

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 16962 of 2021

Ashok Bouri
Vs.
M/s Eastern Coalfields Limited & Ors.

Mr. Partha Ghosh
Mr. Amal Kumar Datta
Ms. Ria Paul
Ms. Simran Sureka
Mr. Debashis Das
Mr. Rahul Agarwala
... For the petitioner

Mr. Bijoy Kumar
Ms. Dipa Roy
... For ECL

The report in form of an affidavit filed by Eastern Coalfields Limited (in short “ECL”) is taken on record.

The petitioner claims to have been suffering from severe illness resulting from high blood pressure and bilateral diabetic foot with gangrenous change over right foot and diabetic ulcer on left foot. The petitioner was referred to Mission Hospital, Durgapur, West Bengal, by ECL for medical check-up and treatment. The petitioner has been thereafter examined by an Apex Medical Board constituted by ECL on 10th February, 2021. The said Apex Medical Board has held that the petitioner should be given alternate job on surface and to continue treatment for diabetes mellitus and cataract in both of his eyes.

A copy of the report of the Medical Board dated 10th February, 2021 is annexed to the report filed by ECL. The petitioner has referred to medical reports for the year 2019. The report of the Apex Medical Board dated 10th February, 2021 is, admittedly, subsequent to the documents relied upon by the petitioner.

In the report filed by ECL, ECL has stated that the petitioner shall be placed as Surface Pump Operator as per the recommendation of the Apex Medical Board in its report dated 10th February, 2021.

The petitioner says that his physical health condition will not permit him to perform even the job of a Surface Pump Operator since a portion of one of his legs has been amputated.

Under the terms of service, the Medical Board constituted by the employer is the final authority to decide as to the fitness and unfitness of the petitioner to perform his duties. In the instant case, the report speaks of providing alternative surface job to the petitioner and ECL is ready and willing to provide the same.

The petitioner has cited a judgment and order dated 1st May, 2018 passed by a coordinate Bench in WP 25544 (W) of 2017 (Girish Deo Majhi v. M/s. Eastern Coalfields Limited & Ors.) and contends that the petitioner should be sent for medical examination in any Government hospital to ascertain his health condition

and as to whether the petitioner will be able to perform the duties of Surface Pump Operator.

After hearing the parties and considering the materials on record, I find that there is no scope of granting the petitioner the reliefs as claimed in this writ petition. The judgment of Girish Deo Majhi (*supra*) cited by the petitioner was based on facts which are different to the facts of the instant case.

The disability as indicated hereinabove has to be decided by the employee taking note of the nature of the job available with the employer to see whether the employee concerned can perform such duties. Any Government hospital will be competent to decide on the physical health condition of the petitioner on examining him but such hospital or the Board constituted by such hospital for examining him will not have the input regarding the available jobs and the nature of duty to be performed and, as such, a medical examination even if directed will not enure to any benefit owing to the fact that the Board will not be in a position to say whether the petitioner with his present physical health will be able to perform the duties assigned to him.

In such circumstances, ECL authorities shall allow the petitioner to join as a Surface Pump Operator and consider the petitioner's case sympathetically in reference to his present physical health.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Disposal of this writ petition, however, will not prevent the petitioner from approaching ECL authorities for reconsider his case if the petitioner after joining the work finds any difficulty in discharging the duties assigned to the post for his physical health condition.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)