

(2004) 08 DEL CK 0067
In the Delhi High Court
Case No : CW 5161 of 2002

Mahinder Singh

APPELLANT

Vs

AIIMS and Others

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Citation : (2004) 08 DEL CK 0067

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Rakesh Tikku, for the Appellant; Mukul Gupta and Ankur Jain, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner, Mahinder Singh, presently employed as a Pump Operator with All India Institute of Medical Science (AIIMS), had filed this writ petition in August, 2002, seeking a direction to the respondents to retire him on medical grounds with all retiral benefits. Further, a direction is sought for recruitment of his son in his place at a suitable post, as provided under the Service Rules.

2. Petitioner had joined the AIIMS as a Khalasi in the year 1965. It is the petitioner's case that in the year 1979, while on duty, he suffered serious injuries resulting in the left leg being amputated from below the knee and an artificial leg was fixed.

Petitioner claimed that in the year 2000, there was a septic infection and his left leg was completely amputated. Petitioner has been certified to be suffering from 80 per cent disability.

3. On the petitioner's seeking retirement on medical grounds, he was examined by the Medical Board on 11.6.2001. The Board assessed his case to be one of 80 per cent impairment in relation to the lower left limb. They also opined that condition was not likely to be changed and no re-assessment was recommended.

At the request of the petitioner that he be permitted to retire on medical grounds, the case of the petitioner was considered by the respondents. The matter was considered on 8.7.2002 and the following comments were made:-

""He wants to have retirement from the job. They have referred to the Medical Board for exam. I feel if he wants to retire, it is fine, the Medical Board does not have to do anything from his retirement. But no one from his family can be given a job in lieu of his retirement.""

4. Petitioner is aggrieved by the above opinion given by Dr. Sharma of the Medical Board. He submits that it was not within his domain to consider whether the petitioner's family member be given employment or not. The Doctor was only to give his medical opinion. Petitioner's condition and the claim for compassionate appointment was to be considered by the Competent Authority. Learned counsel submits that with 80 per cent disability, petitioner is entitled to have retirement on medical grounds. Petitioner is finding increased numbness in his other leg. He has a young unmarried daughter and he is anxious to settle her.

5. Learned counsel for the petitioner submits that respondents have been adopting a policy of pick and choose. He relies on the case of one Mr. Prakash Chand, who, it is claimed was alcoholic and with his disability being partly self-induced, was permitted to retire and have his son employed even though other members of the family were also gainfully employed.

6. Respondents have filed counter affidavit denying that accident was suffered in course of duty. Respondents have averred that petitioner has been put on light duty, where he is not required to move. He has been discharging his duties and his condition did not justify retirement on medical grounds. As regards the case of Mr. Prakash Chand, respondents have stated that the same is not at all comparable with the petitioner. Mr. Prakash Chand, though having 80 per cent physical impairment, was a case of cerebellar ataxia with gross incoordination of all four limbs and trunk due to neurological problems as well. He was unable to stand, move and use to pass urine in the office. He required an attendant and was unable to perform his duties. In these circumstances, he was retired on medical grounds. His son was given employment in lieu thereof.

7. I have considered the pleadings and also heard counsel for the parties. It is to be noted that petitioner, on his own showing, was appointed in the year 1965. He suffered the accident in the year 1979. Petitioner had sought retirement on medical grounds after nearly 21 years, when he was approaching the age of superannuation. In fact, petitioner already stand superannuated on 31.7.2004. The relief being sought in the petition from the said point of view has become infructuous. Leaving that apart, even on merits, it would be seen that even though having a disability of 80 per cent, the nature of disability was not such which precluded the petitioner from discharging his duties and he had been put on light duties. Petitioner, when he is approaching the age of superannuation cannot seek retirement on medical grounds so as to seek compassionate

appointment for his son. Respondents have also succeeded in demonstrating that the case of Mr. Prakash Chand was not at all comparable.

8. In view of the foregoing discussion, petitioner is not entitled to the relief sought. Writ petition has no merit and is dismissed.