

(2014) 03 P&H CK 0221
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6415 of 2013

Lalit Mohan

APPELLANT

Vs

Dakshin Haryana Bijli Vitran Nigam Limited

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) LabIC 3683 : (2014) 175 PLR 247 : (2014) 2 SCT 717

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : B.S. Mittal, Advocate for the Appellant; P.S. Poonia, Advocate for the Respondent

Final Decision : Allowed

Judgement

Daya Chaudhary, J.—An advertisement No. 4/2008 for selection to the posts of Shift Attendant was published on 08.07.2008 by the Haryana Staff Selection Commission (here-in-after called "the Commission"). Total 304 posts were advertised which were meant for different categories. The essential qualification for the same was matric with two years' certificate course in Electrician/Electronics Wireman Trade with knowledge of Computer. The petitioner applied for the said post and on the basis of his qualification and experience and he was selected and appointed vide appointment letter dated 21.03.2012. As per condition of the appointment letter, the petitioner was to undergo medical examination and accordingly, he was examined by the Board of Doctors including Eye Surgeon at Government Hospital, Sirsa. As per report of the Eye Surgeon dated 22.03.2012, the petitioner was diagnosed with reflection error of both eyes (Right Eye - 6/24, Left Eye 6/18 with glasses) and Nystegmus with Amlyopia and colour vision normal. The petitioner was declared neither fit nor unfit for the job. Thereafter, a clarification was sought from the Office of Executive Engineer regarding rules/standards (Medical examination) required for recruitment to the post of Shift Attendant for the purpose of granting fitness certificate to the

petitioner. A letter was accordingly written to the Office of Civil Surgeon, Sirsa. In pursuance of said letter, the Civil Surgeon, Sirsa wrote a letter to the Director, Health Service, Haryana, Panchkula for providing guidelines regarding eye-vision required for first entry into Government Service. Receiving no fitness certificate, the petitioner approached the Civil Surgeon, Narnaul for medical examination, who declared the petitioner fit for job. The petitioner approached respondent No. 3 for joining him on duty on the basis of that fitness certificate. Again a clarification was sought whether the petitioner should be allowed to join the duty in view of fitness certificate issued by Civil Surgeon, Narnaul or be re-examined by the Civil Surgeon, Sirsa in view of condition stipulated in the appointment letter. The Director Health Services, Haryana, then, wrote a letter to PGI, Rohtak for re-examination of the petitioner in view of two conflicting reports regarding fitness of the petitioner. PGI Rohtak found the vision of the Right Eye of the petitioner as 6/24 and that of Left Eye 6/18 and ACC Right Eye-2 Dcyl 1800 (6/18P) in left eye-1-25 Dcylx 250 (6/12P) and found Nystagmus. On the basis of the report from PGI Rohtak, the appointment of the petitioner was cancelled. Aggrieved by the action of respondent No. 3 in cancelling the appointment, the petitioner approached the authorities concerned by submitting representation to consider him for the post of Shift Attendant, as the blind low vision person is also entitled for appointment and as per advertisement, one post was reserved for blind vision person, whereas, 12 posts were reserved for partly deaf persons and 14 posts were reserved for orthopedically handicapped persons. It was also mentioned in the representation that the petitioner had worked against the same post on daily wage basis and moreover, the duties and responsibilities of the post of a Shift Attendant is just to assist the SSA/JE in Sub Stations. However, the representation of the petitioner was not considered and thereafter, the present petition was filed for quashing of order dated 21.01.2013, wherein, the appointment of the petitioner on the post of Shift Attendant had been cancelled and also for issuance of direction to the respondents to appoint him on the post of Shift Attendant in view of judgment of Division Bench of this Court in case Shikha Malhotra Vs. State Bank of India and Another, .

2. Learned counsel for the petitioner submits that there was no such condition mentioned in the advertisement that a particular vision is required for appointment to the said post and as per advertisement, a post was also reserved for blind low vision. The duties and responsibilities of the post of Shift Attendant is to assist the SSA/JE in Sub Stations and moreover, the petitioner had worked on the same post on daily wage basis.

3. Learned counsel also submits that in view of Shikha Malhotra's case (supra), the petitioner is entitled to work on this post and his appointment cannot be cancelled on this ground alone.

4. Learned counsel has also relied upon the judgment of Hon"ble the Apex Court in case Amita Vs. Union of India (UOI) and Another, as well as the judgment of LPA Bench in State Bank of India and another v. Rajesh Babbar, 2009(3) S.C.T.

631 : 2009(4) RSJ 215. Learned counsel for the respondents submits that the petitioner was not found medically fit and his appointment was rightly cancelled as he was medically unfit for the post of Shift Attendant. The appointment letter was issued subject to medical examination. The petitioner was declared as visually impaired and after getting contradictory opinion of CMO Sirsa and CMO Narnaul, the petitioner was got medically re-examined from PGIMS Rohtak. As per opinion of Board of Doctors, the petitioner was declared unfit. Learned counsel also submits that the post of Shift Attendant is a technical post-and the management of supply of electricity is the requirement of the job profile and hence, a person of low vision or less vision is not fit to work on the said post.

5. Heard the arguments of learned counsel for the parties and have also perused the impugned order of cancellation of appointment of the petitioner as well as other documents on the file.

6. Admittedly, the petitioner was selected and was offered the appointment to the post of Shift Attendant vide Appointment Letter dated 21.03.2012. The petitioner approached the CMO, Sirsa for medical examination. As per report of Eye Surgeon, the petitioner was diagnosed with reflection error in both eyes. Thereafter, he was medically examined by Civil Surgeon, Narnaul, whereby, he was declared fit for the job. Having contradictory medical opinion, the case of the petitioner was referred to PGI, Rohtak for his re-examination. As per the report, the vision of the petitioner was found as Right Eye 6/24 and Left Eye 6/18 and Acc Right Eye-2 Dcyl 1800 (6/18P) and Left Eye -1-25 Dcylx 250 (6/12P) and found Nystagmus. On the basis of report of PGI Rohtak, the appointment of the petitioner was cancelled vide order dated 21.01.2013, which is a subject matter of challenge in the present petition.

7. The cancellation of appointment has been challenged on the ground that the petitioner has been working on the same post on daily wage basis and the nature of duties of the post of Shift Attendant can be performed with lower vision also as some of the posts are reserved for partly blind persons.

8. As per advertisement, total 304 posts of Shift Attendant were advertised by the Commission and the description of the posts as per category, was as under:-

Cat No. 3 304 posts of Shift Attendant (SA) (GEN=123. SC=48. BCA=34. BCB=19. ESM GEN=21 ESM SC=6 ESM BCA=7 ESM BCB=9 OSP GEN=2. OSP BCA=3 OSP BCB=2 PHC=27 Blind low vision=1 partially deaf=12 orthopaedically handicapped=14).

The essential qualification for the said post was as under:-

i) Matric with two years certificate course in Electrician/Electronics Wireman Trade with knowledge of Computer and should have a training from a Government approved Institute for a period of three months covering the following topics as part of course/training:-

a) Computer Fundamentals.

b) Knowledge of operating system.

c) Operation of internet/E-mail.

d) MS Word Excel, Power point.

iii) Hindi, Sanskrit up to Matric Standard. Age 18-40 years.

Pay Scale Rs. 4000-6000/-

9. The petitioner, being found meritorious on the basis of his academic qualification, was selected on the post of Shift Attendant and the appointment letter was accordingly issued to him. As per terms and conditions of the appointment letter, the petitioner appeared before the Chief Medical Officer, Sirsa for his medical examination and was examined by the Board of Directors including Eye Surgeon. As per report of Eye Surgeon, the petitioner was diagnosed with reflection error in both eyes (Rt. eye - 6/24, Lt. eye - 6/18 with glasses) and Nystegmus with Amlyopia and colour vision normal on 22.03.2012. As per the said report, the petitioner was neither declared fit nor unfit for the job and thereafter, the clarification was sought. The matter remained pending for five months and no fitness certificate was received by the Office of Civil Surgeon, Sirsa. Thereafter, the petitioner approached the Health Minister at Narnaul and an application was moved for medical examination from PGI Rohtak or Chandigarh. The case of the petitioner was referred to Civil Surgeon, Narnaul, who declared him medically fit for the job. The petitioner was not allowed to join his duties and he was medically re-examined by PGI Rohtak. The report of medical examination was the same as that of submitted by CMO Sirsa. On the basis of the report of PGI Rohtak, the appointment of the petitioner was cancelled.

10. On perusal of advertisement, it is clear that no specific instructions were mentioned regarding specific eye-vision for selection to the post. Moreover, the petitioner has been working against the same post on daily wages basis and also there is no report that he was not in a position to work on his post with the same vision. Now the question for consideration before this Court is as to whether the appointment of the petitioner can be cancelled on the basis of poor vision of the eyes as has been reflected in the medical report or not.

"Disability" has been defined under "The persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the same reads thus;

(i) blindness;

(ii) low vision;

(iii) leprosy-cured;

(iv) hearing impairment;

(v) locomotor disability;

(vi) mental retardation;

(vii) mental illness;

Further, the low vision has been defined as under:-

(u) "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;

11. As per the material available on the internet, 6/24 actually means that the smallest row of letters the tested eye can discern at a distance of 6 metres is what a normal eye can discern at a greater distance of 24 metres. From this, we can see that the numerator 6 is a constant. The denominator varies and a number greater than 6 would represent less than normal visual acuity. The larger the denominator number, the poorer is the vision. A person seeing worse than 6/60 despite best spectacle correction is considered to be legally blind.

12. In a decision by Three Judges' Bench of Hon'ble the Supreme Court in Amita's case (supra), a visually impaired (blind) lady applied for the post of Probationary Officer in a bank in general category and she was denied opportunity due to her visual impairment. The stand of Union of India in the written statement was that because of nature of duties of Probationary Officer, the said candidate was not in a position to perform her duties because of visual impairment but that candidate was found to be entitled for selection and appointment.

13. Similarly, in Shikha Malhotra's case (supra), it was held that the candidature of the petitioner cannot be rejected on the ground of low vision of right eye, however, as the vision of left eye was complete. It was held that there was no condition in the advertisement in respect of a particular vision of a candidate for medical fitness. The said judgment was allowed in view of Amita's case (supra). It was held that the petitioner in that case was entitled to be appointed as a Probationary Officer being visually handicapped even in general category and accordingly, the respondents were directed to appoint the petitioner with all consequential benefits.

14. In case of State Bank of India and another (supra), the candidate was impaired with one eye and his case was rejected by the authorities concerned. The writ petition by the Single Bench was allowed with a direction to the respondent-Bank to appoint the petitioner with consequential benefits. However, the said judgment of Single Bench was challenged by the Bank by way of filing LPA before the Division Bench which was dismissed vide order dated 22.06.2009 and the judgment of Single Bench directing the Bank to appoint him with consequential benefit was upheld.

15. In the present case also, there was no condition in the advertisement that a particular vision is required for the post and moreover, a person with a low vision

or is blind can be appointed against the reserved post meant for blind vision. Hence, the claim of the petitioner has wrongly been rejected. As per guidelines for medical examination of the new recruits, the aim of medical examination is that a candidate must be in good mental and bodily healthy and also free from any physical defect "likely to interfere with the efficient performance of duties of his/her appointment". The only argument raised by learned counsel for the respondents is that the petitioner may not be able to perform his duties in an efficient manner. If the respondents can appoint a blind person on the same post, then why the petitioner cannot be appointed with lower vision. Moreover, the petitioner is not suffering from any disability within the meaning of Section 2(b) of the Act and as such, it cannot be said that he was not eligible for appointment in general category. The petitioner has to fall either in one or the other category. In case, the petitioner cannot be appointed against the reserved post for blind vision person then he has to be treated as a general category candidate. The petitioner has been denied the right of appointment for untenable reasons and the stand of the respondents is without any justification and as such, the same is not only arbitrary but has caused manifest injustice to the petitioner. It is not only arbitrary, discriminatory but also violates the rights guaranteed under Articles 14 and 16 of the Constitution of India. In view of the facts as mentioned above and also keeping in view the decision rendered in Anita's case (supra) as well as Rajesh Babbar's case (supra), I have no hesitation in allowing the petition and to set aside the impugned order dated 21.01.2013. The respondents are also directed to appoint the petitioner on the post of Shift Attendant along with all consequential benefits. Consequential benefits shall include seniority from the date of issuing appointment letter to the petitioner. However, the petitioner shall not be entitled to any arrears of salary for the period from cancellation of his appointment till date. The necessary exercise be done within a period of two months from the date of receipt of certified copy of this order.