

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

% *Judgment Reserved On: 18th January, 2011*
Judgment Delivered On: 9th February, 2011

+ **WP(C) 8787/2008**

BRIGADIER B.C.RANA Petitioner
Through: Ms.Jyoti Singh, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Sanjeev Sachdeva, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. This is a second round fought by Brigadier B.C.Rana, who desires an Auto Transmission Maruti Zen Car to be allotted to him under a scheme for disabled Army Officers.
2. The scheme upon which he places reliance was promulgated on 18.11.1996 and as per which serving officers who had become disabled or who became paraplegic during various operations, including counter insurgency operations were eligible to apply for being selected for allotment of a disabled friendly motor vehicle.

3. Being commissioned in the Indian Army in December 1969 and having participated in the Indo-Pak War in the year 1971, during the war, petitioner incurred a disability of 'Amputated Symes Lt.' i.e. amputation below knee; left side.

4. The scheme in question was not unlimited in the largesse to be distributed. As a one-time measure, only 18 cars were made available by Maruti Udyog Limited and in respect whereof excise duty exemption was granted by the Ministry of Finance. It is apparent that only 18 officers could be accommodated.

5. As against 18 motor vehicles which were available to be allotted, 27 applications were received and this required 9 applicants to be weeded out and for which Screening Board was constituted.

6. Treating petitioners disability at 40% and finding 18 other cases more deserving than that of the petitioner, name of the petitioner was excluded from the list of 18 persons held qualified. The petitioner questioned the percentage of disability attributed to him. A second Screening Board was constituted which maintained the petitioner's disability to be 40%. This necessitated the petitioner to file W.P.(C) No.9522/2004, in which, vide decision dated 20.2.2008 it is opined that petitioner's disability was 60%. Noting that there were 24 applicants and only 18 cars and that the 18 applicants had to be selected on the basis of comparative disability i.e. those with greater disability to be given preference over those who had less disability, directions were issued by this Court to convene a Screening Committee who was directed to

reconsider the matter treating petitioner's disability to be 60%.

7. A Screening Committee was reconstituted which reconsidered all 27 applicants. The Screening Committee consisted of 7 officers; being, Major General B.V.Nair, ADJ, C&W; Brig.J.S.Yadav Jt.Jag; Brig.(Retd.) J.S.Kanwar, DAS, AGI; Col.M.E.Luther Sr.Advisor Surgery and Orthopedics, Base Hospital, Delhi Cantt; Surgeon Cdr.Mohit Goel, Neurophysician, Army Hospital (R&R) Delhi Cantt; Brig.B.K.Chopra, Comdt. ALC Pune and Brig.R.K.Rana, SM, DDG (Wel).

8. At this stage a clarification may be penned. Notwithstanding W.P.(C) No.9522/2004 being decided on the basis as if there were 24 applicants and this being the case projected even in the instant writ petition, record of the proceedings held on 14th May 2008 consisting of a Board of 7 Officers as above, considered 27 applicants.

9. To put it in a tabular form, the 18 persons who were empanelled for being allotted a car each under the policy reads as under:-

S. No.	Name	Disability
1.	Col.S.K.Razdan, KC	100% disability due to GSW (Lumber region) with paraplegia. Med cat S1H1 A3 (Life) P1E1
2.	Maj.Pallav Desai, SM	100% disability due to Hpctr Crash with fracture dislocation DV-12 with paraplegia Med Cat S1H1A3P1E1
3.	Capt.Zahir Ahmed Khan	100% disability due to frost bite resulting in amputation of fingers and toes of both

		hands and feet.
4.	Maj.Mahesh Chander, SC	100% disability due to GSW dorsal spine D2/D3 with paraplegia Med Cat S1H1A3P1E1
5.	Capt.Ashok Mor	60% disability Amputation of BK (Lt) due to mine blast. Med Cat S1H1A2(Life)P1E1
6.	Capt.Ravinder Singh, SM	70% disability, BK Transtribial amputation (Rt.) Med Cat S1H1A2P1E1
7.	Maj.P.S.Hundal	80% disability. BK Amputation of Rt neck of Talus (Lt) with necrosis of fragment. Med Cat S1H1A2P1E1
8.	Lt.Col.P.C.Katoch	60% disability. BK Amputation (Lt). Med Cat S1H1A2P1E1
9.	Maj.Kuriakose KT	100% disability Traumatic paraplegia as a result of air crash. Med Cat S1H1A3P3E1
10.	Lt.Gen.P.S.Joshi, AVSMVSM	100% disability. BK Amputation both legs due to mine blast. Med Cat S1H1A3P1E1
11.	Maj.Yudhvir Singh	60% disability. GSW back with fracture LV 4-5 and Parapareses both lower limbs. Med Cat S1H1A3P1E1
12.	Lt.Col.A.P.S.Ahluwalia	70% disability. Amputation below elbow (Lt.) Med Cat S1H1A2P2E1
13.	Brig.P.Bhanot	60% disability. BK amputation Rt leg crush injury Lt leg (Optd.) Med Cat S1H1A2P1E1
14.	Col.N.K.Kakar, SM	60% disability. Mine blast injury (Rt) leg with BK

		amputation. Med Cat S1H1A2P1E1
15.	Col.R.S.Tushir	60% disability. BK amputation Rt leg. Med Cat S1H1A2P1E1
16.	Lt.Col.K.J.S.Sobti	80% disability. BK Amputation (Rt) S1H1A3P3E1
17.	Maj.S.B.Sinha	60% disability. Amputation hand (Rt) S1H1A3P1E1
18.	Maj.P.Wahi	90% disability. GSW Lt Nect with Brachial Plexus Injury Lt. Lt arm paralysed S1H1A3P1E1

10. The petitioner has revisited the Court, being aggrieved of the fact that he has been held not entitled to be allotted a car, for a second time.

11. A perusal of the writ petition would reveal, evidenced by the averments in paras 7, 8, 9, 11, 12 and 14 of the writ petition coupled with grounds F & G, that the petitioner has predicated his case on the past events. Except for stating that the letter intimating petitioner that his claim was rejected is non-speaking, we do not find any averment questioning the recommendations of the Board which met on 14th May 2008.

12. As regards the grievance that the rejection letter conveys no reasons, suffice would it be to state that administrative decisions pertaining to grant of largesse are not to be equated with reasoned decisions as are contemplated, where civil rights are impacted by administrative decisions.

13. Be that as it may, we note that the petitioner has

been considered treating him to be 60% disabled on account of 'BK Amputation' (left leg); i.e. 'Below Knee Amputation of left leg'.

14. A perusal of the candidates who have been held eligible would reveal that candidates at serial No.1, 2, 3, 4, 9 and 10 are with 100% disability. Those at serial No.5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17 and 18 have disability ranging between 60% to 90%.

15. Relevant would it be to note that no person with less than 60% disability has been empanelled.

16. Obviously, those with percentage disability more than 60% would stand on a better footing than the petitioner. The reason is obvious. Those with higher percentage of disability would be more deserving.

17. Thus, we highlight, for purposes of comparison, those who have been held eligible on account of 60% disability and those would be Captain Ashok Mor (at serial No.5); Lt. Col.P.C.Katoch (at serial No.8); Major Yudhvair Singh (at serial No.11); Brig.P.Bhanot (at serial No.13); Col.N.K.Kakar (at serial No.14) and Col.R.S.Tushir (at serial No.15).

18. The proceedings of the Board and the medical papers pertaining to petitioner's disability would reveal that though percentage disability attributed to the petitioner is 60%, the 'Symes Lt. Amputation' being at ankle and thus giving more mobility to the petitioner, has been treated as less disabling vis-à-vis those whose amputation was immediately below the knee.

19. In other words, the nomenclature 'BK Amputation'

is a very wide term and would include all amputations of the lower limb below the knee level. Commonsense tells us that within this large category would be a range of disabilities, some being of a higher degree and some being of a lesser degree. To illustrate. A has the left limb amputated just below the knee; no stump is left below the knee. B also has an amputation below the knee, but 3 inches below. He has a three inch stump. The difference between A and B would be that whereas the artificial leg of A would be fastened on and above the knee. That of B could be fastened on the stump below the knee. It would be apparent that A's mobility would be less, and that of B would be more.

20. We note that apart from the petitioner, other candidates with 60% disability have been held not eligible. These are Col.Ajit singh, Lt.Col.Rakesh Sharma, Major Rajesh Kumar and Lt.Col. V.Vashisth.

21. We are excluding reference to others who have been declared non eligible on a lesser percentage of disability.

22. The task of a writ court is not to reappraise the decisions taken by experts. It is fairness in action and not fairness of the decision which is the focus of a consideration by a writ court.

23. Having perused the relevant record and extracted brief summary thereof, relevant for purposes of the present decision, we find complete fairness and transparency in the procedure adopted by the Board. We find that the Board has considered the relevant factors to be taken into consideration and has eschewed reference to the non material

considerations. There is procedural fairness in the action of the respondents and thus we dismiss the writ petition but refrain from imposing costs.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

**FEBRUARY 09, 2011
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