

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

% **Date of decision: 11.12.2019**

+ **W.P.(C) 1066/2019, CM APPL. 4863/2019 & 42089/2019**

SHIVAM PANDEY

..... Petitioner

Through Mr. D.K. Devesh and Mr. Piyush
Upadhyay, Advocates.

versus

INDIAN OIL CORPORATION LIMITED & ANR.

..... Respondents

Through Mr. V.N. Koura and Ms. Paramjeet
Benipal, Advocates.
Mr. Gaurang Kanth, CGSC with
Mr. Aman S. Bakshi, Advocates for
R-2/UOI.

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

By the instant petition, the petitioner, in effect, seeks issuance of a writ of certiorari to quash the termination order no. P/512216 dated 09.01.2019 in short, 'the impugned termination order'.

2. The facts emerging from the record are that the petitioner, who is stated to be previously employed with Reliance Industries Limited as Manager, HSEF – fire protection (reference annexure P-5 to the petition), applied for being appointed to the post of Fire Safety Officer (grade-A) on the advertisement issued by the respondent no. 1 – Indian Oil Corporation Limited, in short ‘IOCL’. Relevant to the context, the prescribed eligibility criteria and physical fitness for the subject post was, as under:

Eligibility Criteria

“03	32 years	Regular full time B.E. (Fire)/B.Tech. (Safety & Fire Engineering)/B.Tech.(Fire Technology & Safety Engineering) with minimum 60% marks (55% for SC/ST Candidates) from a recognized Indian University/Institute. Desirable- Possession of a valid HMV Licence.	Minimum (1) one year post qualification experience in Fire Fighting operations & system maintenance & operation of firefighting vehicles, handling safety related jobs like incident/accident reporting/investigation analysis, safety inspection, job safety analysis, shutdown safety, construction safety, conduction safety meetings/ adults, conducting mock-drills, fire & safety training in a Petroleum Refinery/upstream/downstream industries/fertilizers/chemical plants."
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Physical Fitness

1. Selected candidates will be required to undergo ‘Pre-employment Medical Examination’ and should be declared medically fit as per IndianOil’s pre-employment medical standard. Candidates are advised to go through the ‘Guidelines and criteria for Physical Fitness for Pre-employment medical examination’. The guidelines are available in the following link:
http://www.iocl.com/PeopleCareers/Preemployment_Guiding_Principles11th_m ar-2011.pdf
2. **Addl Standards (Minimum) for recruitment to the Post Code 03 : Fire & Safety Officers:**
Height: 165CM, Weight: 50Kg, Chest: Normal: 81 CM, Expanded: 86.5 CN, and Eyesight normal (6/6 in both the eyes; without glasses), colour

vision normal and free from – Vertigo problem, disease of heart/lungs/kidney, abnormal blood pressure, Knock Knee, Flat Feet, Squint eye and stammering."

3. Having undergone the prescribed procedure of selection, the petitioner was not only offered but appointed to the subject post and joined so, on being asked to report for duty to Chief General Manager (HR), Indian Oil Corporation Ltd. (PO)–Barauni Refinery, District–Begusarai, on or before 28.05.2018. Undisputedly, the petitioner so reported for duty and joined the subject post with such office of IOCL. The contract of service between the parties thus got finalised. Vide the impugned termination order dated 09.01.2019, the services of the petitioner were however terminated, with immediate effect.

4. The foregoing factual conspectus, on which the impugned termination order proceeds, leaves no doubt that the petitioner was found fit in the pre-employment medical examination, by none else, but, the duly authorised Medical Officer of IOCL itself. Here, it may also be noted that IOCL does not dispute the genuineness of such certificate nor does it attribute any ulterior motive for its issuance either to the petitioner or the Medical Officer issuing it.

5. It emerges from the record that the petitioner having been posted at Barauni Refinery, where he joined on 23.05.2018, was asked by IOCL to undergo a fresh medical examination. It is the case of IOCL that on such review medical examination, the petitioner did not meet the criteria of eye sight as his power of glasses was recorded as -0.75 in both eyes against the criteria of eye sight normal (6/6 in both the eyes; without glasses). It is said

to have resulted into the issuance of the impugned termination order. On this, the petitioner approached AIIMS and as per the OPD card dated 16.01.2019 annexed to the petition as Ann. P-9, the Eyesight was found to be 6/9 partial and 6/6. The petitioner has thus approached this Court to assail the impugned termination letter *inter alia* on the ground that he had undergone minor medical treatment on getting to know of his Eyesight variation from IOCL and since then, his left eye was discharging 6/6 vision, however, the right eye was discharging 6/9 p and co-jointly, both the eyes (binocularly) discharging 6/6 vision without glasses (unaided).

6. In the submissions of Mr. Devesh, Id. counsel for the petitioner, the petitioner having been found fit for the subject post on the prescribed standards laid by IOCL, his employment could not be terminated later, more so, in the absence of any *malafide* attributable to him. In his submissions, the petitioner having left his previous employment in order to join the subject employment offered by IOCL, the impugned termination letter was against the principles of natural justice and fair play. Also, according to him, the Eyesight of the petitioner, as is found by AIIMS, meets IOCL's standards/guidelines and criteria of medical fitness for pre-employment medical examination, a copy whereof forms part of the counter affidavit Annexure R-1, and, pertinently, the standards of medical fitness for eyes, as per guideline 6.19. It is thus strenuously contended by the Id. counsel for the petitioner that the impugned termination order is not sustainable under law.

7. In the submissions of Mr. Koura, Id. counsel for IOCL, the Eyesight of the petitioner did not meet the prescribed standards and that, such fact had come to be noticed later and therefore, his services could be so terminated.

Mr.Koura contends that though the pre-employment examination dated 18.04.2018 certifies the petitioner to be fit for the post of Fire & Safety Officer, the fact remains that at the time of employment, the Eyesight of the petitioner did not meet the required standards laid down for selection and appointment to the given post, and, therefore, the selection and the offer of appointment was ill-founded and could be terminated even later. In support of such submissions, Mr. Koura places reliance upon the judgment of the Division Bench of this Court in LPA no. 355/2017 '**Dr. Rahul Kumar v. Union of India & Ors.**'.

8. In the present case, it cannot be disputed that with the petitioner reported for duty on being posted by IOCL at its Barauni Refinery in pursuance of its letter dated 10.05.2018. The contract of service/employment thus stood concluded. Nothing emerges from the record to show nor has come to be pointed out by Mr. Koura during the course of hearing that such posting and joining of the petitioner was subject to any further medical check-up of Eyesight or otherwise. Undisputedly, the subsequent medical check-up and the result thereof, is the foundation of the impugned termination letter. The impugned termination letter by itself capitulates, as under:

“E. The Pre-Employment Medical Examination of Shri Shivam Pandey was conducted at Gujarat Refinery Hospital in April’ 2018 where he was found medically fit by the attending Doctors. Subsequently, a review of the aforesaid Pre-employment Medical Examination form revealed that Shri Shivam Pandey was not meeting the prescribed criteria of Eyesight as his power of glasses were recorded as- 0.75 in both eyes against the criteria of Eyesight normal (6/6 in both the eyes; without glasses)

prescribed under Addl Standards (Minimum) notified in the Advertisement.

F. Shri Shivam Pandey was advised to undergo medical examination at Barauni Refinery Hospital with respect to eyesight criteria under additional parameters of Physical Fitness as mentioned in the advertisement. Vide letter dated 31.07.18, Shri Shivam Pandey informed that he had undergone medical treatment of his eyes and requested to get his power vision rechecked after 10.09.18.”

9. A bare perusal of the foregoing reasons recorded in the impugned termination order would show that subsequent to the employment given to the petitioner, the Eyesight of the petitioner was not found to be meeting the standards prescribed at the time of employment. The review of the Eyesight of the petitioner on the premise whereof the impugned termination letter came to be issued is of sometime after September, 2018, whereas, his pre-employment examination medical certificate issued by the Medical Officer, Gujarat Refinery Hospital, IOCL is of 18.04.2018, which declares him fit for the subject post. Suffice, it would be to observe, IOCL has issued the impugned termination letter on the premise of the review medical test without raising even an iota of any doubt as regards the genuineness of the medical certificate dated 18.04.2018 nor any ulterior motive is attributed, either to the petitioner or the Medical Officer, who issued the medical certificate dated 18.04.2018. In the given factual conspectus, the contract of service having attained finality with the joining of the petitioner to the subject post on 23.05.2018, the contract of service/employment could not be terminated by IOCL in the manner, it has proceeded with. It does not require an elaboration that the petitioner having joined the services of IOCL, would be governed by the rules and regulations applicable to the employees

of IOCL. Any action taken by it contrary to the procedure laid or applicable to it, it being an instrumentality of State, cannot be sustained. In the given case, once the contract of employment was concluded, the equitable considerations, assuming, the assertion of IOCL was the only correct position, by no means, could be ignored equally. The impugned termination letter is therefore, not sustainable even on that count. More so, when the petitioner claims to have left his previous employment in view of the offer of appointment to the subject post by IOCL.

10. The reliance placed upon *Dr. Rahul Kumar's case* (supra) is of no avail to the IOCL inasmuch as in that case, the petitioner was not allowed to join the duties on the ground of being medically unfit. In other words, it was a case where the contract of service had not yet been concluded. There is thus an outright distinction between *Dr. Rahul Kumar's case* (supra) and the case in hand. The contention raised by Mr. Koura placing reliance upon *Dr. Rahul Kumar's case* (supra) is therefore, wholly misconceived and is rejected.

11. For the foregoing reasons, the writ petition is granted and by a writ of certiorari, the impugned termination order dated 09.01.2019 is quashed. As a result thereof, the petitioner would be reinstated with consequential benefits, within four weeks from today. It is however made clear that taking note of the medical condition of the petitioner, IOCL may proceed in the matter as per its laid down rules and regulations and/or offer alternative post or other alternative to the petitioner taking note of the equitable considerations.

12. Writ petition along with pending applications stands disposed of in the foregoing terms. No orders as to costs.

A. K. CHAWLA, J

DECEMBER 11, 2019

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