
(2007) 04 DEL CK 0026

In the Delhi High Court

Case No : Writ Petition (C) No. 2943 of 2005

O.P. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 04 DEL CK 0026

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Lipika Sharma, for the Appellant; Darpan Wadhwa, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—The petitioner in this writ petition calls in question the order passed by the respondents on 21.11.2003 denying him extension of service for two more years on the basis of his permanent low medical category BEE(P). He has prayed for a writ of certiorari quashing the order dated 21.11.2003 passed by the respondents; directions to the respondents to give him extension with all consequential benefits and also to pay him damages of Rs. 50 lacs as he has lost his left kidney due to their mala fide act.

2. The necessary facts relevant for the disposal of this writ petition are summarized as follows:

3. The petitioner had joined the Army service as Sepoy Clk/Lance Naik Clk in 1977. Consequent upon his appointment in the Army he was posted at different places from time to time and was also given promotion as per his entitlement and when he filed the present writ petition in 2005 he was holding the rank of Subedar. In 1983 he underwent surgery for removal of stone from his left kidney in Army hospital at Lucknow. Thereafter he was examined by the medical board and was found in shape I and was, Therefore, kept in medical category "A" till

November, 1997 when he suffered multiple renal calculus in his right kidney. In October, 1997 the doctors in the Army hospital diagnosed that the petitioner had a stone in his right kidney. The treating surgeon had recommended for the management by the Urologist. The petitioner was explained the consequences of the treatment by the Urologist consequent upon which he refused in writing for further management. Consequently, the petitioner was placed in low medical category CEE(T) for six months w.e.f 22.11.1997. He was again placed in temporary low medical category CEE (T) for another six months w.e.f 22.5.1998.

This temporary low medical category CEE(T) was again extended for another six months w.e.f 22.11.1998. In the meanwhile, the petitioner had undergone treatment/surgery for removal of stone from his right kidney in the Army hospital and consequent thereto he was placed in temporary low medical category BEE (T) for six months w.e.f 22.5.1999 and thereafter he was placed in permanent low medical category BEE for two years w.e.f. 22.11.1999 and this extended for another two years w.e.f 22.11.2001. Each time the petitioner was placed in permanent low medical category BEE, he was examined by the medical re-categorisation board. Since the petitioner was placed in permanent low medical category BEE which continued till the expiry of his normal service limit in the rank of Subedar, he was denied extension of service by two years as per policy of the respondents vide impugned Office Order dated 21.11.2001 (Annexure P-6). Aggrieved, there from the petitioner has preferred this writ petition and has prayed for a writ of certiorari quashing the said impugned order and to give him extension of service by two years as according to him the respondents have acted malafidely in not placing him in permanent low medical category BEE in 1983 itself when he had undergone major surgery for removal of stone from his left kidney. The petitioner has alleged that his medical category was not lowered in accordance with Army rules in the year 1983 when he underwent a major operation for removal of stone from his left kidney. At that time his medical category was "AYE" despite the Army rules to lower the medical category for minimum of six months and after that the medical board sits and decides after examining the condition of personnel that his category could be upgraded or not. It is stated that the petitioner's medical category was not lowered in 1983 by flouting the rules due to mala fide intention on the part of the respondents. The petitioner came to know about the alleged removal of his left kidney in 1998 while he was undergoing treatment for removal of stone from his right kidney. The petitioner has alleged that the respondents' hospitals are running a racket of selling of kidney of armed forces personnels on the pretext of removing kidney stone.

According to him, his left kidney was removed on the same pretext and for that reason he claimed Rs. 50 lakhs as compensation for removal of his left kidney in 1983 without his knowledge.

4. In response to the show cause notice, the respondents have filed their counter affidavit in which they have denied the assertions made by the petitioner in the

instant writ petition. The respondents have denied that the left kidney of the petitioner was removed in 1983 without his knowledge as alleged in the petition. The respondents have stated that they have verified the facts from the records of the hospital where the petitioner was treated for removal of stone from his left kidney in 1983 and on checking the same they have found the assertion that the petitioner's left kidney was removed in 1983 is false. The case of the respondents is that the petitioner was kept in medical category "A" after his operation for removal of stone from his left kidney in 1983 as at that time he had completely recovered from his ailment and had resumed his normal duties. He was not placed in low medical category at that stage considering his age, service prospects and the trade to which he belonged (clerk -not evolving any strenuous physical activity). It is stated that the petitioner had absolutely no medical problem from 1983 onwards till he got fever in 1997 for which he contacted the concerned doctors in the Army Hospital and was found to have renal stones in his right kidney also and was advised to undergo procedure for the treatment of that ailment. The petitioner was informed by the concerned treating doctors about the consequences of the procedure and initially the petitioner gave in writing that he was not willing to undergo the procedure advised for the treatment of stone in his right kidney but later on he underwent surgery for removal of stone from his right kidney in 1998 in the Army Hospital and while he was being treated at that time, it was discovered that his left kidney had almost shrunked and had become non-functional. On subsequent evaluation of the petitioner at Army Hospital (R and R), he was found to be having a solitary functioning right kidney whereas his left kidney, though present, was non-functional. Hence, he was initially placed in low medical category temporarily for six months w.e.f 22.5.1999 and on his re-examination by the Re-categorisation Medical Board, considering his medical condition he was placed in permanent low medical category for two years w.e.f 22.11.1999. The medical of the petitioner was held by the Re-categorisation Medical Board after every two years to review his medical condition but each time as per advise of the medical board he was kept in permanent low medical category till he reached the age of superannuation i.e. normal service limit and for that reason he was not granted extension of service for two years as per policy of the respondents contained in Army Hospital letter No. B/33098/AG/FS 2(C) dated 21.9.1998 which states that a JCO in permanent low medical category and who is not likely to be upgraded to medical category "A" (now called SHAPE-1) is not to be considered for extension of service. The respondents have, Therefore, pleaded that they acted within the four corners of their policy in not granting extension to the petitioner. They have also denied the claim of the petitioner for grant of compensation as claimed in the writ petition. They have prayed for the dismissal of this writ petition.

5. We have heard the learned Counsel for the parties and have also gone through the written arguments filed on their behalf. We have also carefully perused the entire record of the case placed before us.

6. The learned Counsel for the petitioner had argued that the doctors in the Army

Hospital had removed the left kidney of the petitioner without his knowledge in 1983 when he underwent surgery for removal of stone from his left kidney at that time. Her contention was that the respondents had acted malafidely in not placing the petitioner in low medical category in 1983 itself because according to her, as per policy of the respondents, the petitioner was liable to be placed in low medical category after he had undergone a major surgery. The learned Counsel has also contended that since the left kidney of the petitioner was removed in 1983 without his knowledge, the respondents should be directed to pay compensation of Rs. 50 lacs to the petitioner for loss of his kidney. This argument advanced on behalf of the petitioner was strongly refuted by the learned Counsel for the respondents who had argued that as per record available with the respondents, the left kidney of the petitioner was not removed in 1983 as alleged and it had shrunk over the passage of time, by the time petitioner developed stone in his right kidney also after more than 15 years of his removal of stone from his left kidney in 1983. It was further contended that the petitioner was completely cured of his problem of stone from his left kidney in 1983 which is evident from the fact that he did not have had any problem thereafter for 15 years till he got fever in 1997 when it was found that he had stone in his right kidney also. On the basis of the record that has been shown to us, it is difficult to give any verdict regarding alleged removal of left kidney of the petitioner in 1983. We do not consider it necessary to go into this disputed question of fact because the issue with which we are confronted relates to the validity and legality of the orders passed by the respondents denying extension of service to the petitioner on the ground that he was placed in permanent low medical category "B" after he underwent surgery for removal of stone from his right kidney in 1998.

7. The petitioner has not challenged his placement in permanent low medical category because of solitary functioning of his right kidney. He has also not disputed that he was re-examined by the Re-categorisation Medical Board periodically after every two years since 1999 and he continued to remain in permanent low category "B" till he reached the age of superannuation as per his normal service limit. Though, the petitioner was placed in permanent low category "B" in 1998 but he never challenged his placement in the said low category till the filing of the present writ petition in 2005. The petitioner has not disputed the policy of the respondents to deny extension of service to those who were placed in permanent low medical category. Since the petitioner has not disputed the said policy of the respondents, we do not find any substance in the challenge of the petitioner against denial of extension of service of two years to him vide impugned order. As per the assertions of the petitioner his left kidney was allegedly removed in 1983 of which he came to know for the first time in 1998 but strangely enough, he did not whisper about the same to any of the authorities since then till he filed the present writ petition. The plea of the petitioner that his left kidney was removed by the respondents in 1983 without his knowledge, appears to be far from truth and is difficult to believe after 22

years of his surgery in 1983. The respondents have denied in their counter affidavit that the left kidney of the petitioner was removed in 1983 as alleged in the petition. In our view, the pleadings of the parties on this aspect of the matter raise several complicated and disputed questions of fact, which cannot be gone into by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution.

8. For the foregoing reasons, we do not find any merit in this writ petition which fails and is hereby dismissed with no order as to costs.