

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 13468 of 2017 (O&M)
Reserved on: March 16, 2023
Pronounced on: March 29, 2023

Inderjit Singh

...Petitioner

Versus

Haryana Urban Development Authority and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Vishal Garg, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. This writ petition has been filed under Articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of Certiorari for quashing/setting aside order dated 28.06.2016 Annexure P/10), whereby his representation for grant of extension of service for 2 years beyond the age of 58 years, in terms of instructions issued by the respondents on 31.01.2006 (Annexure P/2), along with all consequential benefits, interest and pay allowances, has been rejected.

2. In brief, the facts, as stated, are that petitioner has been working as a Foreman in Sub Division No. 1 in the Haryana Urban Development Authority, Karnal. He was appointed as a Water Pump Operator in the year

1980. As per the certificate issued by the Chief Medical Officer, Civil Hospital, Karnal, dated 14.6.2006 (Annexure P-1), the petitioner is physically disabled with 75% hearing disability. As per the Notification No. 34/1/2006-4GSI dated 31.1.2006 (Annexure P-2) issued by the Chief Secretary to Government of Haryana, the government raised the retirement age of disabled employees, possessing minimum degree of disability of 70%, from 58 years to 60 years. The competent authority to issue a medical certificate to a handicapped employee, as per instructions issued vide notification No. 34/1/2006-4GSI dated 31.1.2006 (Annexure P-3), is the Medical Board of P.G.I.M.S, Rohtak. The case of the petitioner was forwarded by respondent no. 4, to the Director, PGIMS, Rohtak, for issuance of a Medical Certificate, along with the Medical Certificate issued by the CMO, Karnal, vide which the petitioner is stated to have been possessing 75% of hearing disability. As per letter dated 30.03.2016 (Annexure P-5), of the Medical Board, PGIMS, Rohtak, opined that the petitioner is possessing 70.3% hearing disability. The case of the petitioner was forwarded to respondent No. 3 for extension of service from 58 years to 60 years on the basis of physical disability, along with the disability certificate issued by the CMO, Karnal and the Medical Examination Report issued by PGIMS, Rohtak. Respondent No. 3, vide Memo dated 27.04.2016, forwarded the case of the petitioner to respondent No. 2 along with the Medical Examination Report issued by PGIMS, Rohtak, vide which report the petitioner is stated to have been possessing 70.3% hearing disability.

3. Since the matter was not being processed, the petitioner

approached this court earlier in CWP No. 10605 of 2016 and the same was disposed of vide order dated 26.05.2016 with a direction to the respondents to take final decision on the recommendations by passing a speaking order. Ultimately, the representation of the petitioner was rejected, vide impugned order dated 28.06.2016 (Annexure P-10), on the ground that the disability of the petitioner is not permanent but curable. Subsequently, on a prayer made by the petitioner for constitution of a Medical Board for the purpose of comprehensive diagnosis of the petitioner's disability, he was made to appear before the Board of Doctors, PGIMER, Chandigarh, and vide report dated 12.05.2017 (Annexure P-11), disability of the petitioner has been assessed as 100%. A Disability Certificate, dated 12.05.2017, was issued by the PGIMER, Chandigarh to that effect. Aggrieved against denial of extension in service on account of disability, the present writ petition has been filed.

4. Learned counsel for the petitioner would submit that the case of the petitioner for extension in service had been declined solely on the ground that certificate issued by PGIMS, Rohtak dated 30.03.2016 indicated temporary loss of hearing, while the certificate obtained by the petitioner from PGIMER, Chandigarh (Annexure P-11) indicates that he suffers from permanent hearing loss, with no likelihood of its improving. It is argued that a perusal of the Disability Certificate issued by CMO, Karnal (Annexure P-1), Medical Report by PGIMS, Rohtak, dated 30.03.2016 (Annexure P-5) and the recent Disability Certificate issued by PGIMER, Chandigarh (Annexure P/11), would contemplate that disability of the petitioner is

permanent in nature and is not curable. Therefore, he would submit that the petitioner is entitled to extension in service with effect from the date of his retirement i.e. 28.04.2016 for a period of 2 years along with all consequential benefits and interest.

5. Per contra, learned counsel for the respondents would submit that the petitioner had a hearing loss which has been termed to be temporary and is not permanent in nature and, therefore, cannot be considered for extension in service. It is also argued that there is a delay on the part of the petitioner in approaching the court in writ jurisdiction. After almost one year of the passing of the order dated 28.06.2016, by which his case for extension stood rejected, the petitioner has filed the present writ petition that too on the basis of the document issued by the PGI, Chandigarh, on 12.05.2017.

6. I have heard the learned counsel for the parties and with their assistance have gone through the pleadings.

7. The petitioner was appointed as a Pump Operator in the year 1980. It was in the year 2006 that a Disability Certificate was issued to him by the CMO, Karnal, which reflected 75% hearing disability. On 31.1.2006, the Government decided to raise the normal age of retirement of disabled persons belonging to Group A to Group D posts, who possess a minimum degree of disability of 70% from 58 years to 60 years. Medical Board of PGIMS, Rohtak, was designated as the competent authority to issue a disability certificate which would be considered for the purpose of extension. The case of the petitioner was considered by the Medical Board

of PGIMS Rohtak, for assessment of disability on 30.3.2016 noting that he had a history of decreased hearing from both ears for 18-20 years and it concluded that *“On the basis of audiological reports, at present Sh. Inderjeet is having 70.3% (seventy point three percent) hearing loss. As this hearing is mixed in nature, hearing loss is temporary as conductive part can improve/change with treatment.”* Based on the report, the Executive Engineer HUDA Division, Karnal, vide letter dated 25.4.2016 sent a recommendation for extension to be granted but the same stood declined.

8. On a reading of the instructions dated 31.1.2006 and 21.4.2008, an inference can be drawn that extension beyond 58 years is to be given to Group A to Group D employees, who have a physical disability to the extent of 70%, and for the purpose of giving extension beyond a period of 58 years the case of the physically disabled employees, the Medical Board at PGIMS, Rohtak, shall be designated as the competent authority and the Director shall personally head the medical Board.

9. Vide instructions dated 31.01.2006, it was stated as under:-

“2. With a view to maintaining uniformity in the matter of retirement age in respect of Handicapped employees, the Government, on further consideration of the matter, has decided to raise the normal retirement age of such disable Group 'A' to Group 'D' employees who possess the minimum degree of disability of 70%, from 58 to 60 years.

3. This decision shall come into force at once.”

The instructions dated 21.04.2008 state as under:-

“I am directed to invite your attention to Haryana Government instructions issued vide letters No.34/7/2006-4GSI, dated 31st

January, 2006 on the subject noted above by which the retirement age of the physically disabled Government employees, who possess the minimum degree of disability to the extent of 70% or above, has been raised from 58 to 60 years. Further, it was decided by the Government vide letter No.34/1/2006-4GSI, dated 28th March, 2006 that the Medical Board constituted under the Chairmanship of CMO of the district will be competent to issue medical certificate for the purposes of disability for extension in service beyond 58 years to the physically disabled employees.

2. The matter has been reconsidered by the State Government and it has been decided that for the purpose of giving extension beyond 58 years in the case of physically disabled employees, the Medical Board of the PGIMS, Rohtak shall be designated as the Medical Board for the State and its Director shall personally head the said Board. Accordingly, all such cases, where extension in service beyond the age of 58 years is sought on the grounds of physical disability, be referred to the said Board for the issue of Medical Certificate of disability to the employees. However, on receipt of the medical report from the Board, the Competent Authority shall take a decision to grant or not to grant the extension in service to such physically disabled employees. 3. These instructions shall come into force immediately. This decision may please be brought to the notice of all concerned for strict compliance.”

The certificate as issued clearly mentions that the petitioner has a disability to the extent of 70.3% which can improve with treatment.

10. The question that arises is, whether the case of the petitioner can be rejected on the ground that the disability is not permanent? A co-joint reading of both the instructions does not reflect the use of the word

‘Permanent’ which has become a ground for rejection. The only criteria for allowing extension is that a person must have a disability to the extent of 70%, which is apparent from the certificate of Medical Board of PGIMS, Rohtak, as headed by its Director. The audiological report reflects that ‘*at present Sh. Inderjeet is having 70.3% (seventy point three percent) hearing loss.*’ Opinion given that hearing can improve, is matter to be seen in the future. As on the date when the hearing test was conducted, a 70.3% hearing loss had been assessed it would establish the claim of the petitioner for extension in service. Therefore, the rejection for grant of extension in service is unjustified.

11. The argument that the claim of the petitioner is belated is untenable. The petitioner, who was due to superannuate on attaining the age of 58 years on 31.5.2016, had applied well in time and the process initiated at the behest of the department. The Medical Board gave its opinion on 30.3.2016 and thereafter no decision was taken which resulted in the petitioner approaching this Court and on a direction issued the matter was decided and the impugned order passed on 28.6.2016. The petitioner approached the PGIMER, Chandigarh and got another Medical Board constituted to assess his hearing disability. A Certificate dated 17.5.2017 has been issued which states that the petitioner has 100% disability and it is thereafter the writ petition has been filed. It cannot be said that the writ petition is belated. Moreover, it cannot be lost sight of the fact that beneficial provisions should not be defeated by putting any constrictive or restrictive interpretation so as to defeat the right of a person claiming

benefit of such provisions.

12. Consequently, the writ petition is allowed and the impugned order is set aside. The petitioner is held entitled to extension in service of two years on account of his 70.3% physical disability, and would be deemed to have retired on attaining the age of 60 years as on 31.5.2018. He would be allowed all consequential benefits other than pay for the said period as he has not worked.

March 29, 2023
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No