

(2004) 08 DEL CK 0123

In the Delhi High Court

Case No : Writ Petition (Civil) No. 88 of 2002

Harish Sharma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Citation : (2004) 08 DEL CK 0123

Hon'ble Judges : Manju Goel, J;B.A. Khan, J

Bench : Division Bench

Advocate : Ajay K. Jha, for the Appellant; Anjana Gosain, for the Respondent

Final Decision : Allowed

Judgement

B.A. Khan, J.—Petitioner's OA No. 854/2000 has been dismissed giving rise to this petition.

2. Petitioner joined Railways as Train Examiner in 1980. He took the limited departmental competitive examination for his promotion to Group-B post. He qualified the written examination and the interview also but was declared unfit in Medical B-1 examination on the ground that Intra Ocular Lens (IOL) had been planted in his left eye. He was, however, promoted on adhoc basis and an undertaking was obtained from him that he would not claim consideration for promotion to higher grades like senior scale Group "A"/junior scale as long as his medical shortcomings continued.

3. Petitioner thereafter made an appeal to the respondents for waiver of his disability of IOL as according to him it was not coming in his way of functioning as A.M.E. but this was rejected.

4. Petitioner maintains that in the meanwhile because of some technological advancements, Railway Board issued office orders for permitting IOL for various categories like category `B-2" and below and in certain circumstances in category A-3 also. The Board reiterated this by letter dated 30.5.1997 that use of

IOL was permitted for category B-1 also provided the periodical medical examination of the employee was done annually.

5. Petitioner says that on this, he again submitted a representation in January 1998 requesting the Railway Board to consider his case in the light of his actual performance as A.M.E. and the relaxation granted by the Board in respect of the employees with IOL. He claims that his case was recommended for regularisation of his promotion on the Group-B post by Chief Mechanical Engineer, Northern Railway but before any orders could be passed on this, Railway Board issued order dated 21.5.1999 providing that an employee with posterior chamber IOL may be declared fit for gazetted technical category provided the corrected and uncorrected visual acuity complied with the medical standards. The Board, however, decided that this amendment would be made applicable from the date of issue of this letter (21.5.1999) and that old cases shall not be re-opened on this basis.

6. Petitioner submits that he made yet another representation on 20.10.1999 requesting for regularisation of his promotion to Group-B post on this basis which was rejected. He then filed OA 854/2000 praying for regularisation of his promotion on the Group-B post on the ground that new circulars were issued by the Railway Board and on the plea that these could not be made prospective in operation.

7. This OA was opposed by respondents on the ground that petitioner had failed in medical examination and that Railway Board had permitted him to be promoted to Group-B post on adhoc basis subject to his furnishing an undertaking that he would not be entitled to claim consideration for promotion to senior scale or for induction to Group "A"/junior scale and that since he had furnished this undertaking, he could not now ask for regularisation of his promotion from 24.10.1990. It was also explained that keeping in view the safety requirements in railway operations and technological advancements in the medical field, Railway Board had permitted IOL in case of different medical categories of railway employees from time to time and IOL was permitted for medical categories B-2 and below of non-gazetted employees and by letter dated 15.10.1992, it was extended to gazetted categories covered by para 531 (B of IRMM-1981). Lastly, Railway Board had issued letter dated 25.1.1999 providing that employees in Group-C, after cataract operation, with posterior chamber IOL implants will henceforth be considered fit for promotion to Group-B post including those listed in para 531 (A of IRMM-1981) subject to certain conditions. These instructions were made effective prospectively only and, Therefore, petitioner could not claim any benefit of these.

8. Tribunal examined the rival pleas and took the view that it was for the railway authorities to fix the date from which its instructions could operate. It also held that petitioner could not seek this relaxation with retrospective effect. Relevant operative part of the Tribunal order reads:-

"To our mind, this contention of the applicant has no merits because he himself admits that by virtue of advancement in technology, the Railway Board had relaxed medical standards for technical posts in group "B" and for the first time in 1999, those candidates who were having IOL in their posterior chamber were considered fit for promotion to group "B" posts with certain conditions with regard to their visual acuity. But when the applicant was promoted, probably by that time the technology had not progressed up to the standard to which it has progressed as on 20.5.99 and it is so evident by the fact that the Ministry had been considering the persons with IOL from time to time in certain other categories of posts as the applicant himself admits that earlier vide letter dated 7.2.96, IOL was permitted in certain circumstances for some other categories. Use of IOL was permitted for medical categories B-2 and below of non-gazetted vide letter dated 26.1.88. Similarly vide another letter dated 30.5.97, the Railway Board permitted use of IOL for category B-1 also.

9. It was the discretion of the railway authorities as to from what date the instructions of 20.5.99 declaring an employee with posterior chamber IOL fit for gazetted technical category, should be made applicable. The applicant cannot ask that this relaxation should be applied in his case with retrospective effect."

10. Petitioner assails this order on several grounds. Firstly, that Tribunal had failed to appreciate that he was working against the Group-B post since 24.10.1990 satisfactorily and that IOL had not hampered his functioning and, Therefore, there was no reason to deny him the regularisation of his promotion. Secondly, that Railway Board had arbitrarily fixed 21.5.1999 as the date for permitting IOL in Group-B category posts ignoring that its first letter dated 18.12.2000 had provided that Board's instructions dated 21.5.1999 will be effective from 1.1.1999. It is submitted there was no reason that Board should have restricted the benefit of its circular dated 21.5.1999 and generated discrimination in similarly placed employees by permitting IOL in case of those who were to be promoted after 21.5.1999 and denying it to those who were promoted earlier. Respondents had also resorted to pick and choose by treating the case of his similarly situated colleague Mr. Satnam differently and by regularising his promotion pursuant to new circulars regarding IOL.

11. Respondents again oppose this on similar stand taken by them before the Tribunal that the case of the petitioner did not fall within the zone of consideration under Railway Board circular dated 21.5.1999 which was prospective in operation and which did not permit re-opening of old cases.

12. The Tribunal approach, in our view, appears misdirected on the face of it because the issue before it was whether petitioner's adhoc promotion to Group-B post could be regularised after respondents had permitted IOL in case of promotion from Group-C to Group-B. Once it was the case of petitioner all along that he had discharged his duties on the Group-B post satisfactorily and that IOL had not come in his way at any stage and that respondents had permitted this IOL now for promotion to Group-B post and also recommended his case for

regularisation of promotion, there was no reason for the Tribunal to take a hyper-technical view that it was the discretion of the railway authorities to fix the date for waiver of IOL ignoring that it was liable to breed discrimination between two similarly situated classes of employees in the process.

13. The Tribunal also seems to have overlooked that Railway Board had itself issued letter dated 18.12.2001 providing that its circular dated 21.5.1999 would be effective from 1.1.1999 which date was not supported by any reason or rationale and which suggested that the Board was proceeding in the matter arbitrarily. It had also ignored that respondents had regularised the promotion of one Satnam who was set to be similarly placed as the petitioner and which position has not been refuted rendering their action discriminatory in the process.

14. In the circumstances, we feel no difficulty in holding that Tribunal had fallen in error by dismissing petitioner's OA which was not justified in the facts and circumstances of the case.

15. The Tribunal order is, Therefore, quashed to allow this petition and respondents are directed to consider petitioner's case for regularisation of his promotion to Group-B post from 24.10.1990 in terms of Railway Circular dated 21.5.1999 by taking in regard his medical record of 1990 medical examination and also the orders passed in the case of his colleague Mr. Satnam and pass appropriate orders within four months of receipt of this order.