

\$~3

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

% *Date of Judgment: 10th August, 2018*

+ LPA 295/2018

RAILWAY BOARD

..... Appellant

Through: Mr.Om Prakash, Advocate

versus

PRASHANT KUMAR

..... Respondent

Through: Mr.Rajan Mani, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM.APPL 21659/2018 (delay)

1. This is an application filed by the applicant/appellant seeking condonation of 173 days delay in filing the present appeal.
2. Heard.
3. The prayer made in the application is not opposed. Delay of 173 days in filing the present appeal is condoned.
4. The application stands disposed of.

LPA 295/2018 & C.M.21656/2018 (stay)

5. Challenge in this appeal is to the order passed by the learned Single Judge dated 11.10.2017 wherein challenge was laid to an order dated 31.12.2014 passed by the Chief Commissioner of Persons with Disabilities (in short 'Commissioner') whereby the Commissioner had

considered and allowed the complaint of the respondent and held that the action of the petitioner (appellant herein) to declare the respondent unfit, is not tenable and called upon the appellant herein to allocate appropriate service to the respondent within 30 days from the receipt of the copy of the order.

6. The necessary facts which are required to be noticed for disposal of this appeal are that pursuant to an advertisement published by Union Public Service Commission (UPSC) dated 10.03.2012, the respondent made an application under the reserved category i.e. persons with disability. The respondent had relied upon a certificate issued by the C.M.O. and Civil Surgeon, District Vaishali, Bihar with 40% disability in his left leg. The respondent was declared successful, however, when he appeared before the Medical Board, it was found that there was weakness in left arm as well and resultantly, declared unfit.
7. Mr.Om Prakash, counsel appearing for the appellant has strongly urged before the Court that learned Single Judge has failed to take into account the fact that every candidate, who was successful in the written examination, had appeared for the medical examination. Reliance is placed on the Medical Board Certificate, which shows that there was weakness in the left arm as well. Reliance is placed on the finding of the appellate Medical Board, which contends that in view of two disabilities, the respondent would not be entitled to employment as claimed by him.
8. The submissions made before us today, were also made before the learned Single Judge. Para 8 and 9 of the judgment dated 11.10.2017, rendered by the Single Judge, read as under:

“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.”

9. We are informed that the decision rendered in the case of ***Dr. Raman Khanna vs. University of Delhi & Ors. W.P. (C) No.2670/2003*** dated 11.08.2003, has attained finality.
10. Having regard to the submission made and taking into consideration the decision rendered in the case of ***Dr. Raman Khanna (supra)***, we find no infirmity in the order dated 11.10.2017 passed by the learned Single Judge. Once the candidate has produced the certificate of disability from the competent authority under the Disabilities Act wherein it has been concluded that the respondent has disability to the extent of 40% of lower limb (left leg only), we find no merit in this appeal. The same is, accordingly, dismissed. Order of the Commissioner dated 31.12.2014 shall be complied with.

C.M.21656/2018 (stay)

11. The application stands disposed of, in view of the order passed in the appeal.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

AUGUST 10, 2018/rb

