

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

+ **W.P.(C) 10160/2016**

Date of decision: 4th August, 2017

PRAHALAD SINGH Petitioner
Through: Ms.Saahila Lamba, Advocate.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr.Hashmat Nabi with Mr.
Abhinav Thareja, Advocate for
R-1.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

Prahalad Singh, constable in the Railway Protection Force was diagnosed to be suffering from mouth cancer and had remained on leave for a considerable time.

2. He was operated in a private hospital on 17.09.2014 and discharged on 22.09.2014.

3. The petitioner had thereafter reported to the Railway Hospital, New Delhi for screening for re-categorization and appointment on an alternative post. Petitioner was not paid salary from June, 2014, though, he lacked finances even for treatment.

4. Petitioner has placed on record a copy of notings by the doctors at the Railway Hospital, Delhi. Noting dated 09.01.2015 acknowledges that the petitioner had attended the said hospital for the first time on 09.10.2014. The petitioner was not given fitness by the Railway Hospital as further investigations were to be carried out. The matter was referred to the Chief Medical Officer, Delhi for advice.

5. As there was delay despite written representations, the petitioner was compelled to file Writ Petition No. 1363/2016. Vide order dated 22.02.2016, the Court directed that the petitioner's representation dated 28.11.2015 would be disposed of as expeditiously as possible and speaking order should be passed within four weeks with intimation to the petitioner. It is only thereafter that the respondents conducted the Review Medical Board and vide order dated 14.06.2016 the petitioner was re-categorized and posted in the same scale.

6. The petitioner in the present petition, has prayed for back wages and salary from June, 2014 to May, 2016. However, during the course of arguments learned counsel for the petitioner has restricted his prayer to payment of back wages from October, 2014 to May, 2016. The petitioner has also prayed for reimbursement of medical bills of Rs.1,79,000/- with interest. In view of the stand of the respondents that the petitioner was yet to submit the bill(s) through proper channel for verification, this prayer has been given up by the petitioner with the statement that the petitioner would

apply through proper channel and, if still aggrieved, would initiate proceedings in accordance with law.

7. The respondents in the counter affidavit have stated that petitioner is not entitled to salary/back wages as he had exhausted his medical leave.

8. The submission of the respondents in the counter affidavit misses the point for petitioner is not claiming payment or back wages when he was on the medical leave. The contention of the petitioner is that upon being fit to resume duty, he had reported on 09.10.2014 but was not given posting as the Review Medical Board was not constituted. The Review Medical Board was constituted only after the order dated 22.02.2016 was passed in W.P.(C) No. 1363/2016, filed by the petitioner. This also took time and finally the petitioner was given appointment w.e.f. June, 2016. Salary was also paid from June, 2016.

9. It is apparent from file notings made by the doctors at the Railway hospital dated 09.01.2015 that the petitioner had reported to the said hospital on 09.10.2014 and on dates thereafter.

10. Considering the aforesaid position we are of the opinion that the petitioner should be paid salary from 01.11.2014 till 31.05.2016. At best the medical examination and posting orders etc. should have been issued within the period from 09.10.2014 to 31.10.2014. The petitioner should not be denied salary for the period thereafter as the respondents were at fault and to be blamed

in not constituting the Review Medical Board. The notings by the doctors' dated 09.01.2015 manifests and demonstrates to the confusion prevailing as the respondents were unsure as to the procedure for issue of fitness certificate. This was an internal matter of the respondents. For the said lapse and fault, the petitioner should not suffer.

11. In view of the above, we partly allow the writ petition with direction to respondent to pay salary from 01.11.2014 till 31.05.2016. The said payment would be made within a period of two months from today. In case the payment is not made within the said period, respondents would pay interest @ 8% per annum from the date of this order till payment is made.

12. The petition is disposed of in the above terms. No costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 04, 2017

mr