

CWP-24163-2021

Date of decision : December 01, 2021

Bhim Sain

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Parth Goyal, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Mr. Amit Jhanji, Senior Advocate with
Mr. Abhishek K. Premi, Advocate for respondent No. 5.

LISA GILL, J.

Petitioner, in this case, who was working as a Peon on regular basis under Physically Handicap category with the Skill Development and Industrial Training Department, Haryana is aggrieved of not being granted extension in the age of retirement from 58 to 60 years. It is contended that petitioner suffers from disability of 70%, as has been certified by different medical Boards constituted at the Civil Hospital, Kurukshetra, therefore, he is entitled to retire at the age of 60 years instead of 58. Petitioner was appointed as Peon on regular basis on 17.05.1984. He was medically examined by the Board at PGIMS, Rohtak and as per certificate issued by the said Board, petitioner suffers from disability less than 70%, due to which extension in service was not afforded to the petitioner beyond 30.11.2021. Petitioner's request for re-examination, it is

submitted was wrongly declined by the respondent – authorities in the given factual matrix. Aggrieved therefrom, present writ petition was filed.

Petitioner has sought quashing of communication dated 14.09.2021 from the office of Medical Superintendent, Pt. B.D. Sharma PGIMS, Rohtak to the Group Instructor, Incharge Government I.T.I. Shahabd, Markanda, Kurukshetra wherein disability of the petitioner is estimated to be less than 70% as well as quashing of rejection of petitioner's request for medical re-examination vide communication dated 25.10.2021 (Annexure P15). Contentions on behalf of the petitioner as noted on 29.11.2021 are reproduced as under:-

“ Learned counsel for the petitioner contends that petitioner, who was appointed as a Peon on regular basis on 17.05.1984, is certified to be suffering with 70% disability (Orthopedically Handicapped/Locomotor Disability). Reference is made to medical certificates, Annexure P2 to Annexure P7, issued by various Medical Boards, constituted at the Civil Hospital, Kurukshetra. Learned counsel further contends that petitioner is entitled to retire at the age of 60 years and not 58, as per the applicable Rules as it has been decided by the respondent – State that the category of employees having a minimum degree of disability to the extent of 70%, shall be allowed to retire at the age of 60 years and not 58. Petitioner, it is submitted, suffers from a permanent disability of 70%, which has been so certified since a number of years and there was no occasion of certification of disability to be less than 70% in a vague manner as is mentioned in the certificate dated 14.09.2021 (Annexure P12). Moreover, the respondent – authorities, it is submitted, have declined petitioner's request for re-examination in an unjustified manner.”

Keeping in view the factual matrix of the case, petitioner was directed to be re-examined by the Board constituted at PGIMER, Chandigarh. Relevant part of order dated 29.11.2021 reads as under:-

“ Keeping in view the facts and circumstances, it is directed that a Special Multimember Medical Board, to be constituted by respondent no. 5, shall examine the petitioner on 30.11.2021 to assess the disability of the petitioner.

Petitioner to remain present in the office of Medical Superintendent, PGIMER, Chandigarh, tomorrow i.e., 30.11.2021 at 11.00 a.m. alongwith all the relevant record, including the earlier certificates available with him, for examination by the Medical Board. Report of the Medical Board be produced in Court on the next date of hearing.”

Report of the medical Board which consists of Prof. Saravdeep Singh Dhatt, Department of Orthopaedics, Chairman; Dr. Vikas Bachhal, Department of Orthopaedics, Member; Dr. Madhurima, Department of Radio-diagnosis, Member and Dr. Sandeep Singh Flora, Senior Medical Officer, Convener, in compliance of 29.11.2021 has been produced in Court. Same is perused. It is specifically submitted that on the basis of medical and radiological examination, petitioner suffers from disability of 59.7%.

Report of the medical Board is taken on record subject to just exceptions.

Keeping in view the categoric opinion of the Medical Board at PGIMER, Chandigarh, there remains no doubt that disability suffered by the petitioner is less than 70%, therefore, petitioner is clearly not entitled to the

benefit of extension of service till 60 years in terms of instructions dated 31.01.2006, 28.03.2006 and 21.04.2008. Learned counsel for the petitioner is unable to refute the facts as above.

Keeping in view the aforesaid, no ground whatsoever is made out for interference in this writ petition, which is, accordingly, dismissed.

December 01, 2021

Rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No