



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 6th December 2024***

+ **LPA 592/2023 & CM APPL. 42709/2023 (75 Days Delay)**

ASHWANI KUMARAppellant

Through: **Mr. F.S. Chauhan & Ms. Usha Kashyap, Advs.**

versus

**INDIAN OIL CORPORATION LIMITED
& ORS.**

.....Respondents

Through: **Mr. Rajiv Shukla, Ms. Shivani Kapoor, Mr. Sanjay Kumar and Mr. Pious Pritam Bose, Advs.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This LPA¹ is directed against the judgment rendered by the learned Single Judge of this Court on 13.04.2023 whereby the writ petition bearing W.P.(C) 13115/2018 titled “*Ashwani Kumar v. Indian Oil Corporation Limited & Ors.*” preferred by the appellant herein came to be dismissed by the learned Single Judge. The said writ petition sought the following reliefs:

“I. To pass appropriate order, direction or writ in the nature of certiorari to quash and set aside letter/communication of respondent No. 3 dated 28.03.2018 and that of her predecessor dated 20.11.2015.

II. To pass appropriate order, direction or writ in nature of mandamus to direct the restoration of the Appointment Letter dated 04.06.2014 with retrospective effect.

III. To pass appropriate order, direction or writ in nature of mandamus commanding the respondent to allow the petitioner to

¹ Letters Patent Appeal



join his duties accordance with the Appointment letter dated 04.06.2014.

IV. Cost of the petition.”

2. Shorn of unnecessary details, the appellant is the son and legal heir of late Shri M.C. Upadhyay, who passed-away on 17.06.2011 while in service with the respondent No.1/IOCL². The appellant applied for appointment on 08.08.2011 under the ‘Scheme For Rehabilitation of the Family of the Officer Dying in Service’ read with Modification in the said Scheme (hereinafter referred to as ‘Rehabilitation Scheme’) pertaining to option R-3 of the IOCL whereby the wife of the deceased had to forego the ‘Rehabilitation Grant’ equivalent to 60 months of Basic Pay, Stagnation Increment and Dearness Allowance of her late husband in lieu of her son’s appointment. It is the admitted case that the appointment was offered to the appellant for the post of Junior Technical Assistant (JTA) Grade-III [“JTA”] and the said appointment was subject to the appellant being found medically fit by the respondent No.1/IOCL’s Medical Officer or by a Government Medical Officer of the status specified therein.

3. The appellant initially got medically examined by the CMO³ of the District Hospital, Meerut where he was residing and was found ‘fit’ as per the medical report. However, when the appellant reported to the office of respondent No.1/IOCL on 01.07.2021, he was directed to appear before the Medical Board of private doctors of

² Indian Oil Corporation Limited

³ Chief Medical Officer



Kailash Hospital, Noida and subsequent to the medical examination, he was declared 'medically unfit' for appointment. Resultantly, the appointment was cancelled *vide* letter dated 20.11.2015. The appellant, dissatisfied with the medical report, got himself medically examined at Fortis Hospital, Noida on 14.04.2016, whereby it was certified by the Doctors that *his kidney was functioning normally and he was on stable immunosuppression and blood pressure medicines and was medically and physically 'fit' for any kind of duties.*

4. The appellant, on the strength of such certificate, requested the respondent No.1/IOCL to restore the appointment, however, since he did not receive any positive response from the IOCL, he challenged the cancellation letter dated 20.11.2015 by preferring W.P.(C) 1051/2018, which was disposed of by this Court *vide* order dated 05.02.2018 giving liberty to the appellant to make a concise representation to the IOCL, *besides directing the respondents to consider the said representation in light of the medical certificate dated 14.04.2016, and also directed that if any vacancy was available in the post of JTA Grade-III, then the appellant's case may be considered sympathetically.*

5. To cut the narrative short, the representation of the appellant dated 09.02.2018 was considered and rejected on 28.03.2018 on the ground that no vacancy existed in the post of JTA against which the appellant's case could be considered for compassionate appointment. By way of W.P.(C) 13115/2018, the appellant herein laid a challenge to the aforesaid order dated 28.03.2018 besides earlier order cancelling his appointment dated 20.11.2015, thereby seeking



restoration of the appointment letter dated 04.06.2014 with retrospective effect. The said writ petition was rejected by the learned Single Judge *vide* the impugned order dated 13.04.2023 and that is how the appellant has preferred the present appeal.

ANALYSIS & DECISION:

6. Having heard the learned counsels for the parties and on perusal of the record, we find no grounds to interfere with the impugned order dated 13.04.2023 passed by the learned Single Judge of this Court. The reasons are not far to seek. It was rightly held by the learned Single Judge that the offer of appointment of the appellant on compassionate grounds under the Rehabilitation Scheme was subject to him being found “medically fit” by the respondent No.1/IOCL’s Medical Officer or by a Government Medical Officer of the status of a Civil Surgeon. Therefore, the plea of the appellant that the offer letter was unconditional or that he had the liberty to get medical certification from a doctor/hospital of his choice was rightly not found to be sustainable by the learned Single Judge.

7. Further, the plea advanced by the learned Counsel for the appellant that the respondent No.1/IOCL should accept the latest certificate issued by the Fortis Hospital, Noida, dated 14.04.2016 is fallacious and cannot be sustained in law, particularly in the face of an admission that the appellant had undergone a kidney transplant procedure and that it was not a case where the appellant had no prior medical history. We further find ourselves in agreement with the reasons accorded by learned Single Judge that in the terms of directions dated 05.02.2018 in W.P.(C) 1051/2018, the appellant had



to cross another hurdle as his appointment could only be considered in the event of there being a vacancy in the cadre of JTA, Grade-III.

8. It is a matter of record that the post of JTA was abolished in the year 2017, and therefore, no offer of appointment could possibly be made to the appellant in the absence of the existence of such a post. On the said issue, the learned Single Judge, in her impugned judgment dated 13.04.2023, made the following observations:

“16. In view of the fact that this Court had, by order dated 05.02.2018, made the consideration of the case of the Petitioner subject to existence of vacancy coupled with the fact that the post of JTA Grade-III itself stands abolished in 2017, this Court cannot direct IOCL to offer appointment to the Petitioner at this stage by quashing the cancellation letter. It is trite that creation and abolition of posts is the domain and prerogative of an employer and Courts cannot direct the post be **created or revived for appointing the Petitioner**. At best, in the given situation, perhaps the Court may have directed IOCL to consider the case of the Petitioner for appointment to an equivalent post however, this exercise has already been undertaken by IOCL and as noted above, Petitioner was offered the post of Junior Chargeman Grade-III, subject to medical fitness, which counsel for the Petitioner has refused to accept, even today.”

9. In the last, although, we proceed to dismiss the present appeal, we find ourselves in complete agreement with the directions of the learned Single Judge contained in paragraph (18) of the impugned judgment, which read as under:

“18. While the Court is unable to grant the relief sought in the writ petition for the reasons aforementioned, however, there is another aspect of the matter which needs to be noticed in view of the pleaded case of the Petitioner that because the family had opted for compassionate appointment, they were not considered for the Rehabilitation grant, which are monetary benefits. From para 5 of the Rehabilitation Scheme, which is annexed as ‘R-1’ to the counter affidavit, it is evident that where a spouse of a deceased employee does not opt for employment of eligible dependent under



R-3 option i.e. for compassionate employment, Corporation shall extend financial help of an amount equivalent to 60 (sixty) months Basic Pay along with Stagnation Increment, Personal Pay, Special Pay and Dearness Allowance (excluding Protected Pay) as Rehabilitation Grant, in lieu of employment. In the present case, a very peculiar situation has arisen, where the Petitioner had chosen the option of employment in lieu of Rehabilitation Grant, however, the same did not fructify even though an offer was made and therefore, in my view, it would be appropriate if the Petitioner is given liberty to make a representation to IOCL for Rehabilitation Grant, admissible in lieu of employment. This Court is conscious of the general instructions to the Scheme which may otherwise preclude the Petitioner from applying for the Rehabilitation Grant that an option once exercised cannot be changed, but peculiar situations demand peculiar considerations. Petitioner was offered appointment on compassionate grounds, but could not be appointed and thus, this Court directs that if any representation is received by IOCL from the Petitioner for Rehabilitation grant, the same shall be considered by IOCL. Decision thereon shall be taken within four weeks from the date of receipt of the representation, in accordance with law. It is made clear that in the peculiar facts of the case, the condition of the Scheme that option once exercised cannot be changed, will not be an impediment in the consideration of the case of the Petitioner on merits and needless to state this would not be treated as a precedence in any other case.”

10. The only modification that we make to the impugned judgment dated 13.04.2023 is that an appropriate decision be taken by the respondent No.1/IOCL in terms of the aforesaid directions within four weeks from today.

11. The present appeal, along with the pending application, is accordingly disposed of.

YASHWANT VARMA, J

DHARMESH SHARMA, J.

DECEMBER 06, 2024

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