

LPA No. 147 of 2018 (O&M)

AMIT KUMAR
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**LPA No. 147 of 2018 (O&M)
Date of decision: 13.8.2018**

Hari Kishan

... Appellant

Versus

The State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Jagjeet Beniwal, Advocate,
for the appellant.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 9.1.2018, rendered by the learned Single Judge, vide which the writ petition preferred by the petitioner-appellant had since been dismissed.

The facts that are required to be noticed are limited.

The petitioner was appointed as Peon-cum-Chowkidar in the Haryana Civil Secretariat in Establishment Branch on 24.4.1992. Subsequently, he was promoted to the post of Assistant and was posted with the Haryana Staff Selection Commission at the time of his retirement. Owing to his hearing impairment, he was treated at the Postgraduate Institute of Medical Education & Research, Chandigarh (for short 'PGIMER Chandigarh') in the year 2013. The

disability certificate dated 23.8.2013, issued by PGIMER Chandigarh, showed that degree of his disability was 85%. The petitioner was re-assessed and this time, the authorities found that he was 100% disabled, as reflected in the report dated 13.5.2016 issued by PGIMER, Chandigarh. In terms of Rule 3.26 (a) of the Punjab Civil Services Rules, Volume-I, Part 1, as applicable to Haryana, age of superannuation of the government employees was 58 years, except in the case of Judicial Officers, Group IV employees and the employees who were blind and in whose case the age of retirement was 60 years. However, on 31.1.2006, the Government of Haryana took a decision to raise the normal age of retirement of such disabled Group 'A' to Group 'D' employees, who suffered from minimum degree of disability of 70%, from 58 years to 60 years. For, the appellant was to attain the age of 58 years and retire on 31.1.2018, he moved an application seeking extension in service up to the age of 60 years being 100% disabled. Accordingly, the petitioner was required to appear before the Special Medical Board at the Postgraduate Institute of Medical Sciences, Rohtak (for short 'PGIMS, Rohtak') for evaluating the degree of his disability to consider his claim for granting two years' further extension. The petitioner was examined by the Medical Board of PGIMS, Rohtak, on 13.9.2017, but, as vide report dated 5.12.2017, his disability was assessed as 48.5%, contrary to the required degree of disability, i.e. 70%, he approached this Court, vide a writ petition, as indicated above. Obviously, he prayed that the disability certificate dated 5.12.2017 be quashed. For the said writ petition was dismissed vide impugned order and judgment dated 9.1.2018, thus, this appeal.

We have heard learned counsel for the appellant and perused the records.

Concededly, under the Rules governing the service conditions of the appellant, the prescribed and designated authority to evaluate the degree of physical disability for granting extension of two years in service is PGIMS, Rohtak. The appellant appeared and was thoroughly examined by the Special Medical Board constituted in this regard. The investigations and the audiological reports revealed that degree of physical disability the appellant suffered from was only 48.5%, and was temporary in nature. The medical report dated 5.12.2017, issued by PGIMS, Rohtak, the relevant extract whereof is being reproduced hitherto below, also shows that the fact that appellant had undergone a procedure at PGIMER, Chandigarh, in the past and the records produced by him in this regard were also considered by the Special Medical Board:-

“There is history of right ear surgery in 1998 at PGI Chandigarh. As per records provided by the patient, he underwent right tympanotomy on 11-12-1998.

Left ear: Tympanic Membrane is intact.

Right ear: Tympanic Membrane is intact.

Pure Tone Audiometry (PTA) done on 13.9.17 vide No. 7098 and on 14.9.17 vide No.7133 reported as: Bilateral mixed hearing loss.

ASSR was done vide No.840 dated 13.9.17 and vide No.845, Dt.14.9.17, shows average hearing threshold of:-

Left ear:- 55.25 dB at 500, 1000, 2000 and 4000

KHz

Right ear:-67.75 dB at 500, 1000, 2000 and 4000

KHz.

Conclusion: On the basis of audiological reports, at present Sh. Harikishan is having 48.5% (Forty eight point five per cent) hearing loss both ears, which is temporary in nature.”

Undoubtedly, in the disability certificates issued by the PGIMER, Chandigarh, that are being relied upon by the appellant and wherein the degree of his disability was assessed at 85% and 100%, were issued on 23.8.2013 and 13.5.2016, respectively. Whereas, the current medical report dated 5.12.2017, furnished by the designated authority, i.e. PGIMS, Rohtak, reveals that disability of the appellant was temporary in nature and was evaluated as 48.5%, and thus, he was ineligible to seek extension in service. It does not even require a mention that PGIMER, Chandigarh, is a premiere institution, but it is also true that this is not a medical dispute, which requires determination with mathematical precision as to which of the two reports was more accurate. Thus, in the matter of this nature, the medical report furnished by the prescribed and designated authority under the rules shall prevail. Unless, it is demonstrated to be fraught with perversity. Concededly, the Government of Haryana never solicited any report from PGIMER, Chandigarh, to evaluate the degree of disability of the appellant for granting extension in service. Thus, the same could not be said to be binding upon the respondents. Further, if the appellant had any qualms about the medical report issued by the designated authority, he ought to have taken up the matter with his employer and in turn

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with PGIMS, Rohtak. But, he did not opt to do so, and in the meanwhile, he retired on 31.1.2018.

In conspectus of the above, we too are dissuaded to interfere with the impugned order and judgment dated 9.1.2018, rendered by the learned Single Judge. The appeal being devoid of merit is accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

August 13, 2018
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: NO