

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 197 of 2018***(Arising out of the order dated 04.01.2018 passed by the learned Single Judge in WPS No. 1398 of 2014)*

1. South Eastern Coalfields Limited Through Chairman Cum Managing Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur Chhattisgarh.
2. South Eastern Coalfields Limited, Through General Manager (Manpower), South Eastern Coalfields Limited, Seepat Road, Bilaspur Chhattisgarh.

---- Appellants**Versus**

- Dharamveer Sahu S/o Shri Rameshchand Sahu, Aged About 34 Years R/o Near Bus Stand, Shadora, Village Shadora, Tahsil And Police Station Shadora, District Ashok Nagar, Civil And Revenue District Ashok Nagar (Madhya Pradesh)

---- Respondent

For Appellant	:	Shri Vaibhav Shukla and Ms. Ashtha Shukla, Advocates
For Respondent	:	Shri Awadh Tripathi, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Goutam Bhaduri, Judge****Judgment on Board****Per, P. R. Ramachandra Menon, Chief Justice****19.06.2019**

1. The interference made by the learned Single Judge with regard to the course pursued by the Appellants herein for denying employment to the Respondent having disability to an extent of 45% to his right leg, despite coming out successful in the selection for the post of 'ECG Technician', notified by the Appellant, is under challenge in this appeal.
2. The sum and substance of the case as put forth by the learned counsel representing the Appellant-Company, which is a Public Sector Undertaking in the Central Government Sector, is that a notification was issued inviting application for the post in question. The Respondent participated in the process of selection and he was admittedly selected and offer of appointment was given on 03.09.2012 as borne by Annexure-P/6. During the course of medical examination, the Medical Board certified that, by virtue of the physical disability of 45% to the right leg, the Respondent was not fit to be appointed. Based on

the said certificate, the offer of appointment was cancelled, which was sought to be challenged by the Respondent in the writ petition filed before this Court.

3. The course of action sought to be pursued by the Appellants was sought to be justified stating that there was nothing illegal or arbitrary on their part and that the cancellation of the offer of appointment was only by virtue of the certification given by the Medical Board. It was also asserted that the Respondent was let known that the appointment would only be subject to the medical fitness, as clearly stated in Annexure-P/6 offer of appointment. The relevant rule applicable to the employees of the Appellant-Establishment was also pressed into service, stating that a minimum physical standard had to be maintained for recruitment to the post concerned. The Respondent/Writ Petitioner contended that there was absolutely no rhyme or reason for the cancellation of the appointment and that all the particulars including as to the extent of physical disability to the right leg were clearly mentioned by the applicant in the application. There was no proper reasoning for cancellation of the offer, as to how it (the certified disability) would adversely affect the functioning or discharging the duties by the applicant with regard to the post of 'ECG Technician'. The cancellation order came as a 'bolt from the blue' and even in violation of fundamental principles of natural justice. It was further pointed out that there was absolutely no merit in the stand taken by the Employer-Company, that the rejection of the candidature and the cancellation of the appointment was on the basis of the rule regarding the necessity to maintain the physical standards.
4. The matter was dealt with elaborately by the learned Single Judge. The relevant rule sought to be relied on by the Appellant/Employer-Company was also averted to. The judicial precedent insofar as a similar issue was

considered and dealt with by a learned Judge of the High Court of Karnataka in case of **M. Dinesan Vs. State Bank of India, Bhubaneswar, Orissa** reported in **ILR 1999 Karnataka 3411** was referred to and it was held that there was no reason for the Medical Board to have rejected the candidature of the writ petitioner without recording a finding that the certified physical defect would come in the way of interfering with the normal or efficient functioning of the writ petitioner as 'ECG Technician'. The learned Judge also deprecated the course and procedure pursued by the Appellant/ Employer-Company insofar as it was a Government of India undertaking and an instrumentality of the State, who was supposed to act as a 'model employer', owing public duty to act fairly and reasonably in all respects.

5. It has been observed that in the verdict under challenge, that the writ petitioner has not been found to be medically unfit, not because that he was suffering from any physical defect which was material to interfere with the functioning or efficient discharging the duty of ECG Technician, but only because he was having disability to the right lower limb, to the extent of 45%. Reference was made to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; hereinafter referred to as 'the PWD Act', as repealed and replaced by the Right of Persons with Disabilities Act, 2016, as to the necessity to provide equal opportunity to the differently abled persons. Deprecating the conduct of the Employer-Company in the Public Sector, the learned Single Judge set aside the orders under challenge and has directed to grant appointment to the Writ Petitioner to the post of ECG Technician within a period of 30 days, at the same time, saddling them with a cost of Rs.5,000/-, which is under challenge in this appeal.

6. The learned counsel for the Appellants, besides reiterating the contentions already mooted before the learned Single Judge, submits that the post in question was never identified to be a post in terms of Section 32 of the PWD Act, to be ear-marked for appointment of the Respondent and as such, the Appellant/Company was justified in dealing with the issue with reference to the extent of physical disability for recruitment as ECG Technician, particularly, in the light of the specific rules framed by the Appellant in this regard. The said enactment having been brought down by the Central Government, the purpose and object based on the statute ought to have been appreciated and every attempt should have been given by the Appellant-Company, who belongs to the Central Government, to give effect to the policy of the Central Government including the measures being taken, providing a helping hand to the needy public. Instead of pursuing such a course, the conduct displayed by the Appellant was apparently held as how to have the benefit denied, which made the learned Single Judge to saddle the Appellant with a cost of Rs.5,000/- (which according to us is quite meagre). Even otherwise, when the post notified is only that of an ECG Technician, in what manner would the disability to the lower limit affect discharging the duties as an ECG Technician, was necessarily to be explained by the Appellants. It would be worthwhile to note the relevant Rule, which is sought to be pressed into by the Appellants with reference to the minimum physical standards, as extracted in paragraph 6 of the verdict under challenge; which reads as follows :

“A candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of his duty. He should not be grossly over-weight or under-weight.”

Even casual reading of the above provision will give a clear idea (even to a layman) that, what is contemplated therein is only that the candidate concerned shall maintain good mental and bodily health and there shall be not be any physical defect likely to interfere with the efficient discharge of his duty.

7. The learned counsel for Appellants however points out that the rule says something more in the next part to the effect that the organs should be well formed and it shall not affect the free movements of the joints. There cannot be any dispute with regard to the rule / norm, as there is no challenge, but the question is only as to the extent and applicability of the said rule; particularly as to how the rule is to be given effect to with reference to the post in question. When the rule categorically says that the basic mandate is to see that the defect shall in no way interfere with the efficient discharging of duty, the point involved is what is actually the duty attached to the post in question. The duty attached to the post of ECG Technician may not be the same as the duty attached to the post of a Driver or a post of a Crane Operator or such other posts. The duty varies from post to post and it depends upon the 'job specification' given by the Employer. Insofar as the duty attached to the post of a 'Driver' is concerned, it may be possible for the Appellants to contend that a person with disability to such extent as in the instant case to the right lower limb cannot be appointed as a 'Driver', as he may fail in discharging his duty efficiently while applying the brake or clutch, as the case may be, at the appropriate time, in turn, leading to casualties. This may not be the position, when it comes to such other posts where the 'job specification' is entirely different.

8. Coming to the instant case, the post being that of an 'ECG Technician', the duty to be performed by the Respondent is with regard to the taking of ECGs and to have it processed and proceeded with; in which process, the utility of the lower limb is having only limited application. In other words, the Respondent herein having no deformity in any manner to his upper limbs and such other parts of the body, he may be able to discharge the duty as 'ECG Technician'; more so when no part of the joints of the upper limbs or such other parts which are having direct connection with the taking of ECG and processing the films, is affected adversely. The mandate of the 'second limb' under the above rule, which is sought to be pressed by the learned counsel for the Appellants, that the organs shall be properly formed and there shall be a free movement to the joints, is not applicable to the case in hand, insofar as the organs have been properly formed and joints of the organs concerned which are having direct application for discharging the duty as an ECG Technician are in no way impaired by the physical disability certified by the Medical Board. This being the position, the inference made by the Medical Board that, by virtue of the disability to the right lower limb of the Respondent/Petitioner, he was medically unfit and the further course of action pursued by the Appellants in cancelling the offer of appointment with reference to the said certificate are not correct or sustainable, either on facts or in law. The verdict passed by the learned Single Judge is perfectly within the four walls of law and is not assailable under any circumstance.
9. On pronouncing the judgment, Shri Shukla, the learned counsel appearing for the Appellants fairly submits that the Appellants are ready to give effect to the verdict, for which breathing time is sought for, by 'one month', so as to complete the procedural formalities and to appoint the Respondent

accordingly. The undertaking is recorded and time is granted accordingly. In view of the fair submission as above, we are of the view that the cost ordered by the learned Single Judge could be dispensed with; for which no objection is expressed by the learned counsel appearing for the 1st Respondent. We affirm the judgment passed by the learned Single Judge, at the same time deleting the cost ordered, as a concession.

10. Writ appeal stands disposed off with the aforesaid observation and direction.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge