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

+ **W.P.(C) 11221/2017 & C.M. Nos. 45859-861/2017**

R.R. PRADHAN

..... Petitioner

Through: Mr. Goutam Bhol, Advocate with
petitioner in person.

versus

**CHIEF COMMISSIONER OF PERSONS WITH DISABILITIES &
ORS**

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **18.12.2017**

1. This petition has been filed by the petitioner, assailing an order dated 09.01.2017, passed by the Central Administrative Tribunal in O.A. No.1052/2014, filed by him, being aggrieved by the order dated 10.03.2014, passed by the Chief Commissioner for Persons with Disabilities, who had rejected his plea that in view of an earlier disability certificate dated 04.03.2009, submitted by him to the respondent No.2, he ought not to have been put through a fresh medical examination or called upon to appear before Dr. Ram Manohar Lohia Hospital for issuance of a Disability Certificate in Form IV, as prescribed in the Persons with Disabilities Amendment Rules, 2009.

2. Very briefly stated, the admitted facts of the case are that on 16.04.2009, the petitioner, who is a physically challenged person, was

appointed to the post of Legal Advisor in Pay Band-3, with the respondent No.2/Protection of Plant Varieties and Farmers' Rights Authority (hereinafter referred as the "Authority). Upon completion of probation for a period of two years, the petitioner was confirmed on the subject post w.e.f. 15.04.2011.

3. Prior to his appointment, vide communication dated 24.02.2009, the respondent No.2/Authority had requested the Chief District Medical Officer, District Bargarh, State of Odisha to carry out a medical examination of the petitioner to ascertain his disability. In reply thereto, vide letter dated 04.3.2009, the Chief District Medical Officer, District Bargarh had informed the respondent No.2/Authority that the petitioner was issued a Disability Certificate dated 02.06.2008, by the Medical Board of Bargarh District, which was not even one year old and there was no requirement of a fresh certificate.

4. After his employment, based on his disability of 40%, the petitioner claimed grant of transport allowance, double of the normal rates in terms of O.M. dated 29.08.2008, issued by the Ministry of Finance, Govt. of India, which was duly sanctioned by the respondent No.2/Authority, from date of his joining duty i.e., with effect from 16.4.2009.

5. In the year 2013, the petitioner made a complaint dated 08.02.2013, to the Registrar (Vigilance) of the respondent No.2/Authority alleging irregularities in the advertisement and appointment of a Deputy Registrar. It is the contention of the petitioner that upon his having made the said complaint, the officers in the respondent No.2/Authority got annoyed with him and to harass him, a communication dated 26.06.2013 was issued to Dr. Ram Manohar Lohia Hospital, New Delhi for undertaking his medical

examination through a Medical Board to establish his disability. The hospital was also called upon to opine as to whether the petitioner would be entitled to double transport allowances or not.

6. Instead of appearing for his medical examination, the petitioner once again approached the Internal Vigilance Officer of the respondent No.2/Authority, protesting against the proposal for his medical examination by submitting a complaint dated 01.07.2013 and seeking withdrawal of the letter dated 26.06.2013, directing him to appear before a Medical Board at Dr. R.M.L Hospital for a medical re-examination.

7. The Registrar (Vigilance) of the respondent No.2/Authority wrote back to the petitioner on 01.07.2013 itself, stating *inter alia* that the certificate of disability submitted by him prior to the date of his appointment could not be taken into consideration for grant of double transport allowance and also pointed out that there was no recommendation of any Medical Board to grant a double allowance to him. It was stated that even otherwise, it was the responsibility of the appointing authority to ascertain the genuineness of the documents for granting relaxation.

8. In the meantime, by 11.07.2013, Dr. R.M.L. Hospital, had informed the respondent No.2/Authority that a second medical examination of an employee could be undertaken only for Central Government Employees and if the court so directs. At that stage, the petitioner approached the Chief Commissioner for Persons with Disabilities with a complaint dated 18.07.2013, praying therein for cancellation of the order dated 26.06.2013 passed by the respondent No.2/Authority on the plea that he was being harassed as he was a physically handicapped helpless person. Responding to the said complaint, the Dy. Chief Commissioner, Court of Chief

Commissioner for persons with Disabilities, vide letter dated 10.03.2014, advised the petitioner to appear before the hospital for assessment of his disability. The medical authority at Dr. R.M.L. Hospital was also advised to issue a disability certificate to the petitioner in Form-IV, prescribed under the Act and intimate the action taken in the matter to the said Forum by 17.07.2014.

9. Aggrieved by the aforesaid letter dated 10.03.2014, the petitioner approached the Tribunal seeking quashment thereof.

10. In the counter affidavit filed by the respondents No. 2 and 3 before the Tribunal, it was stated that double transport allowance was admissible only to those orthopedically handicapped persons who have a minimum 40% of permanent partial disability of limbs and that the said allowance is granted on the basis of recommendations made by the Head of Orthopaedics Department of a Government hospital. It was further averred that the case of the petitioner was referred to the Medical Board of Dr. RML Hospital vide Office Order dated 26.06.2013, for obtaining the recommendation but the petitioner did not appear before the Board. The respondents had also clarified that they proposed to verify the genuineness of the petitioner's disability certificate for which his appearance before the Medical Board was necessary.

11. After considering the submissions made by the parties, the Tribunal opined that in a case where the authority receives a complaint about the genuineness of the disability certificate or the extent of disability of an employee and is prima facie convinced that the employee needs to appear for a fresh medical examination to ascertain the correct position, the same cannot be questioned. Noting the fact that the aforesaid action of the

respondents, directing the petitioner to appear for his fresh medical examination was ordered on the basis of a complaint received about the genuineness of the petitioner disability, the Tribunal held that the petitioner should not object to his re-medical examination.

12. It is noteworthy that at that stage, learned counsel for the petitioner had categorically stated before the Tribunal that his client had no objection if he was subjected to a fresh medical examination by the Board of Doctors of Dr. R.M.L. Hospital. Accordingly, the O.A. filed by the petitioner was disposed of with directions to the respondent No.2 to approach Dr. R.M.L. Hospital, New Delhi for fixing a date for conducting a re-examination of the petitioner, for which purpose the hospital was directed to constitute a Board of Doctors and upon receipt of the requisite intimation, the petitioner was directed to appear before the said Board. The Board was further directed to conduct an examination of the petitioner and submit a report to the respondents, based on which his claim for double the transport allowance entitlement was to be decided.

13. Instead of complying with the aforesaid order, the petitioner filed a Review Application (RA No.197/2017) which was dismissed by the Tribunal vide order dated 08.09.2017. Hence, the present petition.

14. Learned counsel for the petitioner assails the impugned order by referring to Rule 6 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, which stipulates that a certificate issued by the Medical Board under Rule 5 shall make a person eligible for applying for facilities, concessions and benefits admissible under the schemes of the Governments or Non-Governments Organizations, subject to conditions, as may be imposed. It is the contention of the learned

counsel for the petitioner that the earlier certificate submitted by him was issued by the Chief District Medical Officer, District Bargarh, State of Odisha on 02.06.2008, in accordance with the aforesaid Rule 5 and would therefore hold good to decided his disability.

15. We may note that the petitioner was appointed to the subject post on a probation, vide letter dated 01.07.2009 and the probation period of two years would have expired on 15.04.2011. That being the position, the petitioner could become a regular employee of the respondent No.2/Authority only in April, 2011. Given the said position, the respondent No.2/Authority was well entitled to call upon him to produce a fresh disability certificate, particularly, when he had claimed for grant of Transport Allowance at double the normal rates in terms of OM No.21 (2) 2008 dated 29.08.2008, which was admittedly issued after the date of issuance of the disability certificate dated 02.06.2008, by the Chief District Medical Officer, Bargarh.

16. In any case, if the facts and circumstances so warrant, Rule 6 on which learned counsel for the petitioner has placed reliance, does not prohibit an employer from directing an employee suffering from a disability to obtain a fresh disability certificate.

17. During the course of the arguments, but before starting to dictate this order, we had given an option to the learned counsel for the petitioner to consider withdrawing the present petition, as we had our reservations on the pleas taken by him to assail the impugned order and had expressed our view that the petitioner appears to be deliberately evading appearing before the Medical Board of Dr. RML Hospital when he had volunteered to do so before the Tribunal. However, the reply was in the negative and learned counsel kept insisting that the case of the petitioner is on a strong footing.

18. Accordingly, for the reasons stated above, the present petition is dismissed as being absolutely meritless, with costs of Rs.5,000/-, to be deposited with the Delhi High Court Legal Service Committee within two weeks from today.

19. The petition is dismissed along with the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

DECEMBER 18, 2017

na/ap