

(2009) 07 DEL CK 0525

In the Delhi High Court

Case No : Writ Petition (C) No. 2680 of 1995

Shri G.L. Chowdhary

APPELLANT

Vs

Union of India (UOI) Ors.

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2010) 124 FLR 407

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : P.P. Khurana and Amit Anand, Birender Singh and Gaurav Tondon, for the Appellant; Jagat Arora and Rajat Arora, for the Respondent

Judgement

Sunil Gaur, J.—Petitioner was an Assistant Manager with the Respondent No. 2-Corporation and vide impugned order (Annexure-I), he was pre-maturely retired on medical grounds with effect from 31st July, 1995. Respondent No. 2 - Corporation had done so on the basis of recommendations of the Medical Board, as contained in Annexure R-2, and the disabilities noted by the Medical Board are as under:

1. Residual right sided Hemiparesis with defective functioning of his right Upper and Lower Limb.
2. Shortening of his right leg for about 2-1/2 inches. He is however, able to move around and level walk with the help of a stick. He has also acquired the skills in writing with his left handed is able to write adequately well. His mental and intellectual functions are normal.
2. The aforesaid recommendations of the Medical Board were approved by the Competent Authority with the following remarks:

In view of his physical and skeletal disabilities he will not be able to perform the duties involving climbing to the tankers or negotiating spiral stairs.

3. Upon receiving the impugned order (Annexure-I), Petitioner had made Representation (Annexure K) on the basis of a Medical Certificate issued by a private hospital to show that the Petitioner is fit to perform his duties, but to no avail.

4. In this petition, quashing of the order compulsorily retiring the Petitioner on medical grounds, is assailed by asserting that the Petitioner was not heard before taking the impugned decision and on the ground that the impugned action of the Respondent in pre-maturely retiring the Petitioner is bad in law as the Petitioner was fit to perform his duties after he has resumed his duties in the year 1993.

5. In the counter affidavit filed by the Respondent to this petition, it has been stated by the Respondents that after assuming of duty by Petitioner on 18th December 1991, he was unable to perform his duties effectively and that the Medical Board was constituted under the Indian Oil Corporation Employees Pre-Mature Retirement Scheme. The stand of the Respondent is that the Pre-Mature Retirement Scheme on Medical Grounds (Annexure R-1) has been introduced in November 1989 for effective functioning of the Respondent No. 2 -Corporation and the employees under the scheme are Pre-Maturely Retired on Medical Grounds and they are adequately compensated in terms of money. It is pointed out that under the aforesaid Scheme (Annexure R-1), no employee, who is medically fit, is to be put on light duty and the Petitioner has been given ex-gratia payment of Rs. 3,10,452/-, which has been accepted by the Petitioner.

6. Counsel for the parties have been heard and the material on record has been perused.

7. Counsel for the Petitioner had drawn attention of this Court to the Section 47 of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995", which reads as under:

47. Non-discrimination in Government employment. - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

8. On behalf of the Petitioner, reliance has been placed upon a decision of this Court in the case of " O.P. Sharma Vs. Delhi Transport Corporation and Another, , to contend that the aforesaid Act would apply to the pending proceedings. The pertinent observations made in this regard in the aforesaid decision are as under:

It would therefore appear that where by an enactment, beneficial measures are introduced, a litigant is entitled to avail of its benefits, certainly in pending

proceedings. In the present case, the DTC, an instrumentality of the State, and admittedly bound by Article 14, was under an obligation to behave in a non-discriminatory and non-arbitrary manner. During the pendency of litigation, the Act was brought into force; it gave statutory shape to the principle of non-discrimination at the work place. Hence, its application cannot be construed as retrospective application of a later law.

9. On the other hand, counsel for Respondent has justified the impugned order by submitting that under the provisions of the aforesaid Scheme (Annexure R-1), there is no requirement of giving any opportunity of hearing before acting upon the recommendations of the Medical Board and the recommendation of the Medical Board cannot be assailed by relying upon a medical certificate of private hospital. Reliance has been placed upon a decision reported in 1993 Labour and Industrial Cases 1995, wherein it has been declared by the Apex Court that deciding of medical fitness in writ jurisdiction by the High Court against the opinion of a specialist doctor is not proper.

10. In the case of "Kanshi Ram Sharma v. Union of India" 2002 (4) SLR 292, it has been held that there is no mandate under the Pre-Mature Retirement Scheme of the Corporation that a medically unfit employee must be offered a job in a lower category.

11. In the case of Sh. Umesh Chakravarti Vs. Union of India and Others, , it has been held by this Court that the opinion of the Medical Board constituted by the Appointing Authority would be relevant and not the opinion of other hospital or doctor.

12. In the case of Union of India (UOI) and Others Vs. Flight Cadet Ashish Rai, , the true import of the power of judicial review has been highlighted by the Apex Court in the following words:

There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner:

(i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) **Irrationality, namely, Wednesbury unreasonableness.**

(iii) **Procedural impropriety.**

13. After having considered the factual background of this case and the aforesaid legal position, this Court is of the considered view that the Pre-Mature Retirement Scheme on Medical Grounds (Annexure R-1) of the Respondent No. 2 - Corporation needs to be re-considered and ought to be suitably amended in the light of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995", as this Court in the case of O.P. Sharma (Supra) has laid down in explicit terms that the provisions of the aforesaid Act (with special reference to Section 47 thereof) would apply to the pending proceedings and the objections of retrospective operation of the aforesaid Act stands already repelled.

14. In " Union of India (UOI) and Another Vs. S.B. Vohra and Others, , the Apex Court has held as under:

The High Court, however, should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the Central/State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefore. The statutory duties should be allowed to be performed by the statutory authorities at the first instance.

15. In the light of the aforesaid position, this petition is partly allowed with liberty to the Petitioner to make a comprehensive Representation while claiming benefit of the provisions of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995", to Respondent No. 2 within four weeks from today and Respondent No. 2 is directed to consider the Petitioner's Representation and to pass a speaking order therein within twelve weeks of the receiving of the Petitioner's Representation. Opportunity of personal hearing, if sought by the Petitioner, be provided to him by the Competent Authority before deciding Petitioner's Representation.

16. This petition stands disposed of in the aforesaid terms.

17. No costs.