
(2009) 12 DEL CK 0272

In the Delhi High Court

Case No : Writ Petition (C) No. 13809 of 2009

Dalip Singh Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0272

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : K.K. Sharma, for the Appellant; Devvrat, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—As per Service Rules of CISF the petitioner had a right to prefer an appeal against the decision of the Medical Board and require Review Medical Board to be convened and the petitioner re-examined by the said Board.

2. Vide communication dated 24.07.2009, the petitioner was communicated that he was found unfit at the medical examination. It was brought to his notice that in case he is not satisfied with the decision of the Medical Board, he was entitled to prefer an appeal seeking constitution of a Review Medical Board and if he so desires, he should tender Rs. 25/- by means of a demand draft.

3. The petitioner preferred an appeal and sought re- constitution of a Medical Board i.e. desired that a Review Medical Board be constituted. He transmitted the appeal along with a draft in sum of Rs. 25/- by means of a Speed Post docket posted from the Post Office, Narnaul, Haryana.

4. The record of the respondent shows that the Postal docket was handed over to the Post Office at Narnaul on 18.08.2009 at 12:46 hours. This is evident from the postal receipt pastened on the envelope. Whereas, with reference to a certificate obtained by the Post Master, Narnaul that the docket in question was delivered at the address notified on 21.08.2009, the record of the respondent: namely the

receipt register, shows that the docket was received on 07.09.2009.

5. What has happened is that vide a communication dated 10.11.2009 the appeal filed by the petitioner seeking constitution of a Review Medical Board has been rejected holding that the appeal has been received beyond the one months period prescribed to file the appeal. We note that the limitation for filing the appeal would expire on 23.08.2009 for the reason the original order is dated 24.07.2009.

6. Unfortunately, the postal envelope which on the record of the respondent does not bear the stamp of the delivering post office i.e. the Central Post Office at New Delhi, within the jurisdiction of which the office of the Appellate Authority i.e., Inspector General, CISF, CGO Complex, Lodhi Road, New Delhi is situated.

7. Thus, we have on record two documents wherefrom the necessary inference has to be drawn.

8. The first is the certificate obtained by the petitioner from the Post Master, Narnaul as per which the docket in question was received at the Post Office, Narnaul on 18.08.2009 and was delivered to the addressee on 21.08.2009. The second is receipt register of the respondents showing that the docket concerned was received on 07.09.2009.

9. The record of the respondents show that the docket was received at the Post Office at Narnaul on 18.08.2009. It was received to be delivered through Speed Post evidenced by a receipt stuck on the envelope. Prima facie, it would be difficult to believe that the docket for onward delivery through Speed Post at Narnaul, a town which is hardly less than 100 kms from Delhi would take 20 days to reach Delhi.

10. It is settled law that where a procedural law comes into conflict with a substantive law, as long as the procedural law permits it to be so read, every attempt should be made to read the procedural law in a manner that substantive rights are enforced.

11. Similarly, where competing evidence impinge upon a procedural law, primacy must be given to such evidence which furthers a substantive right.

12. Noting that the docket was handed over to the Post Master, Narnaul on 18.08.2009 and the petitioner paid the requisite charges for the docket to be transmitted by Speed Post; noting further the certificate issued by the Post Master, Narnaul that the docket was delivered to the addressee on 21.08.2009, we return a finding that evidence probablizes that the docket was delivered on 21.08.2009. There may be a possibility that the receipt clerk has belatedly entered the receipt of the docket in the receipt register.

13. We dispose of the writ petition holding that it would be treated that the appeal filed by the petitioner seeking constitution of the Review Medical Board has been received within the limitation and consequently direct that within two

months from today a Review Medical Board be re-constituted and the petitioner be examined before the Board. Needless to state if the finding of the Review Medical Board is in favour of the petitioner, needful would be done within four weeks thereafter. If the decision of the Review Medical Board is against the petitioner, he would be entitled to remedies as available in law.

14. Copy of this order be supplied dasti to learned Counsel for the petitioner and the respondents.