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07.06.2023
S.H./d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.C.T. 129 of 2022

**Sudama Mandal & Anr.
-versus
Union of India & Ors.**

**Mr. Bharat Bhushan,
Mr. Atindranath Mishra.
...For the Petitioners.**

**Mr. S.N. Dutta,
Mr. Saikat Karmakar.
...For the Respondents.**

The first petitioner was working as Parcel Porter in the respondents/Railways. During his service, he is suffering from various ailments and he was medically examined by various medical practitioners. During examination he was admitted in Bhagalpur Health Unit on 28th May, 2019. He was referred to DRH/Malda on 29th May, 2019 and was admitted on 3rd June, 2019 at DRH/Malda. On 5th July, 2019 he was referred to BRSH/Sealdah and he was admitted. He was diagnosed to be a case of Parkinsonism. Thereafter the first petitioner was referred to NRS Medical College on 7th September, 2019 and NRS Medical College suggested for intervention of surgery. The first petitioner did not agree for surgery.

The first petitioner earlier filed an application being O.A. No. 680 of 2020 before the Central Administrative Tribunal, Kolkata and the Tribunal by

order dated 25th September, 2020 passed the following order:-

“As his prayer for constitution of a Medical Board has failed to elicit a response, with the consent of the parties we direct the respondents to constitute a Medical Board immediately, if the same is required to be constituted, to examine the applicant and to get a report from the Board before the retirement of the applicant.

Respondents are also directed to communicate such report to the applicant immediately thereafter but 7 days prior to his date of superannuation.”

The respondents could not constitute the Medical Board. The petitioner filed a contempt petition before the Central Administrative Tribunal.

The respondent no. 5 herein the Principal Chief Medical Director, Eastern Railway by order 5th February, 2021 passed an order stating that Medical Board can be constituted only to find out fitness when all modalities of treatment are exhausted.

The first petitioner did not take treatment as per the advise of Medical Practitioners and hence question of constituting a Medical Board does not arise. Meanwhile, the first petitioner retired from service on 31st October, 2020 on attaining the age of superannuation.

The Tribunal by order dated 25th September, 2019 disposed of the O.A.

The first petitioner filed present O.A. No. 998 of 2021 on 15th July, 2021 challenging the said order dated 5th February, 2021.

The contention of the petitioner is that the respondents did not follow the procedure contemplated in the Medical Manual for constitution of the Medical Board.

The first petitioner further contended that the Tribunal by the order dated 25th September, 2020 directed the respondents to constitute the Medical Board immediately and submitted a report one week prior to his superannuation. In spite of specific order, the respondents failed to constitute a Medical Board.

Even though the Medical Practitioner stated that the first petitioner did not agree for surgical intervention, it has been stated that the first petitioner could not do the work for lifting heavy materials.

The Tribunal considered the case of the petitioners and also took note of the fact that the first petitioner almost ten months after his retirement has come out with the present O.A. for relief declaring him of medically unfit before superannuation on 31st October, 2020, rejected the relief sought for by the first petitioner.

The Tribunal directed the respondent to treat the leave of the petitioner for the period from 2019 to 31st October, 2020 be regularized based on the available Medical Certificates without asking for further leave application.

From the above materials, it is seen that even though the first petitioner was suffering various illness for a long period from 2016, he approached the Tribunal earlier at the fag end of his service for constitution of Medical Board.

The Tribunal by the order dated 25th September, 2020 directed the first respondent to constitute the Medical Board, if required.

In view of the short period of one month and due to elaborate examination to be conducted, the respondent did not constitute the Medical Board. Further from the materials it is seen the petitioner did not agree for surgical intervention.

In view of the above materials, the petitioners are not entitled for relief sought for in the O.A. and in the writ petition.

The Tribunal after considering all the materials in proper perspective on merits by giving valid reasons passed the order disposing the O.A. There is no error warranting interference by this Court.

With the above observations, the writ petition fails and is hereby dismissed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)