

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A./350/760/2016

Heard on 28.06.2019
Date of Order: 28.8.19.

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Goutam Paul,
Son of Late Bimal Ch. Paul,
Aged about 41 years,
Worked as a Tradesman-B (Mechanical Fitter)
Under Department of Atomic Energy Variable
Energy Cyclotron Centre, 1/AF, Bidhan Nagar,
Kolkata – 700 064,
Residing at Mallick Bagan (S.M. Bose Road),
P.O. Agarpara, Dist. North 24-Parganas,
Kolkata – 700 109.

.....Applicant,

Vrs.

1. Union of India
through the Secretary to the Govt. of India,
Ministry of Atomic Energy,
CSM Marg, Anushaki Bhavan,
Mumbai – 400 001.

2. The Chairman,
Department of Atomic Energy,
Variable Energy Cyclotron Centre,
1/AF, Bidhan Nagar, Sector-I,
Kolkata 700 064.

3. The Director,
Variable Energy Cyclotron Centre,
1/AF, Bidhan Nagar,
Kolkata – 700 064.

4. The Administrative Officer-III,
Variable Energy Cyclotron Centre,
1/AF, Bidhan Nagar,
Kolkata – 700 064.

.....Respondents

For the Applicant(s): Mr. B.Chatterjee & Mr. S.K.Datta, Counsel

For the Respondent(s): Mr. S.Paul, Counsel

ORDER

Bidisha Banerjee, Member (J):

The applicant in this O.A. has sought for the following reliefs:

- "(a) An order do issue directing the respondents authority to quash and set aside the impugned Order dated 23rd April, 2010 issued by the director, Govt. of India, Department of Atomic Energy Variable Energy Cyclotron Centre being Ref. No. VECC/ADMN/R/1-2007 (C-11)/933;*
- (b) An order do issue directing the respondents authority to quash and set aside the Order dated 14th February, 2011 issued by the Assistant Personnel Officer, Govt. of India, Department of Atomic Energy Variable Energy Cyclotron Centre being Ref. No. VECC/Admn/R/2007 (C-11)/2011/598.*
- (c) An order do issue directing the respondents authority to quash and set aside the Order dated 30th March, 2015 issued by the Under Secretary, Government of India, Department of Atomic Energy, R&D-I Section, Anushakti Bhavan, C.S.M. Marg, Mumbai-400001.*
- (d) An order do issue directing the respondents authority to reinstate the applicant w.e.f. when he was terminated from his Service along with all consequential benefits.*
- (e) An order do issue directing the respondents authority to pay all the back wages along with 12% interest thereon.*
- (f) Costs.*
- (g) Any other appropriate relief....."*

2. The admitted facts that emerged from the pleadings of the authorities run thus:

Pursuant to an advertisement vide Reference No. VECC-1/2007, the applicant submitted an application dated 11.06.2007 for the post of Tradesman/B (Mechanical Fitter), under category No. 11 of the Notification. The eligibility criteria required to be fulfilled as per advertisement, being as under:

"ADVERTISEMENT NO. VECC-1/2007
LAST DATE FOR RECEIPT OF APPLICATION 15.6.2007

Applications are invited to the following posts:-

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CATEGORY NO.11 : TRADESMAN/B (MECHANICAL FITTER)

No. of posts : 4 (four) (UR-1 & OBC-3)

Essential Qualification : SSC passed with minimum 50% marks in Science and Maths put together and certificate of not less than 1 year duration from recognised institution in Fitter trade.

Age Limit : Should not be more than 25 yrs. As on 01.05.2007 (relaxation upto 5 yrs. For SC/ST and 3 yrs. For OBC).

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Reservation for disability will be provided as per rules in specific disciplines/trades.

NOTE: The nature of duties to be performed by the above categories involve working in round the clock shift duties, in operational plants and areas.

SC/ST candidates called for interview, which will be held in Kolkata, will be paid Travelling Allowance as per rules. However, Travelling Allowance is not admissible to those SC/ST candidates who are already in Central/State Government services, Central/State Government Corporation, Public Undertakings, Local Government Institutions and Panchayats.

Candidates selected against the advertisement are likely to be posted at VECC, Kolkata but are liable to serve in any part of India and in any constituent unit of the Department of Atomic Energy.

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COPIES OF CERTIFICATES: Candidates should submit along with their application attested SINGLE COPY of certificate of:

- a) Educational qualifications/experience and technical qualifications (supported by appropriate mark sheets indicating the subjects offered at the examinations).
- b) Date of birth.
- c) Their claim that they belong to SC/ST/OBC. However, candidates belonging to OBC should furnish the Caste Certificate (not BC) in the prescribed format of the Department of Personnel & Training OM dated 2.7.1997 as prescribed in Annexure-I of the said O.M. to the effect that they are not in the Creamy Layer failing which their claim for OBC will not be accepted.
- d) Appropriate authority regarding disability [applicable to disabled (physically handicapped) persons only].

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WARNING: Applications which are not in conformity with the requirements indicated and which are not in the prescribed form or are not accompanied by the attested copies of certificates, photograph, will be rejected. Mere fulfilling of

requirements as laid down in the advertisement does not qualify a candidate for an interview. No correspondence will be entertained with candidates not selected for an interview/appointment.

In case the response is more, the screening will be restricted to those with higher percentage of marks."

The applicant, to secure employment, submitted a disability certificate dated 18.05.2004 said to have been issued by the Chairman/handicapped Board & Superintendent, R.G.Kar Medical College & Hospital, Kolkata-700094 (Annexure-R/1) along with his application. His application was scrutinised, considered and processed allowing age relaxation based on the disability certificate. He was asked to appear for Trade Test and Personal Interview by a communication dated 25/26th August, 2008. Applicant was, thereafter by a communication dated 07.11.2008, informed *inter alia* that he was recommended by the Selection Committee for appointment to the post of Tradesman-B (Mechanical Fitter) and was requested to fill up enclosed Attestation Forms and return to Respondent No.4 to reach him on or before 14.11.2008. Thereafter, the applicant was issued with an Offer of Appointment dated 24.07.2009 for the post of Technician-B (Mechanical Fitter) and was asked to report at VECC for medical examination. The Offer of Appointment mentioned the following terms (extracted with emphasis for clarity):

"Consequent on your selection, you are hereby offered appointment as Technician/B (Mechanical Fitter) in the Centre on the following terms and conditions:

- a) Your appointment will be temporary but likely to continue indefinitely. You will be on probation for a period of one year from the date of your appointment, which may be extended at the discretion of the competent authority. During the probationary period, your services are liable to be terminated without notice and you can also resign without giving notice. After completion of the*

probationary period also, your services are liable to be terminated in accordance with the Rule 5 of CCS(Temporary Service) Rules, 1965, as amended from time to time. As per existing provisions of the said rules, your services are liable to be terminated by giving one month's notice or forthwith without any reasons being assigned. In the event of your services being terminated forthwith, you will be entitled to claim a sum equivalent to the amount of your pay plus allowances for the period of notice or for the period by which such notice falls short of one month. Similarly, after completion of the probationary period, you will be required to give one month's notice in writing in case you wish to resign from your post.

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- e) Your appointment is subject to a successful medical examination by a Civil Surgeon or a District Medical Officer or a Medical Officer of equivalent status.

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- i) You shall produce documentary evidence regarding your date of birth, nationality, educational qualifications etc., before appointment and thereafter whenever required. If it is found, at a later date, that your qualification is more than what is revealed by you, it will be considered as suppression of information and action as deemed fit would be initiated.

5. If the offer of appointment on the aforesaid terms and conditions is acceptable, please communicate your acceptance immediately in the prescribed form enclosed and report to the undersigned on or before 21.08.2009 at 09.00 A.M. along with all the documents, photographs etc. specified above, for arranging your medical examination. Please note that if you fail to furnish any of the documents and photographs specified above, you will not be allowed to appear for the medical examination. Subject to your being found medically fit, you will be required to join duty immediately and in any case not later than one week from the date of completion of your medical examination."

Respondent authorities had issued a letter dated 28.07.2009 to the Medical Superintendent, N.R.S. Medical College & Hospital, for medical examination of the applicant on initial appointment. The N.R.S. Medical College &

Hospital issued a medical certificate dated 01.08.2009 (Annexure-R/2) but did not mention anything about his disability. On a specific request of the Respondent authorities regarding medical fitness of the applicant in the light of his physical disability, N.R.S. Medical College & Hospital again issued a medical certificate dated 12.08.2009 (Annexure-R/4) mentioning as under:

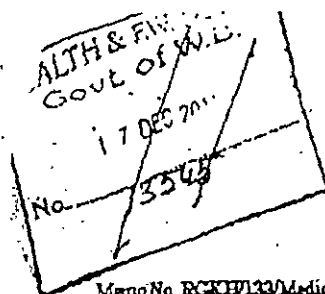
"Pt. is 65% disable as per certificate issued from R.G.Kar Medical College and Hospital-Medical (Handicapped) Board on 18.05.04-At present Pt can work out support."

The applicant subsequently joined VECC on 27.08.2009 on being found medically fit for the post under disabled quota.

A suspicion having cropped up in the disability certificate submitted by the applicant, Respondent authorities wrote a letter to the Chairman, Handicapped Board and Superintendent, R.G.Kar Medical College and Hospital, Kolkata on 19.03.2010 (Annexure-R/5). The Chairman, Handicapped Board and Superintendent, R.G.Kar Medical College and Hospital, Kolkata, vide Annexure-A/6 dated 25.03.2010, duly certified that the certificate dated 18.05.2004 was "purely ingenuine and completely fake" and that the question of issuing the same from that office did not arise. Consequently, a memorandum was issued to the applicant on 01.04.2010. The applicant submitted his reply on 15.04.2010. His service was terminated vide order dated 23.04.2010 (Annexure-R/8) with immediate effect in pursuance of clause 1(a) of the Offer of Appointment (as detailed supra). Subsequently, the applicant preferred an appeal on 19.05.2010. He also moved the Court of Chief Commissioner for persons with disability. The Govt. of West Bengal, Office of M.S.V.P., R.G.Kar Medical College & Hospital

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issued a report dated 16.12.2014 (Annexure-R/10), which is reproduced below for clarity:



GOVERNMENT OF WEST BENGAL
OFFICE OF THE M.S.V.P.
R.G.KAR MEDICAL COLLEGE & HOSPITAL
1 KSHIRIKAM BOST SARANI
KOLKATA - 700004

Memo No. RGKEH/133/Medical Board/14 5782 (2) Dated, the 16.12.2014

In reference to the Memo No. RGKEH/133/Medical Board/14 5617(5) Dt. 08/12/14, a Re-medical Board is constituted on 18/12/14 at 12.00 p.m. in the Chamber of the Registrar, MRD under the Chairmanship of Prof. (Dr.) Prabir Kumar Mukhopadhyay, MSVP, R.G. Kar Medical College & Hospital, Kolkata consisting the following Members to examine of Sri Gautam Paul, B.M., 39 yrs old Mr. Contain. Paul was examined by Prof. D.Pal, HOD, Ortho. Surgery, Prof. P.K. Mandal, PAIR, Assoc. Prof. A.K. Dutta, Neuro-medicine Dr. Subram Chakraborty ENT

CURRENT DISABILITY %

1. Locomotor Disability - 40%
2. Hearing Disability - 55%

Combining the % as per the formula

$$A + B \frac{B}{100} \text{ i.e., } 55 + 40 \frac{40}{98} = 70\% \text{ (Seventy) (as rounded off)}$$

A = 55

B = 40

As per records, he sustained RTA on 13/09/1999 & was admitted in Assembly of God Church Hospital, Kolkata, with diagnosis of Head injury & multiple injury (as per discharge certificate dt. 01/10/99).

He was again admitted in the same Hospital with diagnosis of Br. Asthma exacerbation (as per discharge certificate dt. 09/10/99).

He was again admitted in the same Hospital on 27/11/99 for follow up of medial malleolus at right ankle & discharged on 18/12/99 (as per discharge certificate dt. 18/12/99).

He has Moderate Sensori. Neuronal hearing loss - Rt. ear & profound Sensori. Neuronal hearing loss + Lt. ear - as per audiometry report from ALLYAVAK JUNG NATIONAL INSTITUTE FOR THE HEARING HANDICAPPED, EASTERN REGIONAL CENTRE, BOYNAGHAT, KOLKATA dt. 10/11/14.

He is having a combined locomotor & hearing disability of 70%.

However, from the available documents mentioned above, it is not possible to comment regarding possible period of time for which he has been a person with disability.

Directorate of Health Services
Central Receipt Section
Swasthya Bhavan

22 DEC 2014

Salt Lake, Kolkata, W.B.

Diary No. 178

Memo No. 178

Dr. D.P. Pal
HOD, Ortho. Surgery
R.G. Kar M.C. & H. Hospital
Kolkata

Dr. P.K. Mandal
PAIR
R.G. Kar M.C. & H. Hospital
Kolkata

Dr. Anup Kumar
Dep't. of Neuro Medicine
R.G. Kar M.C. & H. Hospital
Kolkata

Dr. Subram Chakraborty
Dep't. of ENT
R.G. Kar M.C. & H. Hospital
Kolkata


Medical Superintendent cum Vice-Principal
R.G. Kar Medical College & Hospital
Kolkata

HSL-7315
18.12.14

On 30.03.2015, Govt. of India, Department of Atomic Energy, vide No. 15(9)/8/2010/VECC/R&D-I/Vol-II/4200 (Annexure-R/11) issued a speaking order stating that the department after considering all aspects has come to the conclusion that the order terminating the service of the applicant does not merit revocation and accordingly holds that the termination order No. VECC/ADMN/R/1-2007(C-11)933 dated 23.4.2010 holds good and with the issuance of the order, the direction contained in the order dated 08.09.2014 of the Hon'ble Court of Chief Commissioner for persons with disability stands complied with.

3. It is the contention of the Respondents that the point to be considered in the present O.A. is whether the applicant submitted a fake disability certificate for securing government service, and, if so, whether he is qualified for further continuance in the government service. They have alleged that the applicant submitted a fake certificate with malafide intention for securing Central Govt. employment by wrong means compromising his integrity, and, that, he was over aged as on 01.05.2007 and it was only due to the disability certificate that he secured age relaxation as disabled candidate, and, therefore the present O.A. should be dismissed in limine.

4. Ld. Counsel for the applicant would voice his concern in regard to the fact that even without the certificate of 18.05.2004, the applicant has been found disabled to the extent of 70% when referred to by the Respondent authorities to the R.G.K. Medical College and Hospital (as extracted supra). Ld. Counsel would vociferously submit that an orthopedically disabled person cannot acquire disability over night and that the disability was not acquired post appointment. It



was a pre-appointment disability, which he incurred due to an accident sustained on 12.09.1999, which was duly recorded in the subsequent certificate of R.G.K. Medical College and Hospital issued on 16.12.2014. Furthermore, the Respondents, particularly, the Director VEC Centre had opined on 08.11.2010 as follows:

"We now have a certificate from a recognized authority, (North 24 Parganas District Authority) that can not be ignored. He surely has not developed the Orthopaedic disabilities recently. It must have been there since he was first employed with VECC. So, is there a case for giving him benefit of doubt? The case is not straight forward. Please discuss for the next course of action.

-Sd-

(Dr. R.K.Bhandari)
Director,
VEC Centre"

Relying upon the aforesaid note, Ld. Counsel would strenuously urge that the applicant deserved to be retained in service for he has been serving VECC, on contractual basis, since the year 2000; and, has always been lauded for his sincerity, intelligence and hard work as would be evident from the certificate issued from time to time by the offices of the VECC.

5. We heard Ld. Counsel for both the parties and have perused the materials on record.

6. Our inferences:

(i) The Disability Certificate issued by Superintendent, North 24 Parganas District Hospital, that certifies the applicant as 50% disabled due to "old injury R) Knee Ankle.....Restriction of movement of R) Knee, Ankle....", is not in dispute. However, it was a certificate post appointment.

(ii) The order dated 08.09.2014 (Annexure-A/20) passed by Court of Chief Commissioner for Persons with Disabilities, Ministry of Social Justice & Empowerment, Department of Disability Affairs, states as under:

"8. After hearing out the parties and after a careful perusal of the written submissions together with relevant documents and records of the complainant and respondent respectively, it would be in the fitness of things for this Court to also highlight and refer to the notings on the relevant file by the Director, VECC favouring the benefit of doubt to the complainant. Besides, the possibility of the complainant having obtained the allegedly in-genuine and fake certificate from the R.G.Kar Medical College & Hospital in good faith without knowing to be in-genuine and fake cannot be, perhaps, be ruled out, more particularly in the face of the fact that the complaint's disability as of now appears fairly obvious. It is possible that there may have been some procedural or format relating lacunae involving the said certificate in question.

9. In the above view of the matter, this Court deems it fair and appropriate that the matter be referred to the Secretary, Government of West Bengal, Department of Health, Kolkata requesting him to constitute a panel of Medical Experts for undertaking a meticulous examination of the complaint in person together with his medical records to ascertain his disability including the degree and nature and extent of his disability and also to the extent possible his probable period of time for which he has been a person with disability. The copies of relevant records relating to the case/matter be also sent to the Secretary, Government of West Bengal, Department of Health, Kolkata for necessary action. The Secretary, Health, Government of West Bengal, Kolkata may constitute a complete medical examination of the complainant within six weeks from the date of receipt of this order. The Secretary, Health, Government of West Bengal will forward the outcome of the medical examination of the complainant to the respondent and the complainant under intimation to this Court.

10. On receipt of the outcome of the medical examination, the respondent shall consider revoking their termination order dated 23.04.2010 and thereby re-instate the complainant in service with all consequential benefits if the outcome of the said medical examination so warrants. The respondent shall accordingly take appropriate action within six weeks from the date of receipt of the outcome of the medical examination as stated above under intimation to this Court. A copy of this Order be also marked to the Secretary, Government of West Bengal, Department of Health for appropriate action.

11. The matter stands disposed off with the above directions."

(iii) Pursuant to such order, the applicant was referred to a Medical Board at RG Kar Medical College & Hospital, which issued a certificate on 16.12.2014 (Annexure-A/21).

It is evident from the certificate dated 16.12.2014 that the applicant, with a combination of 40% Locomotor and 55% Hearing Disability, was adjudged 70% disabled but that certificate too, was issued long after he entered service.

(iv) The question, therefore, that arises for consideration is whether he secured employment on the basis of a fake certificate even without incurring any disability prior to his appointment and, therefore, with an intention to defraud the Respondents.

It is also a fact to be noted that a person cannot suddenly become debilitated to the extent of being certified as 70% disabled unless it is due to any in recent past accident, or else it must have continued or developed over a period of time.

7. While hearing the instant matter, this Tribunal had directed the applicant to produce relevant medical record to show that he met with an accident and became disabled prior to filling in the application form for the post, in question, and, therefore, prior to the selection.

The applicant has come up with the following medical certificates:

(i) Medical report of the year 1999, which establishes the fact that the applicant met with an accident in September, 1999, and suffered a Fracture Medial Malleolus (R) Ankle in 2000 in a RTA. He was directed to follow up for timely review.

(ii) Medical report dated 17.09.1999 is as under:

"1. No evidence of injury to skull vault shown; vascular and suture markings appear normal. Sella Turcica appear normal.

2. Fracture of nasal bone shown.

3. No evidence of injury to facial bones demonstrated."

(iii) Further, he was admitted to Assembly of God Hospital & Research Centre on 27.11.1999 and discharged on 18.12.1999. The recorded diagnosis being as follows:

"Follow-up case of fracture medial malleolus (R) ankle.

A follow-up case of fracture medial malleolus (R) ankle.

Below knee plaster done 21/9/99

Plaster removed 27/11/99

Was admitted for physiotherapy

Adv. To do exercises as shown

Review S.O.S. and after 6 weeks in Orthopaedic OPD on a Tuesday or Saturday."

(iv) Furthermore, on 09.02.2008, he was admitted once again to the Mission of Mercy Hospital & Research Centre and discharged on 14.02.2008 for having sustained injury from falling down from staircase with injury and trauma to right ankle. He was discharged with an indication of a history of fracture Mid Malleolus in 2000 in a RTA (along with head trauma). Asthmatic on Treatment. He was diagnosed Fracture tip of right Lateral Malleolus and P.O.P. was done.

8. In view of the aforesaid certificates, it can only be gainsaid that the applicant never had a past history of accident or was a completely fit and normal person when he had applied against the post, in question. It was the duty of the Medical College to ascertain whether the applicant was a disabled person, instead they banked upon a certificate issued by RGK Medical College and Hospital. Only

because the N.R.S. Medical College & Hospital authorities had not examined him physically in order to ascertain the degree of his disability when referred to by the authorities in September, 2009, the applicant should not be deprived of his livelihood.

9. Since, the extenuating circumstances, as discussed supra, are galore, we direct the authority that issued the impugned order to re-consider the case of the applicant on the basis of available medical reports, with leniency and due sympathy and decide whether to dismiss a handicap on the basis of alleged fake certificate when he has been adjudged as 70% disabled.

10. Let appropriate orders be issued within three months.

11. O.A. is disposed of accordingly. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

RK