

Gotha Ahirwar Vs. National Mineral Development Corp.and ors

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Court : Madhya Pradesh

Decided On : Jun-27-2012

Appellant : Gotha Ahirwar

Respondent : National Mineral Development Corp.and ors

Advocate for Def. : Shri. Anoop Nair

Advocate for Pet/Ap. : Shri. Rajneesh Gupta

Judgement :

1 HIGH COURT OF MADHYA PRADESH : JABALPUR WRIT PETITION
No.6102/2001 Gotha Ahirwar Vs. National Mineral Development Corp. Ltd.,
Hyderabad & others

Shri
Rajneesh Gupta, learned Counsel for the petitioner. Shri Anoop Nair, learned
Counsel for the respondents.

Present : Honble Shri Justice K.K. Trivedi

ORDER

(27/06/2012) This writ petition under Article 226 of the Constitution of India is directed against the order dated 27.01.2001 by which the petitioner has been discharged from service on the basis of recommendation of the Medical Board, as

has been found medically unfit to perform the duties of the post on which he was working in the establishment of National Mineral Development Corporation Ltd. at Panna Diamond Mines (herein after referred to as N.M.D.C. for short).

2. It is contended by the petitioner that in terms of a settlement arrived between the employees union and the N.M.D.C., the petitioner was required to be referred to the Medical Board consisting of the specialists for the purposes of examination whether the petitioner was medically fit or not. The reference was made to the Medical Board but the same was not constituted in terms of the settlement. The said Board gave the report contrary to the certificate issued by the highly qualified institution of the reputed hospital having nationwide authority. Since the reference was No.2 properly made, medical examination was incorrect, the petitioner could not have been discharged from duty. A representation in this respect was made in detail but since nothing was done, he was constrained to file the writ petition before this Court.

3. Briefly stated facts are that the petitioner was working in Panna Diamond Mines Project of the N.M.D.C. on the post of Maintenance Assistant. He was medically examined by the Board and it was found that he was suffering from loss of vision in his eyes. By order dated 27.02.2000, the petitioner was granted six months' time to get the treatment from the Eye Specialist and thereafter was required to be examined by the Medical Board for the purposes of assessing whether he was medically fit to discharge the duty of his post or not. For the purposes of getting treatment, the petitioner was granted 50% of salary with allowances and was not required to discharge the duty for the aforesaid period. A reference was made and the petitioner was sent for treatment to L.V. Prasad Eye Institute, Hyderabad where the operation was performed and after giving him treatment, a certificate was issued that he was fit to resume his duties. Such a certificate was produced by the petitioner before the respondents. He was referred to the Medical Board. The Medical Board gave the opinion that the petitioner was not having the requisite standard of eye sight and was, thus, not entitled to continue on the post held by him, therefore, the order impugned was issued discharging him from the duty. The petitioner made a representation stating that such an action was not justified as in many a cases persons have been sent before the specialist working

in the Medical Colleges of the State Government whereas the petitioner was examined by a Board, which was not consisting of the Eye Specialist and as 3 such only on the basis of such report, the petitioner was not to be discharged. Further the petitioner could have been accommodated in any other post but this too was not done and, therefore, the order impugned was bad in law.

4. In response to the notice of the writ petition issued to the respondents, an exhaustive return has been filed. It was contended that the petitioner was required to have 6/6 eye sight in both the eyes for the purpose of discharging the duties of Maintenance Assistant, on which post he was appointed in the establishment of respondents in Diamond Mines at Panna. It was found that the petitioner was suffering from retinal disease and, therefore, after getting him examined at the hospital as also by the Medical Board, the petitioner was referred to the Eye Hospital at Hyderabad for specialized treatment. All efforts were made to provide medical treatment to the petitioner and after the surgery performed at Hyderabad, the petitioner was re-examined by the Medical Board. A categorical finding was recorded that eye sight of the petitioner has not improved and still the same was 6/18 in both the eyes, therefore, it was held that petitioner was not fit to discharge the duties of the post on which he was working. In terms of the settlement between the employees and the employer, the petitioner was discharged. However, he has been given all the benefits as have been provided in the said settlement. Since it was nowhere prescribed that he will be accommodated on any other post, no right was available to the petitioner to claim alternate employment with the respondents and as such he was rightly discharged from duties.

5. A rejoinder was filed by the petitioner to rebut the allegations made in the return. However, nothing material has been brought on record to indicate that an alternate 4 employment could be offered to the petitioner on account of his medical unfitness to discharge the duties of the substantive post on which he was appointed in the respondent Corporation. This position has been clarified by filing an additional return by the respondents. Thus, it is contended by the respondents that the petitioner is not entitled to any relief and his petition is liable to be dismissed.

6. After hearing learned Counsel for the parties at length and going through the settlement, this Court is of the opinion that such a claim made by the petitioner cannot be granted. Admittedly, there was an agreement between the employees Union and the employer, the respondents herein. The settlement has specifically provided that in case of medical unfitness of an employee, he will be granted liberty to get the treatment of the ailment and in case the ailment is cured, he will be allowed to continue in the employment. There is nothing prescribed in the said agreement that the employer, the respondents, would consider accommodation of any such employee, who is found medically unfit for continuance on any other post in the establishment of respondents. The Maintenance Assistant has specific job responsibilities to discharge. As per the pleadings of the respondents, the vision of such a person should be normal. It is not disputed that the petitioner has developed some disease on account of which he started losing his vision in the eyes. This was detected on a medical examination by the Medical Board. The petitioner was extended all help to get the treatment of the disease and to get the same cured. For the said purpose, not only the petitioner was referred but he was provided financial assistance by grant of half of the pay for a period of six months by the respondent Corporation. The 5 petitioner got himself treated and after the period of six months when again the Medical Board examined the petitioner, no improvement in the eye sight of the petitioner was found. In view of this, if he was medically unfit to hold the substantive post, there was no option left with the respondent Corporation except to discharge the petitioner from his post. In terms of the agreement, all benefits of service have been extended to the petitioner and, therefore, it cannot be said that any improper, unjustified or arbitrary action was taken by the respondents.

7. The only contention raised by the petitioner is that the settlement contains the condition for constitution of the Medical Board, which specifically prescribes that the Medical Board will be consisting of Head of the Project Hospital/Chief Medical Officer and two other Specialists, if available. It is contended that there were two Specialists available but only one Specialist was inducted in the Board. According to the petitioner, such constitution of the Board was not correct. It is contended that the hospital where the petitioner was treated had given a certificate categorically saying that the petitioner was fit to resume his duties. Contrary to

this, finding could not have been given by the Medical Board. Thus, it is contended that the consideration was not rightly done.

8. This Court cannot accept such a submission of the petitioner, firstly because there is provision made in the settlement itself for the constitution of the Medical Board. If two specialists are not available, only one can be inducted in the Medical Board and it cannot be said that the constitution of the Board was not correct. Secondly, the very same Board has examined the petitioner on earlier occasion and has given an opinion that the petitioner was 6 suffering from the eye disease and loss of vision. It was found by the very same Board that in case proper treatment is done, there is chance of improvement of the eye sight of the petitioner. Accordingly, the order dated 22.07.2000 (Annexure P-2) was issued referring the petitioner for treatment. The medical certificate produced by the petitioner do not contain specific finding that the eye sight of the petitioner after the treatment had become normal. The certificate simply says that after the treatment, petitioner is fit to resume his duties. Nothing was opined by the institution, which has issued the said certificate whether the eye sight of the petitioner was fulfilling the standard prescribed for recruitment on the post of Maintenance Assistant or not. Mere recital of the fact that the petitioner is fit to resume the duty cannot be treated as if it was certified that his eye sight was also up to the standard prescribed for appointment on the post of Maintenance Assistant. Secondly, the Board has examined the case of the petitioner as is clearly indicated and has given a definite finding that even after treatment, there was no improvement in the eye sight of the petitioner and same remained 6/18 in both the eyes. This report could have been controverted by the petitioner by getting himself examined in any other hospital. The eye sight of the petitioner was found to be 6/18 even on the date when the re-examination was conducted, as is indicated in medical report annexed as Annexure R-2 with the return. Thus, on the basis of this report, where it was categorically recorded that even after his treatment in L.V. Prasad Eye Institute, Hyderabad, there was no improvement in his eye sight, it cannot be said that Medical Board has not rightly examined the petitioner. Nothing has been placed on record to show that such a report of the Medical Board was not correct. Thus, it cannot be said that any illegality was committed by 7 the respondents in discharging the petitioner from the employment. As has been stated herein above,

as per the settlement, there was no question of considering the claim of the petitioner for grant of alternate employment in the service of the respondent Corporation.

9. In view of the aforesaid, there is no substance in the writ petition. The same deserves to be and is hereby dismissed. However, there shall be no order as to cost. (K.K. Trivedi) Judge Skc

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