

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17455 of 2013

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1. Sita Ram Yadav S/O Late Sudam Yadav, Orderly Peon At District Probation Office, P.O. Camp Jail Campus, P.S. Tilkamanjhi, District - Bhagalpur

.... Petitioner/s

Versus

1. The Union Of India Through Secretary, Ministry Of Law, Justice And Company Affairs (Legislative Department) 4th Floor, A - Wing, Shastri Bhawan, New Delhi - 110001
2. Election Commission Of India, Nirvachan Sadan, Ashoka Road, New Delhi - 110001
3. The State Of Bihar, Through the Principal Secretary, Department of Election, Government of Bihar, Patna
4. The Director General Prison, Govt. Of Bihar, Patna
5. Election Commission of Bihar, Department Of Election, Govt. Of Bihar, 7, Sardar Patel Marg (Mangles Road), Patna
6. The Chief Election Commissioner, Department Of Election, Govt. Of Bihar, 7, Sardar Patel Marg (Mangles Road), Patna
7. The Deputy Chief Election Commissioner Bihar, Department Of Election, Govt. Of Bihar, 7, Sardar Patel Marg (Magles Road), Patna
8. District Election Officer - Cum - District Magistrate, Bhagalpur
9. District Probation Officer (Home) Prison Department, District Probation Office, District - Bhagalpur
10. The Chief Medical Officer - Cum - Civil Surgeon, District - Bhagalpur
11. The Prof. And Head, Department Of Physical Medicine and Rehabilitation (PM & R) Patna Medical College Hospital, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Purushottam Kr. Jha, Advocate
For the State	:	Ms. Ratna Kumari, AC to SC-13.
For the Respondent no.7	:	Mr. Siddhartha Prasad, Advocate.
For the Respondent nos. 1 & 2	:	Mr. Kanak Verma CGC.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 18-05-2016

Heard both parties.

Separate counter affidavit on behalf of the respondent

nos. 7, 8 and 10 have been filed.

The writ application prays for a direction upon the



respondents to pay the compensation amount/ex-gratia amount to which the petitioner is entitled to receive under the resolution of the Government taken in the Finance Department on 01.04.2009 (Annexure-A to the counter affidavit of respondent no.7) wherein in case of an accident in course of due discharge of the election duty, any employee suffers any injury causing death or disability to a specified percentage on permanent basis is entitled to receive ex-gratia amount from the Government. It is stated that the petitioner was a 4th grade employee in the office of the District Probation Officer and was drafted by the respondents in the conduct of 2009 parliamentary election in course whereof he met with a road accident which caused injury in his right leg. As required under the resolution, the petitioner was examined of the injury by a Medical Board, at the District level and a handicapped certificate dated 30.11.2010 (Annexure-9) was issued. According to which, he had suffered permanent disability upto 40% and the certificate issued was valid for whole life. However, it appears the said certificate was later cancelled/withdrawn and a new handicapped certificate dated 25.6.2012 (part of Annexure-13) was issued in favour of the petitioner detailing the same finding. On a recommendation made by the respondent- District Magistrate, the Government in the concerned Department examined the case of the petitioner and having found the



discrepancies in the two handicapped/medical certificates directed the petitioner vide Annexure-17 to appear before the Head of the Department of Physical Medicine & Rehabilitation (PM & R), Patna Medical College, Patna who was requested to examine the petitioner about his disability as claimed and provide the certificate. Indisputably, the petitioner appeared on the date and time fixed for such clinical examination of the petitioner by the Head of the Department whereafter the opinion/certificate dated 09.11.2012 (Annexure-21) was issued, according to which, as the disability claim was post traumatic effect of the injury sustained in the road accident, the petitioner was required to be reassessed after one year. Again, the petitioner was examined by him whereafter the report dated 19.11.2013 on reassessment on disability of the petitioner was submitted by the Head of the Department of Physical Medicine & Rehabilitation (PM & R), Patna Medical College, Patna, a copy whereof is appended as Annexure B to the counter affidavit of respondent no.7. On reassessment, the Head of the Department opined as under:-

“Examination of right lower limb:

- (a) Post traumatic stiffness in Right Foot with Hallux Valgus and painful MP/IP joints of all lesser toes due to overcrowding/clawing.
- (b) There is no as such calf wasting.

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- (c) Assumes inverted foot during stance phase, avoiding toe off.
 - (d) X-Ray exam of right ankle and foot dated 18/11/2013 showed no signs of fracture (fracture healed) with normal talocrural and subtalar joint.
 - (e) Non healed infected ulcer over sole of foot corresponding with Head of 1st Metatarsal Bone.

Impression: The ulcer is causing difficulty in walking right now. But it would heal under proper management /care if kept under supervision of Surgeon and by using protective devices.

Disability Percent: Between 30% to 35%
(Between thirty percent to thirty five percent)
Permanent.”

It, thus, appears that the said report/opinion of the doctor does not entitle the petitioner to receive the ex-gratia payment from the State Government because the disability percentage found in the petitioner was assessed between 30 to 35%. There is no controversy that if the permanent disablement owing to the traffic accident suffered by the petitioner in course of the election duty is 40% or above then only he is entitled to the receipt of the payment of ex-gratia amount as per the resolution/decision of the Government.

Mr. Jha, counsel for the petitioner, submits that according to the resolution it is the opinion/report/certificate of the Civil Surgeon-cum- Chief Medical Officer which is to be considered by the respondent. In the case at hand, the Civil Surgeon on the basis

of a report of the Medical Board issued the handicapped certificate on 25.6.2012 (Annexure-13 series) which declares the 40% disability of the petitioner on permanent basis. It would be unjustified on the part of the respondents to rely on any other certificate and refuse to grant the ex-gratia amount.

Per contra, Mr. Sidhartha Prasad, counsel for the respondent no.7, has pointed out that finding the discrepancy in the two certificates of the Medical Board the respondent State directed for further examination of the disability of the petitioner by the Head of the Department who is fairly senior doctor and Head of the Department of Physical Medicine & Rehabilitation (PM & R), Patna Medical College, Patna. The petitioner without any demur appeared before the said authority whereafter he was examined of his injury as well as the disability suffered by him owing to the injury. Considering the fact that it was post traumatic effect of the injury the doctor found it appropriate to re-assess the disability of the petitioner after one year. On completion of one year, the petitioner again appeared before the said authority, who, upon re-examination, found the disability percentage between 30-35%. In a case like this, the petitioner cannot claim as of right to restrict the state to accept the medical report of the Civil Surgeon particularly when apparently there was discrepancy with respect to the

percentage of disability in the two reports submitted by the Civil Surgeon-cum-Chief Medical Officer.

On a consideration of the materials on record and after hearing both sides, in my view, no legal vested right accrued in favour of the petitioner to seek writ of mandamus from this Court directing the respondent State to accept the Medical report /handicapped report submitted by the Civil Surgeon. It has rightly been pointed out by the State counsel that finding the apparent discrepancy in the two reports a decision was taken by the Government to get the petitioner reexamined by the H.O.D. which was accepted by the petitioner inasmuch as on two occasions he appeared before him for assessment of his percentage of disability. In a case like this, as requested by the petitioner, the Court would not require the petitioner to be reassessed by any other authority/Board to assess his percentage of disability. Annexure-B is a detailed consideration of the injuries suffered by the petitioner and the effect thereof on his disability. The Court would not substitute its opinion in the matter.

One of the contentions is that it was a mala fide act of the Head of the Department in not granting certificate of the required percentage of disability on account of the fact that the petitioner was unable to please the doctor. Mr. Prasad, on the

contrary states that the report of the doctor/opinion is not under challenge. A bald statement has been made without there being any supporting material placed on record. In my view, the allegation of mala fide is easy to be made but difficult to be proved. On the basis of the pleadings available on record, it is difficult for this Court to hold that the said respondent i.e. the Head of the Department of Physical Medicine & Rehabilitation (PM & R), Patna Medical College, Patna acted in the case of the petitioner in mala fide manner. The said contention of the counsel for the petitioner is rejected.

When the order was dictated, it is submitted by Mr. Jha that the petitioner would, at his own cost, get another certification with regard to his disability from the recognized research Medical Institute and apply afresh. He may do so in accordance with law.

The writ application is devoid of merit. Dismissed.

There shall be no order as to costs.

(Kishore Kumar Mandal, J)

Shyam/-

AFR/NAFR	
CAV DATE	
Uploading Date	27.05.2016
Transmission Date	