

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

+ **W.P.(C) No.4410/2013**

% **19th February, 2015**

ANSHUL JAIN Petitioner
Through: Mr. Pradeep Kumar Arya, Advocate.

Versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD.
& ORS. Respondents
Through: Ms. Manisha Tyagi, Advocate for
respondent No.1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner seeks employment to the post of Assistant Manager (Finance) with the respondent no.1 on the ground that the petitioner has cleared both the written test and the interview. Petitioner has been disqualified by the respondent no.1 on account of his medical condition which states that petitioner can only see with one eye. Respondent no.1 therefore has found the petitioner to be unfit for employment in the C-1 category being the post of Assistant Manager (Finance) and for which post

as per the advertisement persons such as the petitioner were specified as ineligible.

2. It is not disputed before this Court by the petitioner that the post of Assistant Manager (Finance) is a C-1 post and for C-1 posts the medical standards have been specifically stated in the advertisement. In the said advertisement issued by the respondent no.1 for the post in question, and which is no.4/2012 of August, 2012, it is specifically mentioned that for C-1 posts, persons who have complete vision in only one eye would not be considered as fit for employment.

3. Learned counsel for the petitioner has placed reliance upon the following rule of the respondent no.1 to argue that the petitioner is qualified for being appointed to the post in question, and which Rule 503(g)(iii) reads as under:-

“Rule 503(g)(iii) One eyed person:- For all technical services, all posts in the medical department, all posts in Railway protection force, and Chemists and Metallurgists, one eyed persons should be considered unfit. These will include cases where there may be normal vision in one eye but the other eye is amblyopic or has subnormal vision resulting in lack of stereoscopic vision. However for employment in other categories the medical board may recommend such one eyed persons provided that it is satisfied that he/she can perform all the functions of the particular job for which he/she is a candidate, provided further that the visual acuity in the functioning eye is 6/6 for distant vision, and J.I for near vision with or without glasses, provided error in any meridian is not more than

4.D for distant vision, and normal color vision where ever required.”

4. A reading of the aforesaid rule shows that there are two specified requirements for appointments of persons who have vision only in one eye. First requirement is that the medical board of the respondent no.1/employer must give a report that the post in question is such that a one eyed person can perform all the functions of the post of Assistant Manager (Finance). The second requirement is of the aspect that the post of Assistant Manager (Finance)/C-1 post can be filled up if the medical board recommends that a one eyed person can perform all the functions of the particular job and further that the visual acuity in the functioning eye is 6/6 for distant vision, and J.I for near vision with or without glasses, provided error in any meridian is not more than 4.D for distant vision, and normal color vision where ever required.

5(i). So far as the first requirement is concerned, petitioner obviously could not point out that the medical board of the respondent no.1 has given a report that a C-1 post of Assistant Manager (Finance) is a post to which a one eyed person can be appointed inasmuch as such a person can perform all the functions of the said post. Obviously, petitioner could not have filed such a report of the medical board of the respondent no.1 inasmuch as in the advertisement itself the respondent no.1 had clearly

mentioned that the post in question would not be available with respect to persons having vision only in one eye.

(ii) So far as the second requirement is concerned, and assuming that for the second requirement petitioner has filed a medical certificate to show that the second requirement as stated above is fully complied with, the same is of no effect because the second requirement aspect will come in only if the first requirement was satisfied and which is not so. In law, it is the employer who will decide in terms of the first requirement whether the post in question is or is not one which is available for a one eyed person, and admittedly the medical board of the respondent no.1 has not given any report of the post in question being fit for appointment of a one eyed person.

6. In my opinion, there is another reason to dismiss this petition because the petitioner has not challenged by filing an appeal the rejection letter dated 1.5.2013 which specifically allows the petitioner to file an appeal from the said order, and which appeal had to be filed within 21 days alongwith a medical practitioner's certificate having a specific format as stated in the letter dated 1.5.2013. Petitioner has not filed the appeal, and much less with filing the certificate of the medical practitioner in the form as stated in the letter dated 1.5.2013 and thus this writ petition is liable to be dismissed.

7. It is settled law that Courts do not substitute their opinion for the opinion and requirements of the employer as regards a candidate fulfilling the requirement of a particular eligibility criteria with respect to a particular post. This Court neither has the expertise to go into the question as to whether the eligibility criteria given by the employer for the post in question is or is not justified. Also, this Court has no reason not to accept the standards of employment given by the respondent no.1 inasmuch as this aspect was specifically stated in the advertisement in question and petitioner was all along aware of the requirement. Therefore, once the petitioner does not satisfy the requirement of medical fitness in both the eyes, merely because petitioner has cleared the tests will not mean that petitioner will be entitled to appointment.

8. I may also state that petitioner had earlier filed a writ petition challenging the letter dated 1.5.2013 in W.P.(C) No.3934/2013 but this writ petition was dismissed as withdrawn with liberty to challenge the letter dated 1.5.2013, but petitioner did not challenge this letter dated 1.5.2013 by filing of the appeal alongwith the certificate of the medical practitioner as stated above but instead filed this petition, and therefore petitioner once again is totally unjustified in approaching this Court on the same basis which existed at the time of filing of the W.P.(C) No. 3934/2013 and which was dismissed

as withdrawn. Petitioner is in fact therefore estopped from filing the present writ petition.

At this stage, it is stated by the parties that the appeal was filed but without the requisite medical certificate and hence the same was rejected.

9. Dismissed.

FEBRUARY 19, 2015
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VALMIKI J. MEHTA, J