

\$~4

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

+ W.P.(C) 7548/2015

RAILWAY BOARD

..... Petitioner

Through: Mr. Om Prakash, Adv.

versus

PRASHANT KUMAR

..... Respondent

Through: Mr. Rajan Mani, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

11.10.2017

W.P.(C) 7548/2015

1. The challenge in this writ petition is to the order dated December 31, 2014 of the Chief Commissioner of Persons with Disabilities (Commissioner in Short) whereby the Commissioner in so far as the complaint of the respondent, being Case No. 2143/1011/2014 is concerned, had allowed the same and held that the action of the petitioner to declare the respondent unfit is not tenable and called upon the petitioner to allocate appropriate service to the respondent within 30 days from the date of receipt of the copy of the order.

2. Some of the relevant facts are, the respondent who is a person with lower limb disability of 40% had applied for Engineering Services Examination, 2012 held by the UPSC in different disciplines like Civil,

Mechanical, Electrical, Electronics and Telecommunication in various Ministries and Departments including Ministry of Railways. The Ministry of Railway was the coordinating Ministry for the purpose of Medical Examination and service allocation or post-examination procedure. The petitioner was recommended against OH Category by the UPSC. The petitioner was examined by the Medical Board consisting of three Doctors at the Railway Hospital. He was declared unfit for all services by First and Appellate Medical Boards on account of “Spastic Hemi Paresis left side”, i.e., weakness of both left upper and lower limb vide orders dated October 10, 2013 and February 21, 2014 respectively. As a consequence he could not be allocated to any service. Being aggrieved, the respondent filed a complaint before the Commissioner. The prayer made in the complaint was that the disability certificate issued by the Office of Civil Surgeon, Vaishali, Bihar to the effect that the respondent has one leg disability and can perform the functions required for the post be accepted. The Railway Board had filed a reply before the Commissioner wherein they have stated, Prashant Kumar the respondent herein a PWD (OA and OL) candidate for ESE-2012 was recommended against the OH category by the UPSC. UPSC while recommending the PH candidate broadly places the candidates into

orthopedically handicapped (OH) (PH-1) and Hearing Impaired, (HI) PH-3 candidates only. The respondent has been declared unfit for all services on account of *Spastic Hemiparesis left side* (OA and OL). It was also the stand of the petitioner that the respondent was given a chance for Medical re-Examination. The Appellate Medical Board declared the candidate unfit for all the services on account of weakness of both upper left limb and lower limb. It was also their stand that the vacancies in Electronics and Telecommunication Engineering were reserved only for one arm or one leg affected candidate only. As such he could not be allotted any service / post as per his category of disability and fitness.

3. The Commissioner in the impugned order was of the following view:

“15. It is observed that the respondent did not refer the case of the complainant to an authorized Medical Authority after the Medical Board/Appellate Medical Board which came out with a different Finding and assessment from the disability certificates issued by the authorized medical authority by the State Government. The respondent have also not submitted any document that indicates that the Medical Boards of the Railways referred to above are authorized to assess and issue Disability Certificates to persons with disabilities in accordance with the provisions of Rule 3 and 4 of the Persons with Disabilities (Amendment) Rules, 2009. Therefore, declaring the complainant unfit for Indian Railway Service of Electrical Engineers (IRSEE), Central Elect & Mech. Engg Service (Elect Engg Posts) under Electrical Engineering and Indian

Railway Service of Signal Engineers (IRSSE) and Indian Supply Service (JTS Group A) (Electronics & Telecom Engg. Posts) in which posts were reserved for persons with Locomotor Disability (OA and OL) is not in accordance with the rules / instructions on the subject, particularly in the face of the fact that the respondents were required to apply relaxed medical standards in respect of persons with disabilities. As rightly put by the Ld. Counsel for the complainant, the competent medical authority did not find any disability in the left arm of the complainant that could have reached the threshold to be called disability in terms of the provisions in the Disabilities Act and the Rules made thereunder and that even if the Medical Board of the Railways found some problem in the upper left arm, it could be dealt with by applying categories of disabilities. This explains why the complainant applied for the said examination and went through the rigors of the selection process. Had it been clearly mentioned in the advertisement/Notification that none of the Engineering Services is identified for his category of disability, the complainant would not have applied for the said examination and would have concentrated his energies in securing jobs elsewhere. After being recommended for appointment to one of the Engineering Services by UPSC under the category of Locomotor Disability. It does not appear to be reasonable to declare the complainant unfit solely on the ground on his disability at such a late stage when the entire process had almost been completed and to deprive him of a well earned job for no fault of his. It is understood that case of Shri Rajiv Ranjan which is an identical case, is pending adjudication before the Hon'ble CAT and in the Hon'ble High Court. As soon as a decision is pronounced by the concerned Tribunal/Court, the respondent is advised to decide the case of the complainant in terms of the decision in that case."

4. It is the submission of Mr. Om Prakash, learned counsel for the Petitioner that the Commissioner while allowing the complaint had exercised jurisdiction which was not vested in him in terms of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Disabilities Act), and in violation of the judgment of the Supreme Court in the case of *State Bank of Patiala and ors vs. Vinesh Kumar Bhasin* 2010(4) SCC 368 as followed by this Court in W.P. (C) No.7689/2015 *Union of India vs. Rajendra Singh* decided on January 17, 2017. In other words, it is his submission that the Commissioner could not have issued direction for the appointment of the respondent contrary to the mandate of the Disabilities Act and the law of the Supreme Court. I am unable to agree with the only submission made by Mr. Om Prakash while challenging the impugned order, for the simple reason that in the case of *Vinesh Kumar Bhasin* (*supra*) Supreme Court was concerned with the power of the Commissioner to grant interim injunctions. In any case, in a subsequent judgment of the Supreme Court in the case of *Geetaben Ratilal Patel vs. District Primary Education Officer, (2013) 7 SCC 182*, the Supreme Court while interpreting the provisions of Section 42

and 62 of the Disabilities Act has held that if it comes to the notice of the Commissioner that a person with disability has been deprived of his rights or that the authorities have flouted any law, rule, guideline and instruction etc. issued by the appropriate Government or local authorities, the Commissioner is required to take up the matter with the appropriate authority to ensure restoration of rights of such disabled persons and to implement the law, rule and instruction if not followed. It may be stated here the Supreme Court decided the issue in favour of the petitioner therein against his dismissal on the ground that he was deprived of his rights as a disabled person. This Court in a W.P. (C) No.1398/2015 in the case of ***Union of India vs. Mahipal Kumar*** decided on October 14, 2015 has culled out the difference in issues decided by the Supreme Court in ***Vinesh Kumar Bhasin*** (*supra*) and ***Geetaben Ratilal Patel*** (*supra*) on the lines stated above. I refer to the relevant para of the judgment in ***Union of India vs. Mahipal Kumar*** in that regard as under:

*“Insofar as the judgments relied upon by the learned counsel for the petitioner are concerned, in the case of **State Bank of Patiala and ors** (*supra*), the Supreme Court was concerned with a direction given by the High Court at the interim stage for appointing the respondent pending hearing of the writ petition. It was in that background, the Supreme Court said, the Commissioner could not have passed the directions of*

giving appointment to the respondent as an interim direction which virtually amounted to allowing the writ petition without hearing the bank. The said judgment would not be applicable to the facts of this case.”

5. The reliance placed by Mr. Om Prakash on the judgment of the coordinate Bench of this Court in the case of ***Union of India vs. Rajendra Singh*** (*supra*) is concerned the same is per incuriam as the attention of the Court was not drawn to the judgment of the Supreme Court in ***Geetaben Ratilal Patel*** (*supra*).

6. In view of the above finding, the submission made by Mr. Om Prakash is liable to be rejected.

7. Mr. Rajan Mani, learned counsel for the respondent has justified the impugned order on the ground that the stand of the petitioner that the petitioner is unfit for service on account of Disability of (OA) and (OL) is untenable, in as much as in terms of the disability certificate issued by the Competent Authority, the Disability of the respondent is with regard to one left leg only and not one arm also.

8. In other words, it is his stand that the respondent's disability is with regard to both (OL) and (OA) is contrary to the declaration given by the Competent Authority under the Disabilities Act. He would rely on the

judgment of this Court in case of ***Dr. Raman Khanna vs. University of Delhi & Ors.*** W.P. (C) No.2670/2003, decided on August 11, 2003, to contend that, the petitioner has no alternative but to accept, the Disability certificate so issued, by the Competent Authority. He refers to Para 14, of the judgment wherein Court has concluded as under:

“14. On a conjoint reading of Section 58 of the Disabilities Act and Rule 4 of the Disability Rules, it will be crystal clear that individual Universities, Institutions or Establishments have no alternative but to accept a certificate issued by the Medical Boards constituted by the Central or State Governments, as the case may be. Any other interpretation would render Rule 4 totally otiose. Since this Rule has not been challenged it must be given effect to. Even though there may be some substance in the Universities stand that it is quite possible that some Medical Board may be lenient in the manner and extent of their certification when compared with others, in the cases before me all the candidates are from Delhi. The following Order has palpably been issued in the exercise of the power contained in Rule 4.

"Government of National Capital Territory of Delhi (Health and Family Welfare Department) Level 9, Wing-A, Delhi Secretariat, New Delhi-110002

No.F.27/8/93-HandFW/ Dated : 8.8.2002

ORDER

In furtherance of order of even no. dated 09.03.2000 the Medical Superintendents of the following 9 hospitals along with jurisdiction for issue of medical disability certificates are hereby authorized to co-opt an Orthopedic surgeon, if available in the hospital or

else from the nearby major hospital for specific cases for issuance of disability certificates:-

- 1. Lok Nayak Hospital*
- 2. Aruna Asaf Ali Government Hospital*
- 3. Deen Dayal Upadhyay Hospital*
- 4. Guru Gobind Singh Government Hospital*
- 5. Sanjay Gandhi Memorial Hospital*
- 6. Guru Teg Bahadur Hospital*
- 7. Lal Bahadur Shastri Hospital*
- 8. Babu Jagjivan Ram Memorial Hospital*
- 9. Rao Tula Ram Memorial Hospital This issues with the approval of Pr. Secretary (H and FW), GNCTD.*

sd/-

(N.C. Ray) Addl. Secretary (H and FW)"

9. Having noted the aforesaid conclusion of this Court, I agree with the submission made by Mr. Rajan Mani that the petitioner neither can challenge nor nullify the Certificate issued by the Competent Authority under the Disabilities Act, wherein it has been concluded that the petitioner has disability to the extent of 40% of lower limb, (left leg) only and not one arm and one leg as is the stand of the petitioner which is in violation of the provisions of the Disability Act and the Rules.

10. The submission of Mr. Mani by referring to page 48 of the paper book

to contend that Disability shall not have any effect on the performance of the duties by the respondent is also appealing.

11. In view of my above discussion, I do not see any merit in the petition. The same is dismissed.

CM No. 14497/2015

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 11, 2017/jg