
(2009) 07 OHC CK 0023

In the Orissa High Court

Case No : Writ Petition (C) No. 15699 of 2005

Manas Chandra Mahanta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Citation : (2009) 2 ILR (Ori) 197

Hon'ble Judges : L. Mohapatra, J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

L. Mohapatra, J.—The Applicant before the Tribunal is the Petitioner before this Court challenging the order dated 16.11.2005 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in Original Application No. 300 of 2001.

2. Case of the Petitioner before the Tribunal was that in order to fill up 44 Group "D" vacancies in the Railways, a notification was issued on 10.2.1999 inviting applications from the eligible candidates from three different categories. Out of 44 posts, 15 posts were reserved for Visually Handicapped, 15 posts for Orthopaedically Handicapped and rest 14 posts for Hearing Handicapped. In pursuance of the said notification, the Petitioner applied for consideration of his case against the vacancy meant for Visually Handicapped persons. He attended the interview on 12.12.2000 and having been found suitable as Visually Handicapped person, his name was included in the panel published by the Railways on 9.1.2001. As per the Rules of the Railways, empanelled candidates are required to face a medical test and on the request of the Petitioner, he was sent for medical examination to the Medical Superintendent/Bandhamunda and was declared fit in C-2 category. After being declared fit in the category of Visually Handicapped persons, he was posted as Ty. Chowkidar under the Divisional (Signal and telecom) Engineer (Con.)/Chakradharpur vide Office Order dated 3.4.2001.

3. A complaint was received with regard to the degree of visual disability of the

Petitioner and the Petitioner was again sent to Opthamological Clinic (Eye Specialist) at Divisional Railway Hospital/Chakradharpur for examination. On receipt of the findings of such Medical Examination, the matter was placed before the Chief Medical Director (Eye) of Railways, who opined that the Petitioner cannot be considered as a visually handicapped person as per the Opthamological findings. On the basis of such opinion, the service of the Petitioner was terminated by the competent authority and the said order of termination was challenged by the Petitioner before the Tribunal. The Tribunal on consideration of the materials placed before it, found that the degree of visual handicap of the Petitioner does not bring him within the required degree in order to make him eligible to be appointed against the post reserved for such category of candidates and, accordingly declined to interfere with the order of termination.

4. Learned Counsel for the Petitioner relied on a medical certificate in Annexure-1 to support his contention that the Petitioner was visually handicapped and had rightly been appointed against the vacancy meant for such category of visually handicapped persons. Annexure-1 is a Medical Certificate issued by a Board consisting of three Doctors including the Chief District Medical Officer, Sundargarh. The said medical report shows that the Petitioner was visually handicapped in his right eye. The employment notice in Annexure-3 provides for filing of such certificate along with the application and the Petitioner had filed Annexure-1 issued by the Chief District Medical Officer along with his application. The employment notice further provides that the appointment of such visually handicapped category persons shall be subjected to passing the prescribed medical examination for appointment. In terms of the said provision, the Petitioner was offered an employment subject to passing the prescribed medical examination by an authorized Medical Officer of the Railway. Annexure-5 is clear to the above effect. The Petitioner was thereafter subjected to medical examination and Annexure-6 is the report of such examination. He having been found fit for appointment against C-2 posts, under Annexure-7, he was given an employment as Visually Handicapped person. Subsequently, on the basis of a complaint, the Petitioner was again subjected to medical examination and on the basis of the report of such examination, in Annexure-9, the Chief Medical Director found that the Petitioner cannot be considered as Visually Handicapped candidate. On the basis of such information of the Chief Medical Director in Annexure-9, the services of the Petitioner were terminated in Annexure-10. As is evident from the documents referred to above, the Petitioner was offered an employment subject to passing of required medical test by a doctor of the Railway. After such examination, the Petitioner was found fit for employment in C-2 Category and on the basis of such report in Annexure-6, he was given employment. There is no dispute that the Petitioner was again subjected to medical examination and the report does not indicates that he had the required disability for being appointed against the post meant for Visually Handicapped persons and on the basis of the second report, the Chief Medical Director opined that the deficiency in eye of the Petitioner does not come within the scope of

Visually Handicapped category and, therefore, the services were terminated in Annexure-10. The Petitioner undisputedly has been examined by two doctors working in the Railways. The first doctor, who examined the Petitioner, found him fit to be employed under the Visually Handicapped Category whereas the second doctor did not find him fit for such appointment.

5. Under these circumstances, the Railway Administration should have constituted a board of doctors for examination of the Petitioner so as to find out as to whether the Petitioner 's deficiency in eye is to such an extent that he could be categorized as Visually Handicapped person. Ignoring the report of the first doctor and relying on the report of the second doctor, the order of termination should not have been passed. We are, therefore, of the view that two doctors of the same Railway Administration having given two different opinions, one in favour of the Petitioner and the other against him, it would-have been appropriate on the part of the railway administration to get the Petitioner examined by a Board consisting of more than one Eye Specialist.

6. We, accordingly set aside the impugned judgment of the Tribunal as well as the order of termination and direct the opposite party No. 2 to set up a medical board consisting of Eye Specialist for examination of the Petitioner in order to find out as to whether he could be categorized as Visually Handicapped person or not. In the event, the Petitioner is found fit for employment as Visually Handicapped Person, he should be allowed to continue in service. In the event he is not found eligible for employment as a Visually Handicapped Person, a fresh order shall be passed on the basis of the report of the Medical Board. So far as salary for the period he is kept out of service is concerned, the competent authority shall pass necessary orders keeping in mind the fact that the order of termination in Annexure-10 has been quashed and Petitioner is deemed to be continuing in service (though he has not actually worked) till a fresh order is passed on the basis of the report of the Medical Board.

With the above observation and direction, the writ application is disposed of.