

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.13922/2009**

% **Date of Decision: 17.12.2009**

DTC Petitioner
Through Mrs.Avnish Ahlawat, Advocate.

Versus

Kamal Kumar Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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CM No.15840/2009

Allowed subject to all just exceptions.

Application is disposed of.

W.P (C) No.13922/2009

The petitioner has challenged the order dated 16th July, 2009 passed by the Central Administrative Tribunal, principal Bench, New Delhi in T.A No.454/2009 titled Kamal Kumar v. Government of NCT of Delhi & Anr directing the petitioner to send the respondent for medical examination by the Board at AIIMS and on the basis of their opinion

directing the petitioner to process the case of the respondent for appointment as driver in DTC.

Pursuant to the order passed by the Tribunal, a medical board was constituted on the request of Deputy Manager (Personnel) of the petitioner contained in his letter dated 30th July, 2009 bearing No.PLD-III (Dr./DSSSB/Court Case)/2009/2844. The medical board has given the following opinion:-

“All the papers concerning the case including the discharge summary of the patient from GTB Hospital, Shahdara (of his initial operation in 2004), Medical Board reports of the DTC, the reports of patient’s examination at GTB Hospital, RML Hospital, Hedgewar Hospital, St. Stephen Hospital, Max Hospital and Surgery Unit-III OPD at AIIMS as well as his petition before the Central Administrative Tribunal and the orders of the Hon’ble Tribunal were examined in detail. The patient was interviewed and examined in detail by all the signatories to this report. The reports and films of the ultrasound of the abdomen as well as the CT scan of the abdomen which the patient has been advised during the course of his work up were also examined.

After perusal of the records as mentioned above and the examination of the patient we are of a unanimous opinion that patient has no incisional Hernia in his abdominal wound. The wound is nicely healed and there is no clinical or investigative evidence of Hernia at present.

We are shocked at the attitude of the authorities in the DTC medical board who have consistently rejected him despite specialists in a number of reputed and prestigious government as well as private hospitals repeatedly stating that he has no incisional Hernia. We sincerely hope that

the matter will be finally settled after this medical board and Mr.Kamal Kumar will be given his due. We appreciate the dogged persistence of Mr.Kamal Kumar to continue to fight to get justice. We hope that he will finally get justice after this report.”

From the opinion given by the medical board of All India Institute of Medical Sciences after considering the report of respondent's examination at GTB Hospital, RML Hospital, Hedgewar Hospital, St.Stephens Hospital, Max Hospital and Surgery Unit III OPD at AIIMS and the other reports and films of the ultrasound and his examination done, the unanimous opinion is that the respondent had no incisional Hernia in his abdomen and the wound has been nicely healed and there is no clinical or investigative evidence of Hernia at present.

Despite the medical opinion given by All India Institute of Medical Sciences medical board constituted pursuant to the order of the Tribunal, it has again been contended by the petitioner that the case of the respondent is of an Exploratory Laprotomy done for traumatic Jejunal perforation operated in February, 2004 with mild diverticulation in epigasttric region leading to initial stage of Incisional Hernia. In the circumstances, it is contended that post operative scar are more prone to develop bulge or diverticulae being weak in the abdominal wall make the respondent more prone to be the victim of disease as he would have to drive a heavy vehicle and in the circumstances it is contended that

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his medical condition would worsen and this will not be conducive for the functioning of the petitioner and in the circumstances the petitioner is entitled for declining appointment to respondent as a driver.

This cannot be disputed that pursuant to order dated 16th July, 2009, the medical board was constituted by All India Institute of Medical Sciences. The petitioner did not dispute the order dated 16th July, 2009 whereby the medical board of AIIMS was directed to be constituted in view of the opinion of the medical board of the DTC and other hospitals. Therefore, the petitioner accepted the impugned order and acted upon it without any reservations.

After the case of the respondent had been referred to the medical board of All India Institute of Medical Sciences it has considered not only the physical condition of the respondent but has also considered the medical reports of the medical board of DTC and other hospitals and has categorically held that the respondent has no incisional Hernia and his wound has healed nicely and there is no clinical or investigative evidence of Hernia. While forming this opinion the medical board of the premier institute of this country has not only rejected impliedly the report of the medical board of DTC and other hospitals but has categorically stated that they are shocked at the attitude of the

authorities in the DTC medical board who have consistently rejected the respondent despite the contrary opinion by a number of reputed and prestigious Government as well as private hospitals repeatedly holding that the respondent does not have any incisional Hernia. It is on account of this attitude of the petitioner, which is also not approved by this Court after hearing the learned counsel for the petitioner, the medical board of All India Institute of Medical Sciences has stated it is hoped that now the matter will be finally settled and respondent will get his due. Despite this categorical assertion by the medical board, the petitioner has again tried to deny the respondent appointment as a driver.

The petition apparently is a sheer abuse of process of law, and the attempt by the petitioner to persistently discredit the opinion of the reputed hospitals and doggedly reiterate the opinion of their medical board which has been adversely commented by an independent medical board cannot be approved by this Court. After accepting the order of the Tribunal and acting upon it, the petitioner cannot seek to assail the said order merely because the medical report of the medical board is not found favourable by the petitioner.

In the circumstances, the petition is a sheer abuse of the process of law and does not require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed.

ANIL KUMAR, J.

December 17, 2009
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VIPIN SANGHI, J.