

(2017) 03 RAJ CK 0174
In the Rajasthan High Court
Case No : 4180 of 2016

Ramesh Chandra Faujdar

APPELLANT

Vs

Union of India & anr.

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Citation : (2017) 03 RAJ CK 0174

Hon'ble Judges : Mohammad Rafiq, Dinesh Chandra Somani

Bench : DIVISION BENCH

Advocate : Ashok Joshi, S.N. Meena

Judgement

1. This writ petition has been filed by the petitioner challenging order dated 14.08.2015 passed by the Central Administrative Tribunal, Jaipur Bench (for short "the Tribunal") whereby original application filed by the petitioner has been dismissed.

2. The petitioner approached the Tribunal by filing original application against order dated 21.10.2011 and praying for direction to the respondents to conduct his second medical examination and if eventually he was found to have been passed the same, then grant him posting as Junior Engineer-II in view of notification dated 28.09.2010.

3. Facts of the case are that post of Junior Engineer (TM) Grade II was notified by the respondent-department vide notification dated 28.09.2010. Departmental candidates were eligible to appear in the said examination. In response to the aforesaid notification, the petitioner appeared in the written examination and was declared passed. Thereafter, the petitioner was sent for training of eight weeks at Allahabad. The petitioner successfully completed said training and he was, thereafter, sent for medical examination at Divisional Headquarter at Kota. During medical examination, vision of left eye of the petitioner was not found normal and certificate was issued on 23.06.2011 indicating that the petitioner was not found fit for B-1 category and was declared fit for only C-1 category.

While others, who qualified written examination as well as completed training and cleared medical test, were given posting, the petitioner was not posted on the post of Junior Engineer(TM) Grade-II. The petitioner thereafter got himself operated upon for correction of vision of his left eye by Dr. Ashish Nagpal at Ahmedabad on 19.05.2011 and 04.08.2011. It was thereafter that certificate was issued to him by Dr. Ashish Nagpal to the effect that vision of his left eye was now 6/6 and vision of his right eye was 6/9. The petitioner submitted an application to the department on 21.09.2011 requesting that he is now medically fit for B-1 category and therefore, order be issued for his re-medical examination.

4. The respondents by order dated 21.10.2011 conveyed to the petitioner rejection of his prayer for re-medical examination. Therein, the respondents relied on opinion of the Chief Medical Superintendent, W.C. Railway, Kota which reads as under: "In reference to above subject, it is to say that as per the documents of the private hospital, he has been operated for complicated cataract with glues IOL (not a routine PCIOL) and vitrectomy. As glued IOL is kept in place with a glue which is not stable and is comparatively newer concept, not proven over time about its stability and long term visual outcomes is not predictable. As we are already making those employees fit in categories above Cee-one who have under gone PCIOL and not any other IOL's like ACIOL and Iris claw lenses for which no clear cut guidelines are available especially for glued type IOL. Therefore, it is not advisable to upgrade his medical category.

Moreover the employee is a case of chronic uveitis which is a relative contraindication to IOL implantation and vitrectomy also may lead to complication later on."

5. The Tribunal relying on the aforesaid opinion of the Chief Medical Superintendent, W.C. Railway, Kota, dismissed the original application filed by the petitioner vide order dated 14.08.2015. Hence, this writ petition by the petitioner.

6. Mr. Ashok Joshi, learned counsel for the petitioner argued that once the petitioner was subjected to cataract surgery for correction of his vision, which is a usual procedure, there is no reason for the respondents for not granting promotion to the petitioner, particularly when the respondents vide order dated 02.05.2011 have promoted and posted nine of his juniors. The respondents have wrongly relied on the opinion of the Chief Medical Superintendent, W.C. Railway, Kota that technique adopted for the surgery of the petitioner was relatively new and performed in cases where it is not possible to posterior chamber IOL most probably due to absence of posterior capsule support which assumption was absolutely unfounded. Heading Cataract sub heading employee with pseudophakia only posterior chamber IOL is now latest technique by which maximum number of cataract surgery are performed. Besides, the Chief Medical Superintendent has neither physically examined the petitioner, nor obtained opinion of an ophthalmologist.

7. Mr. S.N. Meena, learned counsel for the respondents opposed the writ petition and submitted that the Tribunal was perfectly justified in rejecting application of the petitioner because after qualifying written examination and training, the petitioner was not found fit for promotion in B-1 category, which was the minimum requirement. He was declared fit for only C-1 category. Learned counsel submitted that the petitioner did not file any appeal against his placement in B-1 category even though there was provision of appeal. Besides, subsequent cataract surgery of the petitioner would not improve his case because certificate issued by Dr. Ashish Nagpal was scrutinized by the Chief Medical Superintendent, W.C. Railway, Kota in whose opinion the kind of surgery undergone by the petitioner was by new technique and is performed in case where it is not possible to posterior chamber IOL most probably due to absence of posterior capsule support. The department therefore rightly took the decision for not treating the petitioner as medically fit so as to avoid any future complications.

8. Having heard learned counsel for the parties and perused the material on record, this Court finds that the Chief Medical Superintendent, W.C. Railway, Kota could not have given the kind of opinion, which he has given in the present case unless he himself physically examined the petitioner. Cataract surgery by pseudophakia only through posterior chamber IOL is stated to be latest technique. Respondents therefore cannot completely discard the improvement in vision of the petitioner and that too by an individual medical officer. Moreover, it is not shown that the Chief Medical Superintendent, W.C. Railway, Kota is an ophthalmologist or eye specialist and therefore, his opinion about viability or otherwise of the technique adopted in the cataract surgery of the petitioner cannot be accepted as final verdict.

9. We are, therefore, persuaded to allow this writ petition, which is accordingly allowed and order dated 14.08.2015 passed by the Tribunal is set aside and the respondents are directed to constitute a medical board, which should consist of at least one ophthalmologist/eye specialist as the member and said medical board shall submit its report to the respondents within one month. The respondents shall thereafter act according to their provisions in accordance with law. Stay application stands disposed off.