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HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (S) No. 1398 of 2014**

Dharamveer Sahu, S/o. Shri Rameshchand Sahu, aged about 30 years, R/o. Near Bus Stand, Shadora, Village Shadora, Tahsil and Police Station Shadora, District Ashok Nagar, Civil and Revenue District Ashok Nagar (Madhya Pradesh), Pin 473330

---- Petitioner

Versus

1. South Eastern Coalfields Limited through the Chairman-cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur, District Bilaspur (C.G.)
2. South Eastern Coalfields Limited through the General Manager (Manpower), South Eastern Coalfields Limited, Seepat Road, Bilaspur, District Bilaspur (C.G.)

---- Respondents

For Petitioner : Shri Awadh Tripathi, Advocate.
 For Respondents : Shri Vaibhav Shukla, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/01/2018**

(1) The petitioner is differently abled person. He applied and selected for the post of ECG Technician and order of appointment was issued in his favour and as per terms & condition of order of appointment, he was put to medical test. The medical Board declared him unfit, which was communicated to the petitioner by order dated 2.12.2013 and by separate order his order of appointment was cancelled subsequently, against which instant writ petition has been filed questioning the above-stated orders.

(2) Mr. Awadh Tripathi, learned counsel appearing for the petitioner would submit that the impugned orders are bad and unsustainable in law because there is no finding that petitioner's physical disability is likely to interfere with the effective performance of his duty as ECG Technician, as such, in absence of that finding, impugned orders passed by respondents/SECL deserves to be set aside.

(3) Per contra, learned counsel for the respondents would submit that the duly constituted Medical Board has considered the case of the petitioner on 25.09.2012, in which, he has been found medically unfit as he is suffering from permanent disability to the right lower limb to the extent of 45% as per AIIMS guidelines and, therefore, the petitioner has rightly been held medically unfit for the post of ECG Technician and orders have rightly been passed cancelling his appointment on said post.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and gone through the record with utmost circumspection.

(5) It is not in dispute that the petitioner is differently abled person; he himself indicated in the application for appointment on the post of ECG Technician that he is suffering from permanent disability to the right lower limb to the extent of 45% and he was selected on the post of ECG Technician.

(6) Minimum physical standard required for recruitment to the

post other than Group "A" as per respondent's prescription states as under:-

"A candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of his duty. He should not be grossly over-weight or under-weight."

(7) The purpose of the policy of selecting persons who are medically fit, is to find the best persons who are physically and mentally fit to discharge their functions and duties attached to the post to which they are appointed. There can be no doubt that if the person appointed is not in a position to discharge the functions and duties attached to the post properly, by reason of any physical or mental infirmity, handicap or disability, that would be a good reason for not selecting that person. Medical fitness may include physical fitness and mental fitness. The terms 'physical handicap' and 'physical disability' normally refer to a problem or condition which makes functioning by such person more difficult, than persons without such problem or condition. In other words, if a person lacks one or more physical abilities either fully or partially, then it would be a physical disability or handicap. The term physical defect refers to a physical impairment. There may be several instances where a physical defect will have absolutely no effect on the discharge of functions of any job/post. Therefore, if there is some physical defect which has absolutely no bearing on the functioning of the person, in relation to the post to which he is appointed, such

physical defect cannot be said to have any relevance for ascertaining the physical or mental fitness for the post. When a person is medically examined to consider whether he is medically fit, as provided in the guidelines, the intention is to find out whether the person has any physical defect which is likely to interfere with the efficient performance of the duties of the post to which he is to be appointed. Therefore, the relevant test is not whether the person is free from defects and deformities, but whether the person has any defect or impediment which will interfere with the normal or efficient functioning of the person in performance of the duties attached to the post.

(8) R.V.Raveendran, J [as then his Lordship was] speaking for Karnataka High Court in the matter of **M. Dinesan Vs. State Bank of India, Bhubaneswar, Orissa**¹ while dealing with the similar issue held as under, which aptly applies to the factual matrix of the present case :-

“20. A physical defect or deformity which in no way interferes with the normal or efficient functioning should not be considered as an absolute bar to public employment, in regard to posts not associated with physical activity. There can be no doubt that a person with only one eye can be rejected if on medical examination he is found to be unfit to discharge the functions normally associated with a supervisory personnel or managerial personnel. Similarly such a person may also

1 ILR 1999 Karnataka 3411

be rejected for the post of a Driver of a vehicle. But, where interference with normal or efficient functioning is not likely, on account of such defect, and medical examination and opinion does not say so, existence of a mere physical defect or deformity by itself cannot be termed as unfitness for a job.....”.

(9) Applying the principles of law laid-down by the Karnataka High Court in the above-stated judgment (supra) to the facts of the present case, it would appear that the petitioner himself indicated in his application for appointment on the post of ECG Technician that he is suffering from permanent disability to the right lower limb to the extent of 50% and the Medical Board declared him medically unfit simply on the ground that he is suffering from permanent disability to the right lower limb to the extent of 45% without further consideration. There is no finding recorded by the Medical Board that the petitioner's above-stated physical disability in the right lower limb would come in his way in discharging his duties as ECG Technician, as such, his physical defect or deformity cannot be said that it will interfere with the normal or efficient functioning in discharge of his duty as ECG Technician. Therefore, there is no reason for the Medical Board to reject the candidature of the petitioner without recording a finding that the petitioner's above-stated physical defect would come in the way interfere with the normal or efficient functioning of petitioner as ECG Technician.

(10) There is one more reason for not upholding the order of the SECL. The SECL is the Government of India undertaking and an

instrumentality of state within the meaning of Article 12 of the Constitution of India and it cannot act arbitrarily, capriciously or perversely. It owes a public duty to act fairly and reasonably and all its actions must be informed with reasons. What is required is mental alertness and mental capability and physical fitness which will ensure efficient discharge of his functions. So long as the defect or deformity has no effect on the efficient and normal functioning of the person, the alleged disability by itself cannot be a ground to disentitle the person for being considered for the post.

(11) In this case, the petitioner has not found to be medically unfit not because that he is suffering from any physical defect, which is material to interfere in the efficient discharge of his duties as ECG Technician, but because of he is suffering from disability of right lower limb to the extent of 45%. When the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted by the Parliament and repealed by The Rights of Persons with Disabilities Act, 2016 to provide equal opportunities to disabled and handicapped person, rejection of petitioner's candidature on the ground of physical disability, which has no bearing on efficient functioning of petitioner as ECG Technician, as such, it is a retrograde step on the part of SECL and such rejection cannot be put a stamp of approval by this Court. The SECL being an instrumentality of State has to treat differently abled persons with due respect which they deserve particularly keeping in view the object of the Act of 1995 as repealed by the Act of 2016.

(12) As a fallout and consequence of the above-stated discussion, the writ petition is allowed and the impugned orders dated 2.12.2013 and 19.3.2013 are hereby set aside. The respondents are directed to consider the case of the petitioner and grant appointment to him on the post of ECG Technician within a period of 30 days from the date of production/receipt of a copy this order. The respondent-SECL is saddled with the cost of ₹ 5000/-.

Sd/-

(Sanjay K. Agrawal)
Judge



HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (S) No. 1398 of 2014

PETITIONER : Dharamveer Sahu

Versus

RESPONDENT: South Eastern Coalfields Limited and another.

Head Note

English

(1) Differently abled persons must be treated with due respect in view of object of The Rights of Persons with Disabilities Act, 2016 to provide equal opportunity to disabled and handicapped persons.

HINDI

(1) निःशक्त तथा विकलांग व्यक्तियों को समान अवसर प्रदान करने हेतु दिव्यांग अधिनियम, 2016 के उद्देश्य को दृष्टिगत रखते हुए अन्यथा सक्षम व्यक्तियों से सम्यक सम्मान से बर्ताव करना चाहिए ।

