

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4560 OF 2021

Saurabh Paulkumar Kapse, Plot No.80, Cement Road, Swavlambi Nagar, Pannase Nagar, Nagpur
-vs-

Western Coalfields Ltd. Thr. Its Director Personal Coal Estate, Civil Lines, Nagpur-01 and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Bhushan N. Mohta, Advocate for petitioner.
Smt Sushma, Advocate for respondent Nos.1 to 3.
Ms N. P. Mehta, Assistant Government Pleader for respondent No.5.

CORAM : A. S. CHANDURKAR AND SMT M. S. JAWALKAR, JJ.

DATE : March 30, 2022

Heard.

The petitioner seeks a declaration that he be appointed on the post of General Mazdoor, Cat-I (Trainee) at the Western Coalfields Ltd. (WCL) after declaring him to be medically unfit.

2. The father of the petitioner was employed with the WCL and he expired on 29/09/2017. The petitioner sought appointment on compassionate basis by moving an application dated 06/10/2017. On 13/02/2019 the WCL issued an order of appointment to the petitioner on compassionate basis subject to medical fitness. The petitioner accordingly underwent medical test and on 08/03/2019 he was informed that in the initial medical examination (IME) he was found unfit for employment. It was

stated that employment could not be offered to him as a dependent under the National Coal bearing Agreement (NCWA). The petitioner thereafter informed the WCL that he had been issued a medical fitness certificate by the Head of Department of Genetic Diseases by the All India Medical Sciences (AIIMS), New Delhi. A certificate dated 15/05/2019 was submitted in that regard. The petitioner also obtained a medical fitness certificate issued by the Civil Surgeon, Nagpur. In the meanwhile the case of the petitioner was referred to the Apex Medical Board of the WCL and on 20/08/2019 the petitioner was informed that even the Apex Medical Board had found him medically unfit. It was stated that for said reason the petitioner could not be offered employment. The petitioner filed Writ Petition No.8248/2019 and on 21/06/2021 he was permitted to withdraw that writ petition since it was found that the opinion of the Apex Medical Board had not been challenged in that writ petition. He was granted liberty to file a fresh writ petition. After obtaining information under the Right to Information Act, 2005 with regard to details of the IME form, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that though the petitioner was suffering from Gaucher disease Type-I

which was a rare disease, he was otherwise medically fit which was certified by the AIIMS, New Delhi as well as by the Indira Gandhi Government Medical College and Hospital, Nagpur. The Civil Surgeon, General Hospital, Nagpur had also certified the same and therefore the WCL ought to have considered these certificates as well as reports issued by the said Authority and declared the petitioner to be medically fit. There was no reason to deny appointment to the petitioner especially when he was found entitled for appointment on compassionate basis. It was urged that the doctors who examined the petitioner in the initial medical examination on 05/03/2019 as well the Apex Medical Board which examined the petitioner subsequently did not comprise of any doctor specialized in the rare disease with which the petitioner was affected. The learned counsel placed reliance on the decision in *Ranjit Kumar Rajak vs. State Bank of India 2009 (5) Bom.C.R. 227* and submitted that he be held entitled for appointment on compassionate basis after holding him to be medically fit.

4. The learned counsel for the respondent Nos.1 to 3 opposed the aforesaid submissions. It was submitted that employment could be provided by the WCL subject to medical fitness determined either in the initial medical examination or after re-examination

by the Apex Medical board. The opinion expressed either by AIIMS or by the Civil Surgeon was not binding on the WCL since WCL was having its own system for medical examination with a view to determine fitness for the employment provided by it. Reference was made to Rule 29C and 29F of the Mines Rules, 1955 in that regard. Since the requirement of medical fitness was as prescribed under the initial medical examination and the Apex Medical Board under which the petitioner was not found medically fit, employment could not be provided to the petitioner. On these counts it was submitted that no relief was liable to be granted to the petitioner.

5. We have heard the learned counsel for the parties and we have perused the documents on record. At the outset it may be noted that Writ Petition No.8248/2019 was permitted to be withdrawn on 21/06/2021 for the reason that the opinion of the Apex Medical Board holding the petitioner to be medically unfit had not been challenged in that writ petition. After grant of liberty to file a fresh writ petition, we find that in this writ petition too the opinion of the Apex Medical Board has not been challenged. Instead, the petitioner seeks to rely upon the opinion expressed by the Civil Surgeon, General Hospital Nagpur, AIIMS New Delhi and

that given by the Indira Gandhi Government Medical College and Hospital, Nagpur. Thus despite being granted liberty to challenge the opinion of the Apex Medical Board, the same has not been so challenged and on this count itself the present writ petition is liable to be dismissed.

Be that as it may, we have considered the contentions of the petitioner and we find that the stand taken by the WCL that the medical fitness required of its employees would be as per the norms that are applied in the initial medical examination and thereafter by the Apex Medical Board. The justification for the same can be gathered from the Rules relating to medical examination and especially Clause 1A(XV) thereof. It has been stated that the question of fitness and object thereof is to secure continuous effective service to prevent early retirement and payments in case of premature death or payments of accidents compensation attributable to physical deficiencies and unusual medical expenditure on employees of poor physique. In the report after the initial medical examination it has been noted that the petitioner suffers from Gaucher disease Type-I and is on enzymes replacement therapy. Same has also been opined by the Apex Medical Board. Thus under the norms prescribed, the petitioner was found medically unfit in the initial medical

examination and thereafter by the Apex Medical Board. It would not be permissible for the Court to substitute its view for the view expressed by the experts in that field. It may be true that some other Authorities have found the petitioner to be medically fit, but the opinion of those Authorities cannot be foisted on the WCL when the WCL contends that the medical examination is based on its requirements considering the nature of employment being provided. We therefore do not find any reason to hold in favour of the petitioner. The decision relied upon by the learned counsel for the petitioner is thus distinguishable. Moreover, the facts of that case indicate that the petitioner therein was found to be medically fit and despite that he was denied appointment which is not the case here.

For aforesaid reasons we do not find any merit in the writ petition. It is accordingly dismissed with no order as to costs.

(Smt M. S. Jawalkar, J.)

(A. S. Chandurkar, J.)

Asmita