

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1052/2014

New Delhi, this the 9th day of January, 2017.

**HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

R.R.Pradhan
Son of Late Karthik Pradhan
Resident of Chattarpur, New Delhi
Working as Legal Advisor,
Protection of Plant Varieties and
Farmers' Rights Authority, S-2, A Block,
NASC Complex, DPS Marg, New Delhi-110 012. -Applicant

(By Advocate: Shri Gautam Bhol)

V E R S U S

1. Dy. Chief Commissioner for Persons with Disabilities, Sarojini House, 6, Bhagwan Dass Road, New Delhi-110 001.
2. Chairperson,
Protection of Plant Varieties and
Farmers' Rights Authority, S-2, A Block,
NASC Complex, DPS Marg, New Delhi-110 012.
3. Registrar/Vigilance Officer,
Protection of Plant Varieties and
Farmers' Rights Authority, S-2, A Block,
NASC Complex, DPS Marg, New Delhi-110 012.
4. Secretary,
Ministry of Social Justice and Empowerment,
Shastri Bhawan, New Delhi. -Respondents.

(By Advocate:Shri Amit Chawla for Shri H.K.Gangwani for R-1
& Shri Rajender Nischal for R-2 and R-3)

ORDER (ORAL)

By Mr. Justice Permod Kohli

The applicant was appointed to the post of Legal Advisor (Physically Handicapped) in the Pay Band-3 Rs.15,600-39,100/-

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with Grade Pay of Rs.6600/- in a regular temporary capacity on the recommendations of the Select Committee vide order dated 01.05.2009 in the Protection Plant Varieties and Farmers' Rights Authority, NASC Complex, DPS Marg, Opposite Todalpur Village, New Delhi. He was initially on probation for a period of two years and later confirmed on the post. Prior to his appointment, the employer vide communication dated 24.02.2009 requested the Chief District Medical Officer, District Bargarh for medical examination of the applicant for ascertaining the disability. This letter was responded to by the Chief District Medical Officer, Bargarh vide letter dated 04.03.2009 stating therein that the applicant has been issued disability certificate vide Certificate No.443 dated 02.06.2008 by the Office of the Chief District Medical Officer, Bargarh. It is further stated that the Disability Certificate has been issued by the duly constituted Medical Board of Bargarh District. The applicant has also placed on record the Disability Certificate dated 04.03.009 as Annexure A/6. The employer of the applicant considered his claim for grant of Transport Allowance at double the normal rates in terms of provisions of Ministry of Finance contained in OM No.21(2)2008 E-II (B) dated 29.08.2008 and sanctioned grant of Transport Allowance at double the normal rates from the date of his joining the duty i.e. from 16.04.2009 (Annexure A/9). Since the date of

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his appointment the applicant is performing the duty as Legal Advisor and was being paid the Transport Allowance at double the normal rates being Physically Handicapped. He made a complaint regarding certain irregularities in the advertisement and appointments in PPV & FR Authority, a copy of such complaint dated 08.02.2013 is placed on record (Annexure A/11). It is stated by the applicant that the respondents issued a communication dated 26.06.2013 to the Medical Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi for medical examination of the applicant by the Head of the Department (Orthopaedic) through Medical Board. The Hospital Authority was further asked to examine whether the applicant is entitled to the double Transport Allowances or not, a copy of such communication was forwarded to the applicant directing to report to the Medical Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi for medical examination. It seems that the applicant instead of appearing for medical examination approached the Internal Vigilance Officer protesting against the proposal of R-3 for medical examination vide complaint/representation dated 01.07.2013 (Annexure A/13). The Registrar & Vigilance Officer of the Respondent-Department, however, informed the applicant vide letter dated 01.07.2013 that the certificate of disability submitted by him prior to the date of appointment cannot be

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taken into consideration for grant of transport allowance and it is the responsibility of the appointing authority to ascertain the genuineness of the documents submitted for seeking any relaxation. In the meantime, Dr. Ram Manohar Lohia Hospital Authorities communicated to the Vigilance Officer of the Respondent-Department vide letter dated 11.07.2013 that the 2nd Medical Examination can be taken up for Central Government Employees and if courts so direct, meaning thereby that the hospital declined the request of the Department for medical examination of the applicant. Thereafter, the applicant approached the Chief Commissioner for Persons with Disabilities by endorsing the copy of his complaint dated 01.07.2013. The Chief Commissioner for Persons with Disabilities vide impugned communication dated 10.03.2014 rejected the contention of the applicant and at the same time the Medical Authority, Dr. Ram Manohar Lohia Hospital, New Delhi was advised to issue a Disability Certificate to the applicant in Form-IV prescribed in the Persons with Disabilities Amendment Rules, 2009 and intimate the action taken to the Deputy Chief Commissioner for Persons with Disabilities. Against the said order, the applicant has filed the present OA seeking for quashment of the communication dated 10.03.2014.

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2. The Respondent Nos. 2 and 3 in Paras L & M of the reply stated that the double Transport Allowance is admissible to the orthopedically Handicapped Persons having minimum of 40% of permanent partial disability of limbs and allowance is granted on the basis of recommendation of the Head of Orthopaedics Department of a Government Hospital. It is further stated that the case of the applicant was referred to the Medical Board of Dr. Ram Manohar Lohia Hospital vide office order dated 26.06.2013 for obtaining specific recommendation in this regard. The applicant has, however, not appeared before the said Board. It is further stated by the respondent nos. 2 and 3 that they have issued letter dated 01.07.2013 stating that the genuineness of the applicant's Disability Certificate is under scanner and that for grant of double Transport Allowance, the Head of the Department will have to refer the case to the appropriate Medical Authority. The stand taken by the respondent nos. 2 and 3 will be adopted by the respondent no.1.

3. We have heard the learned counsel for the parties.

4. The grievance of the applicant is that once he is deputed on the strength of certificate issued by the competent authority, he cannot be subjected to 2nd Medical Examination. The moot question which needs to be considered in the present OA is

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whether a government servant recruited under the physically handicapped category on the strength of disability certificate issued by the prescribed authority can be again subjected to fresh medical examination to ascertain the nature and extent of disability after the appointment. The answer would depend upon the circumstances. Under normal circumstances where a candidate has been selected and appointed under any disability category on the basis of medical certificate issued by the prescribed competent authority, there is no reason to again ask him to subject himself to fresh medical examination unless there is doubt on the genuineness of his certificate or there is complaint about the genuineness of his disability. However, in a case where the authority receives a complaint about the genuineness of the certificate or even regarding the extent of the disability, the authority, if *prima facie* convinced about the complaint, cannot be prevented from asking the government servant for fresh medical examination for purposes of ascertaining the true facts about his disability. In the present case, from the reply it appears that there was some complaint in respect to the genuineness of the disability of the applicant, which *inter alia* includes the extent of disability. The authority, i.e., the employer, decided to seek fresh medical examination of the applicant from government hospital, i.e., Dr. Ram Manohar Lohia Hospital, to ascertain the factum and

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extent of his disability. We do not feel such a recourse is prohibited by any rule or law. The applicant should not have objected to his re-medical examination for ascertaining his disability, which is the basis for his selection in the handicapped category.

5. During the course of hearing, we asked the learned counsel for the applicant as to reasons for opposing fresh medical examination. At this stage, learned counsel for the applicant submits that the applicant has no objection if he is subjected to fresh medical examination by Board of Doctors. Dr. Ram Manohar Lohia Hospital is admittedly a Government Hospital of repute and fresh medical examination of the applicant would re-assure his claim for genuineness of his disability.

6. In the above circumstances, this OA is disposed of with the following directions:

i) The respondent No.2 will communicate to the Medical Superintendent, Dr. Ram Manohar Lohia Hospital for medical examination of the applicant.

ii) The Medical Superintendent will constitute a Board of Doctors for medical examination of the applicant from the concerned field and expertise and fix a date for medical

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examination of the applicant. The Medical Superintendent will communicate the constitution of the Medical Board and the date for medical examination of the applicant to the respondent no.3, who in turn, shall inform the applicant the date and time for appearing before the Medical Board.

- (iii) On receipt of intimation from the Respondent No.3, the applicant shall appear before the Board of Doctors for fresh medical examination in regard to his physical disability on the basis of which he was appointed as Legal Advisor.
- iv) The Medical Board on examination will submit its opinion/report to the Respondent No.3, who in turn, shall provide a copy thereof to the applicant. The further entitlement of the applicant for the double transport allowances will depend upon the report of the Medical Board.
- (v) Let the entire exercise be completed within a period of two months. No costs.

(Nita Chowdhury)
Member (A)

/kdr/

(Justice Permod Kohli)
Chairman

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