

(2009) 11 DEL CK 0389
In the Delhi High Court
Case No : Writ Petition (C) 9087 of 2008

Khurshind Alam

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Citation : (2009) 11 DEL CK 0389

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

Bench : Division Bench

Advocate : Jyoti Singh, for the Appellant; Preeti Dalal, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Rule D.B.

2. Heard learned Counsel for the parties.

3. The medical record pertaining to the petitioner directed to be produced in Court vide order dated 16.11.2009 has been produced and has been considered.

4. The medical record consists of 6 X-rays pertaining to the lower limbs of the petitioner.

5. The facts required to be noted to adjudicate the dispute may be stated briefly.

6. At a medical board constituted on 30.10.2007, the petitioner was found with no physical infirmity but was found to be suffering from hypertension and accordingly was placed in the category of P2 (T-12). It means that the petitioner was declared temporarily unfit for a period of 12 weeks pertaining to the disability of hypertension and was accordingly placed in the physical category 2.

7. The DPC met on 04.12.2008 to consider all those who were eligible for being promoted from the post of Inspector to the post of Assistant Commandant under CISF.

8. In view of the fact that the petitioner had been placed in a low medical category, the DPC did not consider the candidature of the petitioner.

9. A writ petition was filed by the petitioner which was registered as WP(C) No. 1485/2008 in this Court.

10. With reference to the rules applicable, the petitioner pleaded that in view of the fact that he was placed in low medical category for a temporary period of 12 weeks, the DPC had to consider the candidature of the petitioner.

11. What had happened was that before filing the afore-noted writ petition, the petitioner had sought constitution of a Review Medical Board. The result was that during the pendency of the afore-noted writ petition, the findings of the Review Medical Board which met on 14.03.2008 informed the petitioner that he continued to be in the category of P2 (T-12) but additionally found him to be suffering from appendages i.e. a deformity of the right leg of a permanent nature and hence was placed in the category A-2. We may note here that category A-2 means category -2 in appendages.

12. The petitioner brought to the notice of the bench which was seized of WP(C) No. 1485/2008 that it was unexplainable as to how the petitioner who had joined service under CISF as an Assistant Sub Inspector in the year 1976, could successfully perform the physical endurance test and duties till the year 2008 without such a physical infirmity being detected. The petitioner highlighted that in between, in the year 1989 he earned promotion to the post of Sub Inspector and in the year 1991 earned further promotion to the post of an Inspector. The petitioner highlighted the duties which he had performed and thus urged that there was something more than which meets the eyes in the decision of the Review Medical Board held on 14.03.2008.

13. The writ petition afore-noted was disposed of vide order and judgment dated 02.04.2008. A mandamus was issued which reads as under:

It is not necessary for us to go into this controversy. In so far as the present case is concerned, we may again highlight that the medical examination was conducted on 30th October, 2007. The petitioner was put in low medical category on temporary basis only in respect of P2 (Physical), however, the medical board who examined the petitioner on 14th March, 2008 has not only retained that category but has additionally put him in low medical category (permanent) in so far as A-1 (Appenages) is concerned. Learned Counsel for the petitioner had pointed out that the petitioner suffered from leg injury more than 18 years ago and during all this period of service with CISF, as far as that injury is concerned, petitioner has never been put in low medical category on temporary basis and such a categorization is with some ulterior motives. Without creating it as a precedent but keeping in view the aforesaid submission and the outcome of the medical examination conducted on 30th October, 2007, we are of the view that the petitioner be examined again by medical board consisting of independent doctors. Such examination is to take place within 30 days from the date of

receipt of the order. In case petitioner is categorized in SHAPE I or even put in low medical category, but on temporary basis, review DPC would be convened to consider his case for promotion to the post of Assistant Commandant (Junior Administrative Officer) within three months thereafter and needless to say that the petitioner would be entitled to promotion only if he attains SHAPE I category. This writ petition is disposed of in the aforesaid terms.

14. In terms of the mandamus issued by the Division Bench, an independent Board consisting of Dr. Satish Kumar, CMO (SG), Dr. A.K. Mukhopadhyaya, CMO(SG) and Dr. Vijay Bhadur, CMO(SG) was constituted. The board re-examined the petitioner and on 30.06.2008 recorded that the petitioner was no longer suffering from hypertension and accordingly was entitled to be declared fit on account of said previous infirmity, but with respect to his being placed in the category A-2 i.e. pertaining to the deformity in the leg, gave an opinion in the following words:

Pt. gave history of (R) leg injury in 1989 due to R.T.A. Clinical examination revealed limping from (R) leg. Angulation at middle 1/3 of leg. PEs cavus & atrophy of (R) tibialis anterior muscle, X-Ray of (R) leg revealed angulation of tibia at middle 1/3 & marked calcification.

15. The petitioner has rushed back to this Court for a second time, inter-alia alleging that the findings of the second Review Medical Board are malafide. It is urged that petitioner is given to understand that none of the 3 doctors is an orthopedic doctor.

16. It was urged before us on 16.11.2009 that it is just not possible that the petitioner who has worked under CISF since the year 1976 and has earned promotion and at each stage was declared physically fit would be found to be suffering from permanent disability as noted by the second Review Medical Board.

17. Conceding that in the year 1989, the petitioner had suffered bone injury of the right leg, it is urged that the injury had not resulted in any permanent disability evidenced by the fact that in the year 1989 the petitioner earned promotion to the post of Sub Inspector and thereafter 2 years later earned promotion to the post of Inspector and that he continued to discharge his duties to the satisfaction of all without any blemish.

18. It need hardly be emphasized, but we do so for the reason, in the instant case it is necessary to do so, that bone injury creates some problems with passage of time.

19. With reference to medical literature, we understand that the deformity noted by the second Review Medical Board is on alleged account of angulation of the right leg at the middle 1/3rd of the leg, resulting in the foot not being placed at the normal position. This is conveyed by the words "PEs CAVUS". This medical term conveys to us that when the foot is put on the ground, the curvature at the sole becomes pronounce. The result is that the muscles of the leg are not used

as they are not normally required to be put to use. Such muscles which are not actively used results in "atrophy".

20. From the report, it is apparent that the X-ray of the right leg has revealed angulation. The resultant is what has been analyzed by the doctors during clinical examination.

21. The petitioner is not in Court and even if he was, we would hardly be able to clinically examine him.

22. We have objective material before us in the form of the X-Ray sheets of the right leg of the petitioner. We have summoned the Chief Medical Officer attached to the Medical Centre of the Delhi High Court who has gone through the X-Ray sheets and informs us that the X-Rays of the right leg of the petitioner reveals angulation of the tibia bone at the middle 1/3rd.

23. In that view of the matter it becomes obvious that what has happened in the instant case that as age caught on the petitioner, a physical defect which remained un-noticed has become pronounced and has got detected.

24. There being objective material before this Court to take a decision with respect to the findings returned by the Medical Board which met on 03.06.2008, notwithstanding the fact that we have no clue as to what are the medical qualifications of the 3 doctors who physically examined the petitioner, we see just no scope to extend any benefit to the petitioner.

25. The writ petition is dismissed.

26. No costs.

27. The record has been returned to learned Counsel for the respondents.