

Date of Hearing: 20.02.2008
Date of Decision: 20.02.2008

CORAM :-
***THE HON'BLE MR.JUSTICE A.K.SIKRI**
THE HON'BLE MR. JUSTICE J.M. MALIK

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. The petitioner wanted to get the benefit of a welfare scheme which was promulgated by the Army Headquarters vide its circular letter dated 18.11.1996 for serving army officers. As per this scheme, the respondents had decided that those serving officers who had become disabled or who became paraplegic patients during various operations, including counter insurgency operations be provided the facility of purchase of such

cars/vehicles which are disabled friendly. The reading of the scheme would indicate that it was available to those serving officers who fulfilled the following conditions:-

- “(a) Should be a battle or operational casualty.
- (b) Should be invalid/paraplegic and be incapable of independent movement.
- (c) Should preferably be gallantry award winner.”

2. This circular also mentions that this type of car is being manufactured by M/s.Maruti Udyog Limited and the cost of the car is Rs.3-4 lakhs excluding customs, excise duty and sales tax. It was decided that the concerned officer would be paying 20% of the cost and 80% shall be met by various authorities. The concerned Regiment/Command had to contribute 20%, 40% was to be given by AGI Fund and 20% contribution was to come from AG's Branch Welfare Fund. The willing officers who fulfilled the aforesaid conditions were asked to apply for the aforesaid grant for the purpose of purchase of such cars. The petitioner was one of the applicants. He has, however, not been given the benefit of the said scheme as his application was rejected, though considered twice. In these circumstances, the petitioner has approached this Court by means of the present writ petition with the following prayers:-

- “1. Issue a writ of certiorari quashing the letter dated 8.6.99 and 28.1.02 whereby the allotment of

the petitioner to auto transmission Maruti Zen car under the scheme for disabled serving army officer has been rejected.

2. Issue a writ of mandamus directing the respondents to immediately allot the said car to the petitioner as he is completely entitled the same under the scheme evolved by the Army Headquarters.

3. Issue a writ of mandamus directing the respondents to produce all the medical records of the petitioner which would substantiate the stand of the petitioner as regards the percentage and nature of his disability.

4. Issue any other writ as this Hon'ble Court may deem fit in the fact of this case.

3. The basis for making the application under the aforesaid scheme for the purchase of car at subsidized rates is contained in the petition and it would be necessary to first take stock of the said factual matrix narrated by the petitioner.

4. According to the petitioner, he was commissioned in the Indian Army in December 1969 and he participated in the Indo-Pak war in the year 1971. In the said war he incurred a disability of amputated symes LT., i.e., amputation below knee left side. Though there is a dispute about the extent of injury, it is conceded by the respondents that at that time the disability of the petitioner was assessed by the Medical Board at 60%. The petitioner has produced sufficient material on record to

demonstrate the extent of disability, which is clear from the following documents:

(a) Certificate dated 2.8.1972 issued by the Commandant, Artificial Limb Centre which indicates that the injury suffered by the petitioner was a battle casualty of Indo-Pak conflict 1971 and is a case of Amputation Symes LT. It further mentions that "His disability as is usually assessed under the rules is not less than 60% (Sixty Percent) as on (date) 2-8-72 ..."

(b) Certificate dated 2.7.1999 issued by the Command Hospital (WC), Chandi Mandir, again confirming that he was a battle casualty in 1971 war and "His disability as per guide to medical Office G of I 1980 Appendix 1 to Chapter VII is 60% (Sixty percent)".

(c) As per the disability assessment undertaken by the Command Hospital EC, Calcutta, on 2.2.2000 the disability of the petitioner was again assessed at 60%. This document further mentions that the disability was also of permanent nature and incapable of further improvement. It also mentions that the petitioner was incapable of driving conventional vehicle and needed specialized vehicle with auto transmission.

(d) Learned counsel for the petitioner also produced, today in the Court, Pension Payment Order (PPO) of the petitioner issued by the CDA(P), Allahabad, which is dated 3.10.2002. This

pension order clarifies that it is a war injury pension and mentions the disability of the petitioner at 60% for life.

5. In the aforesaid circumstances, the petitioner made out a case that he was eligible to be considered for purchase of car with auto transmission under the aforesaid scheme. Along with his application, he submitted certificate from authorized Medical Board disclosing his disability at 60% (refer Annexure C at page 18 of the petition). It is also an admitted fact, as already noted above, that the petitioner had suffered the said injury in a mine blast in a war.

6. The respondents had also issued circular letter dated 26.4.1999 in furtherance of its aforesaid policy dated 18.11.1996 giving revised eligibility criteria for the purchase of the aforesaid automated Maruti Zen car to the disabled officers. As per this criteria, it was, *inter alia*, provided that the applicant should be paraplegic/quadruplegic or be disabled by any of the following categories of disability:-

- “(i) Loss of Lower Limb at Hip Joint-unilateral and bilateral.
- (ii) Bilateral Above Knee (AK) through Knee amputation.
- (iii) Bilateral Below Knee (BK) amputation.
- (iv) Unilateral AK or BK amputation.
- (v) Loss of both feet.

- (vi) Loss of Upper Limb at shoulder-unilateral or bilateral.
- (vii) Amputation above elbow unilateral or bilateral.
- (viii) Amputation below elbow unilateral or bilateral.
- (ix) Loss of both hands or one hand.
- (x) Loss of thumb and three fingers in any one hand.
- (xi) Gun shot wound damaging main nerve trunks and producing paralysis of one or both sides upper or lower 4 limbs.”

7. As per the petitioner, his case is covered by category (iv) above as his case was a case of unilateral below knee amputation. Therefore, according to the petitioner, he fulfilled the eligibility criteria and his case could not have been rejected by the Selection Board.

8. In the counter affidavit filed by the respondents, the respondents have contested the claim of the petitioner by taking various pleas. It is, *inter alia*, pointed out that the Headquarters had taken up the case with the Ministry of Defence for excise exemption for the said cars for disabled serving officers and the Ministry of Defence had obtained permission for exemption from the excise duty for 18 cars as one-time measure from the Ministry of Finance. Thus, only 18 officers could be accommodated. However, in the first instance the number of applications received were 24. In order to screen these

applications, a Screening Board was constituted. The first Screening Board was held on 18.4.1999, which was chaired by officials of very high rank. Twenty four officers were considered by the said Screening Board out of which, 13 officers were recommended for allotment of cars. It is mentioned that the Board did not recommend the name of the petitioner for the provision of auto transmission car owing to his lower severity of disability, i.e., 40%. The proceedings of the said Screening Board indicating names of the persons who were recommended and who were found not eligible are annexed along with the counter affidavit.

9. It is further stated that the second Screening Board was held on 21.1.2000. Since, in the meantime, the petitioner had made a representation against his non-selection by the first Screening Board, which was considered by the Headquarters, it was decided to include his name for screening by the second Screening Board as well. This was primarily the reason that the petitioner had mentioned that his disability was 60%. This disability is maintained at 60% throughout, except on one occasion to which we shall revert soon after. What is emphasized is that even as per the respondents, the disability is permanent in nature as it is a case of amputation of limb. The extent of disability is also assessed having regard to the extant rules.

However, it appears that re-categorisation Medical Board, which met on 27.9.1996, after examining the petitioner had stated the percentage of disability at 40%. It is this document which was placed before the first Screening Medical Board and on the assumption that the petitioner suffered from 50% disability, his case was rejected. This is the ground of rejection given by the respondents themselves in the counter affidavit. Though Medical Board proceedings dated 27.9.1996 were not filed along with the petition, a copy thereof was handed over to us during arguments. In column No.10(e), which relates to 'Percentage of Disability', we find that initially words 'N.A.' were written which are scored off and in its place 40% is mentioned. Learned counsel for the petitioner pointed out, and rightly so, that the mentioning of such a percentage was totally uncalled for and the manner in which it is mentioned creates doubts as well as it mentions after scoring out the initial mentioning, namely, 'N.A.'. She produced the copy of the proceedings of the re-categorisation Medical Board dated 19.3.1999 where again the same column, i.e. 10(e) the words 'Not Applicable' are written. It is because of this reason that re-categorisation Medical Board is not to assess the extent of disability. In the case of the petitioner the disability suffered by him is of permanent nature. As per the instructions dated 7.2.2001 issued by the Ministry of Defence, Government of India,

in case of officials suffering from permanent disability, there is no need to have periodical reviews by the Re-survey Medical Board for re-assessment of the disability. These instructions are valid and enforceable with effect from 1.1.1996 and would be applicable when the re-categorisation Medical Board proceedings were held on 27.9.1996 to examine the petitioner. Even otherwise, as already pointed out above, the petitioner suffers from permanent disability as per the respondents' own showing and in 1999 as well his disability is shown as 60%. The proceedings dated 27.9.1996 are signed by one Col. P.K. Manna, President of the Medical Board. Interestingly, he has himself issued disability certificate dated 2.2.2000 indicating the disability of the petitioner at 60% and also indicating that this disability is of permanent nature and incapable of any improvement.

10. No doubt, there were more applicants than the cars available for allotment and, therefore, there was no choice for the respondent but to screen the applicant and allot these cars to more deserving persons. In the first Screening Board when 24 applicants were considered and 18 cars were still available, the name of the petitioner was rejected only because of the reason that he suffered from 50% disability. It is clear from this that case of the petitioner was not properly considered as correct

facts in respect of the extent of disability suffered by the petitioner were not placed before the said Screening Board. Learned counsel for the respondents had ventured to point out that there were many persons with 60% disability whose cases were also rejected and merely because a person suffered from 60% disability would not mean that his case could still have been recommended for allotment of the said auto transmission car. However, it is not for this Court to fathom or dwell into the mind of the Screening Committee and try to find out as to what could be the result had correct facts qua the petitioner been placed before the Screening Committee. We are one with the learned counsel for the respondent that it is the Screening Committee, which is the best judge which had considered the applications. In juridical review we are concerned with the process of decision-making. The Court can interfere when it is found that a particular decision suffers from irrationality, procedural impropriety or is mala fide and contrary to law. In the present case, we find that there was procedural impropriety as the correction position, qua the petitioner, was not placed before the first Screening Committee. On this ground alone we are inclined to allow this petition. The consequence would be to direct the first Screening Committee to consider the case on the basis that the petitioner suffered from 60% disability. While considering the case, the Screening

Committee would relegate itself to the original position in which it was when 24 applicants were considered by the said Committee, namely, it will keep in mind that 24 applicants and 18 cars are at its disposal. Keeping these considerations in mind, the case of the petitioner shall be considered and the Screening Committee would then decide as to whether on comparative merit the petitioner is worthy of recommendation for purchase of auto transmission car under the aforesaid scheme. If the petitioner is found eligible and is recommended, even if the scheme is discontinued, in so far as the petitioner is concerned, he would not be deprived of the benefit on this ground alone inasmuch as, already pointed out above, his case is to be considered restoring the *status quo ante* and as if the Screening Committee is meeting on 18.4.1999. The case of the petitioner shall be considered within eight weeks from today and decision be communicated to him.

**A.K. SIKRI
(JUDGE)**

**J.M. MALIK
(JUDGE)**

February 20, 2008
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