitioner has filed the instant writ petition for a direction upon the respondents to consider his application for employment on compassionate ground to his dependent under the provisions of Clause 9:3:0 of National Coal Wage Agreement?VII (hereinafter referred as N.C.W.A.) and other relevant provisions as the petitioner has become unfit to perform his duty.

2. The factual exposition, as has been delineated in this writ application is that the petitioner was posted as Head Security Guard in Giridih Project of the respondent. He was to superannuate on 31.05.2016. Due to ill health, the petitioner could not perform his duty for long time and as such was not getting any salary during this period. He was suffering from various disease and also lost his eye sight. The petitioner made application under the relevant provisions of N.C.W.A. for declaring him unfit and for compassionate employment to his dependent. The applications were received on 21.07.2014 and a Medical Board was constituted under the provisions of Clause 9:4:0 of N.C.W.A. and the petitioner and other candidates were directed to appear vide letter dated

05.07.2015. It is also stated that an absentee report was submitted which disclosed that the petitioner could not attend his duties properly and

regularly since long. In view of the office order dated 23.07.2015 issued by the respondent no.4, it was informed that the Medical Board had declared the petitioner and others to be fit to join their duties and accordingly the petitioner was also directed to resume his duties. The petitioner being unsatisfied with the report of the Medical Board, made an appeal before the respondent no.4 on 27.07.2015 with a prayer to constitute Appellate Medical Board under the relevant provisions of N.C.W.A. It was the case of the petitioner that he was suffering from Cataract and had undergone heart surgery for fixing Pace Maker at Gandhi Nagar Hospital, Ranchi where he is still under treatment but till date when no action was taken, the petitioner made a representation to the Chairman-cum-Managing Director of respondent no.1 on 11.01.2016 but no orders were passed though the respondent authorities were aware of the fact that the petitioner will superannuate on 31.05.2016. Hence, this writ petition.

3. Learned counsel for the petitioner, Mr. A.K. Singh argues that the petitioner was suffering from various disease of vision problem and he was operated for Cataract and undergone for heart surgery and as such his case ought to have been considered by the respondent authorities. Learned counsel for the petitioner further argued that though his case was rejected by the Medical Board without consideration of the contention raised in his representation, the petitioner preferred an appeal with a prayer for consideration of Apex Medical Board and at the same time when no orders were passed, the petitioner also preferred representation before the Chairman-cum-Managing Director who had sat tight over the matter and passed no orders though the respondent authorities were aware of the fact that the petitioner is going to superannuate on 31.05.2016 and as such non-consideration of the case of the petitioner and passing no orders on the representation amounts to violation of principle of natural justice and also violation of the guidelines of N.C.W.A. Learned counsel further submits that the action of the respondent are illegal, arbitrary and violative of Articles 14, 16, 19(i)(g) of the Constitution of India. A supplementary affidavit is also on the record which shows that the case of the petitioner was referred to Disha Eye Hospital, Kolkata by the Central Medical Board under the provisions of Clause 9:4:0 of N.C.W.A. as he cannot see after surgery done by the doctors of Company's Hospital.

4. The respondents have filed counter affidavit. Mr. H.P. Singh, learned counsel for the respondents submitted that the petitioner is not entitle for any relief in view of the guidelines and rules of the N.C.W.A. Clause 9:4:0. He drew attention of the Court towards Para 15, 16, 17 & 18 of the counter affidavit and submitted that the applicant should have been declared medically unfit by the company itself and that there should be loss of employment. These two things were missing in the case of the petitioner and as such his case was rightly not considered by the respondent authorities and there is no illegality in non-

consideration of case of the petitioner and his representation is devoid of any merit and should be dismissed. The respondents placed reliance on a decision of this Court passed in L.P.A. Nos.614 & 615 of 2002 decided on 06.11.2009 and submitted that the similar question fell for consideration and the case has been decided against the petitioner.

5. Having heard learned counsel for the parties and considering the rival submissions, this Court is of the considered view that the respondent authorities have illegally and arbitrarily not considered the case of the petitioner and till date have passed no orders on the representation. The respondent authorities ought to have passed specific order on the representation of the petitioner for consideration of the Medical Board and for consideration of his case for compassionate appointment. From the record of the case, it transpires that though the case of the petitioner was referred to Apex Medical Board for consideration but as the petitioner retired from the service on 31.05.2006, his case could not be considered. The record shows laches on the part of the respondents and the petitioner cannot be made to suffer. It is the respondents who did not consider the case of the petitioner under the specific time and they were aware of the fact that the petitioner would go to superannuate. It seems that the respondent authorities were waiting for superannuation of the petitioner to make out a case for non-consideration. The case relied by the respondents is of no help as the facts of the present case and the case relied on by the respondents are on different footing. In the said case, appellant

demanding employment of his dependent much after his superannuation but in the case at hand the prayer was made much before superannuation and it was due to laches on the part of the respondent authorities the petitioner was to superannuate before coming to a conclusion and as such decision of the Division Bench of the Hon'ble Court is of no help to the respondents.

6. As a cumulative effect of the aforesaid guidelines, rules and judicial pronouncement, I hereby direct the respondent authorities-CCL to pass a reasoned order and furnish medical report and take a decision on the representation of the petitioner to recommend to the Apex Medical Board and if the Apex Medical Board decides the case in favour of the petitioner, the case of the petitioner's dependent should be considered for appointment on compassionate ground in accordance with law expeditiously within a period of four months from the date of receipt of a copy of the order.

7. With the aforesaid observation, this writ petition is disposed of.