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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 385/2000

New Delhi this the 2nd day of August, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Kanhaiya Prasad Singh,
C/O A.P.Singh,
D-102, Sector-I(727-7711),
Rohini,
New Delhi-110085.

... Applicant

(By Shri G.K.Aggarwal, Advocate)

-versus-

1. Union of India through
Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-110011.
2. Superintending Engineer,
Co-ordination Circle (Civil),
CPWD, B-108, I.P.Bhawan,
I.P.Estate, New Delhi-110002.
3. Medical Superintendent,
Bara Hindu Rao Hospital,
Delhi.

... Respondents

(By Ms. Pratima K. Gupta, Advocate)

O R D E R (ORAL)

Shri V.K.Majotra, AM :

The applicant is aggrieved by failure of respondents 1 and 2 to offer him the post of Junior Engineer (Civil) in CPWD under 'handicapped' category despite medical certificate given by respondent No.3 pursuant to the order dated 30.8.1999 passed by this Tribunal in O.A. No.201/99 (Annexure A-1). The applicant is BE (Civil) from Birla Institute of Technology. He qualified at All India Competitive Examination for the post of Junior Engineer (Civil) in CPWD held on 27.7.1997 under age relaxation allowed to physically handicapped persons upto 35 years. There was a controversy about the medical certificate

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submitted by the applicant. Whereas initially Bara Hindu Rao Hospital, Delhi had categorised the applicant as physically handicapped person, Dr. Ram Manohar Lohia Hospital, New Delhi had certified his handicap as only 9%. The following orders were passed on 30.8.1999 in O.A. No.201/99 filed by the applicant :

2. With the agreement of both parties this O.A. is disposed of with a direction to respondents to obtain a further opinion from the Bara Hindu Rao Hospital, Delhi in the background of the certificate issued earlier by them on 23.12.1991, as to whether, consequent to the DP&T's O.M. dated 27.2.96 superceding the percentage system of evaluating the degree of physical handicap, and defining those as orthopaedically handicapped, who "have a physical defect or deformity which causes an interference with the normal functioning of the bones, muscles and joints," applicant would qualify for appointment as Junior Engineer in C.P.W.D. on the basis of all India competitive examination in July, 1997, in the physically handicapped quota.

3. Respondents should ensure that the matter is referred to M.S., Bara Hindu Rao Hospital, Delhi within two weeks from the date of receipt of a copy of this order and take appropriate steps to ensure that the report is obtained from that hospital within two months from the date of reference to them.

4. The report of the Bara Hindu Rao Hospital shall be treated as final.

5. the O.A. stands disposed of accordingly..."

2. Accordingly, Bara Hindu Rao Hospital, Delhi gave a fresh medical report as directed by aforesaid order dated 30.8.1999 in O.A. 201/99. It is to the effect that the applicant has a physical defect or deformity which causes an interference with the normal functioning of bones, muscles and joints because index finger of his right hand was amputated through middle phalanx.

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3. The applicant claims that on the basis of the fresh medical certificate, the respondents should be directed to appoint him as regular Junior Engineer (Civil) with consequential benefits.

4. According to the respondents, the age relaxation of 10 years was available to physically handicapped candidates as per the notice published in the Employment News inviting applications for the post of JE(Civil/Elect.). Whereas as per the DOP&T O.M. dated 4.8.1998 the minimum degree of disability for any benefit/concession for physically handicapped was required to be 40%, the applicant's medical certificate revealed a disability of only 10%. Later on when he was referred to the R.M.L.Hospital, his disability was certified to be 9% only. Accordingly, the result of the applicant was cancelled vide letter dated 9.11.1998 (Annexure R-1). In pursuance of the orders of the Tribunal dated 30.8.1999 in O.A. No.201/99, the Hindu Rao Hospital, Delhi certified the applicant's disability as 5% only. According to the respondents, the applicant could be accorded benefit if he had a physical defect/deformity causing an interference with the normal functioning of bones, muscles and joints. The respondents have interpreted the medical certificate given by the Hindu Rao Hospital on 21.10.1999 (Annexure R-2) to mean that the applicant does not have a defect or deformity which interferes in the normal functioning of bones, muscles and joints as also that the percentage of disability is only 5% as against the required percentage of 40%; thus the applicant cannot be accorded the benefit of

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age relaxation envisaged for physically handicapped persons.

5. We have heard the learned counsel on both sides and considered the matter^{ial} on record. As per instructions dated 27.2.1996 relating to reservation for the physically handicapped persons in posts/services under government, orthopaedically handicapped person is one "who has a physical defect or deformity which causes an interference with the normal functioning of the bones, muscles and joints." According to the learned counsel for the applicant, the former procedure of percentage of disability has been done away with under instructions dated 27.2.1996 which ^{action by} has been upheld by the order dated 30.8.1999 in O.A. No.201/99 filed by the applicant. The learned counsel for the respondents has contended that the applicant has no such physical defect or deformity which causes an interference with the normal functioning of bones, muscles and joints entitling him to the benefits available to handicapped persons; therefore, the applicant cannot be offered the job of a Junior Engineer.

6. We have to see whether the applicant's case is covered by the definition of "orthopaedically handicapped" given in O.M. dated 27.2.1996. As per the definition such persons should have a physical defect or deformity which causes interference with the normal functioning of the bones, muscles and joints. The applicant's case has been recommended by the medical authorities for benefits of permanently handicapped person. It has been certified that "Due

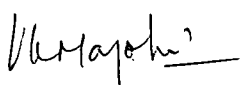
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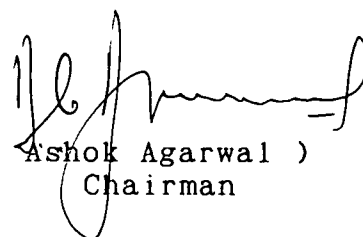
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to amputation, function of (R) index finger will be hampered."

7. Even though the language of the certificate is not strictly as per the language given in the definition for orthopaedically handicapped, the import of the language used in the certificate is that the applicant suffers from a physical handicap which interferes with the normal functioning of bones, muscles and joints, and the medical authorities have recommended his case for benefits of permanent handicapped persons.

8. In view of the certificate dated 15.10.1999 given by the Hindu Rao Hospital, Delhi, we have no doubt in our mind that the applicant suffers from a physical handicap entitling him to the benefit of age relaxation under the rules. In this view of the matter and in the facts and circumstances of the case, the O.A. is allowed and the respondents are directed to consider the applicant's case for appointment as regular Junior Engineer (Civil) by giving him the benefit of a physically handicapped person with effect from the date his junior in merit list of July, 1997 examination was appointed. However, he shall not be accorded any backwages, but he shall be given the benefit of seniority and notional pay-fixation. These directions shall be carried out by the respondents within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.


(V. K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman