
(2011) 03 DEL CK 0249

In the Delhi High Court

Case No : Writ Petition (C) No. 7112 of 2008

Mukesh

APPELLANT

Vs

Air India and Another

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Citation : (2011) 3 ILR Delhi 272

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : V.V.R. Rao, for the Appellant; Padma Priya, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Sharma, J.—The Petitioner had applied for the post of Ramp Service Agent with Respondent No. 2 pursuant to an advertisement published in Employment News dated February 14-20, 2004. Despite having cleared the trade test and personal interview, he has not been appointed to the post, allegedly, on the ground that he was found medically unfit, as he failed to meet the standard of Pre-Employment Medical Examination (in short, called the "PEME").

2. The grievance of the Petitioner is that after he had presented himself for the PEME conducted by the Respondents, he kept waiting for a favourable response and when for a long time he did not hear from them, he made several trips to their office to know the status of his appointment but to no avail. Left with no option, he sent a legal notice to the Respondents dated August 20, 2007 followed by an application under the Right to Information Act dated December 01, 2007. It was only thereafter, on December 12, 2007 that he was informed that he had been found medically unfit.

3. It is further his grievance that the information so given did not specify the nature of medical unfitness that he was found to be suffering from. That led him to file another application under the Right to Information Act, dated December 27, 2007 calling upon the Respondents to supply him his medical report, in

response to which he received letter dated January 17, 2008 informing him that the Medical Officer of the Company during the course of his medical examination found him to be suffering from right ear deafness and that it was for the said reason that he was declared medically unfit. Along with this letter he was sent his medical report signed by Dr. V.K. Gupta & Dr. V.K. Batra wherein against the heading "Final Assessment", it was recorded - "Temporarily Unfit". On receipt of letter dated January 17, 2008 along with his medical report, the Petitioner got himself privately examined from an ENT Specialist, namely, Dr. V.K. Gupta, M.B.B.S., M.S. (ENT) FCGP Ex. H.C.M.S. who opined that he suffered from no abnormality and that his hearing was within normal limit. Armed with this report, the Petitioner sent a letter to the Respondent dated February 19, 2008 requesting that he be appointed to the post, and in the meanwhile, he sent another letter under the Right to Information Act dated April 24, 2008 inter-alia requesting the Respondents to furnish details regarding the designation, specialization, qualification and experience of Dr. V.K. Gupta and Dr. V.K. Batra both of whom had signed his medical report. He also sought information, whether they were ENT Specialists. The Respondents did not accede to his request for appointment on the basis of the report obtained by him from an ENT Specialist, but after some reminders vide letter dated July 18, 2008 did inform him that Dr. V.K. Gupta was Locum Medical Officer with MBBS qualification and had an experience of 35 years, and Dr. V.K. Batra was Deputy General Manager, MD (Internal Medicines), M.N.A.M.S. (Internal Medicines) and had an experience of 29 years. He was also informed that they were not ENT Specialists.

4. In the aforementioned background, it is the case of the Petitioner that the Respondents having themselves admitted that Dr. V.K. Gupta and Dr. V.K. Batra who had declared him medically unfit on account of abnormality in his right ear were not ENT Specialists and he having got himself examined from an ENT Specialist who had given an opinion that he suffered from no abnormality, there is no justification on the part of the Respondents in not appointing him to the post. Hence, he has come to this Court seeking inter-alia a writ, order or direction to the Respondents to immediately consider him for appointment to the post of Ramp Service Agent with effect from the date he was disqualified in the medical examination and for a further direction to frame guidelines for conducting pre-medical examination at a Government recognized hospital by a qualified and specialist panel of doctors.

5. Having set out the case of the Petitioner, it is turn now to furnish the Respondents' version to the same. Both Respondents No. 1 & 2 have filed separate counter-affidavits but they have taken identical stand in so far as the merits of the case are concerned. However, before I refer to what the Respondents have to say on merits, it needs to be noticed that Respondent No. 1, namely, Air India in its counter-affidavit has taken a plea that as on the date of the filing of the writ-petition, it had ceased to exist as an entity, in as much as along with Indian Airlines Limited, it stood amalgamated with National Aviation Company of India Limited (NACIL) vide Ministry of Corporate Affairs' order dated

August 22, 2007 approving the scheme of amalgamation. Hence, it has prayed for deletion of its name from the array of parties. As regards the status of Respondent No. 2, it is stated by both the Respondents that it is a wholly owned subsidiary of erstwhile Air India Limited and was established for undertaking ground handling functions at various Airports.

6. On merits, the Respondents have accused the Petitioner of deliberately suppressing a material fact that in the course of his PEME, he was examined by an ENT Specialist and that by suppressing this fact, he has sought to give an impression as if the Medical Officers of the Respondents who have declared him medically unfit had done so without taking into consideration the report of the ENT Specialist. Giving details of how the PEME is carried out, it is stated that various medical examinations on a candidate are conducted by doctors who are on the panel of Respondent No. 1 including specialist doctors and thereafter, all the examination/assessment reports are handed over/collected by Medical Officer of the Respondent-company for final review/assessment. The Medical Officer after compiling all the reports from all the concerned panel doctors including specialist doctors, who have carried out the medical examination, prepares a final report giving his final remarks as per the Rules of the Respondent-company. As per the Respondents, the same procedure was followed in the case of the Petitioner. The Specialists clinically examined him for Pathological tests, X-Ray, ENT, etc. The confidential reports of all these tests were sent in a sealed cover to the Medical Officer of the company. The Medical Officer/s of the company assessed the reports of the Specialists vis-?-vis the prescribed standard for the post. During the course of the assessment of the report of ENT Specialist, namely, Dr. (Major) Rajesh Bhardwaj, MBBS, MS(ENT), BLO, DNE, DHA, the Petitioner was found to be medically unfit by the Medical Officer of the Respondent-company, as the same was not meeting the standards of the PEME prescribed by the company which were as under:

Sl. No. Criteria Standard of (Audiometry) Hearing required as per PEME Standards Hearing (Audiometry) Loss of the petitioner at the time of pre-employment examination

1 Average Hearing Loss Less than 25 db (Normal) 42 db (Right Ear) 23 db (Left Ear)

2 Speech Discrimination More than 90% (Normal) 80% (Right Ear) 98% (Left Ear)

7. It is stated that Dr. (Major) Rajesh Bhardwaj, ENT Specialist was only required to furnish his report on the basis of clinical examination conducted by him. It was thereafter the job of the Medical Officers of the company to examine the report vis-?-vis the prescribed medical standard. Accordingly, as noticed above, they examined the medical reports of the Petitioner and only then did they declare him unfit for the job.

8. It is further stated that the job of Ramp Service Agent requires a person to

operate/handle equipments at the Tarmac Area of the International Airport and as the Airport is a high risk area where high level of noise occurs due to constant presence of aircrafts and other heavy equipments, the job require precision in handling equipment. Accordingly, strict medical standards are laid down and the selection of the fittest from the fit is made so that the individual is not put to risk himself and is also not a cause of risk to others in the Airport premises.

9. For what has been noticed above, the following question arises for consideration:

Is the Petitioner guilty of suppression of a material fact? And if so, is the petition liable to be dismissed on that score, and if not, has he been wrongly declared medically unfit by the Respondents?

10. One fact clearly emerges from the case set-out by the Respondents and that fact is that the Petitioner was examined by an ENT Specialist, namely, Dr. (Major) Rajesh Bhardwaj who was on the panel of Respondent No. 1. But what I find to my dismay is that the Petitioner who has made so much ado about his having been declared medically unfit by the Medical Officers of the Respondents who were not ENT Specialists, chose not to disclose this fact in his writ-petition. The tone and tenor of his writ-petition is such that it gives an impression as if the Medical Officers who declared him unfit had no material before them. On the other hand, as pointed out by the Respondents, the fact of the matter is that they had before them the report of the ENT Specialist as well as the medical standards for the post in question which they applied to the report and only then did they declare the Petitioner unfit. The Medical Officers who compared the ENT report of the Petitioner with the prescribed standards were neither na?ve nor laymen. They too were qualified doctors. It required no super-skill to consider the reports of the various specialists with reference to the prescribed medical standard and declare a person fit or unfit.

11. Given the fact that the Petitioner is accusing the Respondents that he has been declared medically unfit by the Medical Officers who were not qualified to do so, should he not have disclosed that he appeared before an ENT Specialist of the Respondents and was examined by him? He chose to remain silent. To me, this silence was not out of ignorance. It was deliberate and with a view to present a distorted picture of what actually happened. For how many times the Courts have to repeat that a Petitioner must approach the Court with clean hands? Here is a Petitioner who knew that he had been examined by an ENT Specialist and yet did not disclose this fact in the writ-petition.

12. Something more! It is not the case of the Petitioner that no medical norms are prescribed by the Respondents. It is also not his case that the norms so prescribed were not followed. The Respondents have referred to those norms and in terms thereof, only less than 25 db of average hearing loss was considered normal and as regards speech discrimination, more than 90% was taken as normal. The Petitioner suffered from average hearing loss of 42 db vis-?-vis his

right ear and 80% of speech discrimination in the said ear. He, thus, fell far short of the laid down standards. It is stated by the Respondents that once a candidate is examined by a Specialist and has been declared medically unfit by an in-house panel of doctors as per the relevant Pre-employment Medical Rules, there is no provision of referring a candidate for a second round of medical examination.

13. In view of the above, no fault can be found with the Medical Officers declaring him unfit and I also feel that the Petitioner does not deserve to be sent for a fresh medical examination.

14. And last but not least, I cannot lose sight of the fact that the Petitioner has challenged the recruitment exercise that was undertaken way-back in the year 2004. As per the Respondents, all the vacancies have since been filled up which I have no reason to disbelieve.

15. For the fore-going reasons, I feel that the petition deserves to be dismissed, and I hereby do so.