



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. 3239/2002

New Delhi this the 20 th day of May, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

Kanhiya Lal Kanak,
S/o Shri Raj Ballabh Pandit,
C/o Shri Dharendra Pandit,
Pocket D-16, House No. 438,
Sector 7, Rohini,
Delhi-110085. ... Applicant.

(By Advocate Shri A.K. Bhardwaj)

Versus

Union of India through
The Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public
Grievances and Pension,
North Block -I, Central Secretariat,
New Delhi. ... Respondent.

(By Advocate Shri Madhav Panikar)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has impugned the order issued by the respondents dated 31.10.2002/5.11.2002 by which he has been declared medically unfit to be appointed to any Service on the basis of the Civil Services Examination (CSE), 2001.

2. The brief relevant facts of the case are that the applicant had appeared in CSE, 2001 and was placed in the select list. He was sent for medical examination before the Medical Board at Safdarjung Hospital which declared him 'Temporarily Unfit' for appointment to Government service on account of Lt. vericocele. Shri A.K. Bhardwaj, learned counsel for the applicant has contended vehemently that temporary unfitness is no bar to

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appointment in Civil Services, including the Indian Police Service, to which the applicant had been selected. The temporary unfitness can be removed by medical treatment. In the present case, the applicant informed the respondents by his letter dated 23.7.2002 that he was undergoing an operation on 30.7.2002 regarding Item No.2, that is Lt. vericocele. With regard to item No.3, that is defective colour vision, he had informed that he was attaching a certificate by an eye specialist which declared his colour vision as 'Normal'. He has, therefore, requested that he be examined by the Appellate Medical Board in addition to re-examination by the First Medical Board.

3. We have heard Shri Madhav Panikar, learned counsel for the respondents who has also submitted the Departmental file which we have perused. The respondents have stated that after giving the applicant sufficient time to have the defect removed, as per the relevant Medical Regulations, the Medical Board was constituted and the applicant was asked to appear before the Medical Board. He appeared before the Medical Board, Safdarjung Hospital on 18.10.2002 for medical re-examination for Lt. vericocele. It was found by the Board that the Lt. vericocele was persisting and consequently, the Medical Board declared him unfit for the job. Shri Madhav Panikar, learned counsel for the respondents has contended that the applicant was give ample opportunity to have the defect of Lt. vericocele cured and then appear for medical re-examination. The re-examination was conducted only after the applicant had informed the respondents that he would undergo necessary operation for removing Lt. vericocele vide his letter dated 30.7.2002. He has,

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therefore, submitted that under the Medical Regulations, no further opportunity can be given to the applicant after re-examination. The Medical Regulations have been meticulously followed and there is, therefore, no ground for further re-examination of the applicant under the Medical Regulations.

4. On the other hand, Shri A.K. Bhardwaj, learned counsel has tried to put forward the case of the applicant on parallel with the Regulations relating to a woman candidate who is pregnant, where the certificate is given after re-examination after a much longer period. Needless to say, the conditions applicable to a female candidate are not at all applicable to applicant's case, especially when the cases are specifically dealt with separately under the Medical Regulations relating to the Physical Examination of Candidates. In the circumstances, we are of the view that the relevant Regulations applicable to the applicant pertain to his being declared temporarily unfit and subsequent developments which took place in his case.

5. Rule 21 of the Civil Services Examination Rules reads as follows:

"21. A candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties as an officer of the service. A candidate who after such medical examination as Government or the appointing authority, as the case may be, may prescribe, is found not to satisfy these requirements will not be appointed. Any candidate called for the Personality Test by the Commission may be required to undergo Part I of the medical examination and the candidate who are declared finally successful on the basis of this examination, may be required to undergo Part II of the medical examination. The details of Parts I and II of the medical examination are given in the Appendix III to these Rules. No fee shall be

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payable to the Medical Board by the candidate for the medical examination except in the case of appeal.

NOTE: - In order to prevent disappointment, candidates are advised to have themselves examined by a Government Medical Officer of the standing of a Civil Surgeon, before applying for admission to the examination. Particulars of the nature of the medical test to which candidates will be subjected before appointment and of the standards required are given in Appendix III to these Rules. For the disabled ex-Defence Services Personnel, the standards will be relaxed consistent with the requirements of the Service (s)".

6. The Regulations relating to the physical examinations of candidates are laid down in Appendix III to the Examination Rules under the heading 'Regulations relating to the Physical Examination of Candidates' (Annexure A-II). Regulation-1 provides that to be passed as fit for appointment, a candidate must be in good, mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties of his appointment. Regulation (2) of the said Regulations provides that "The Government of India reserve to themselves absolute discretion to reject or accept any candidate after considering the report of the Medical Board.

7. Both the learned counsel for the parties have referred to the provisions in the Regulations regarding the Medical Board's report, the relevant portion of which read as follows:

"In case where a Medical Board considers that a minor disability disqualifying a candidate for Government service can be cured by treatment (medical or surgical) a statement to the effect should be recorded by the Medical Board. There is no objection to a candidate being informed of the Board's opinion to the effect by the appointing authority and when a cure has been effected it will be open to the authority concerned to ask for another Medical Board.

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In the case of candidate who are to be declared temporarily Unfit, the period specified for re-examination should not ordinarily exceed six months at the maximum. On re-examination after the specified period these candidates should not be declared temporarily unfit for a further period but a final decision in regard to their fitness for appointment or otherwise should be given.

(Emphasis added)

8. In the case of the applicant, it is indeed most disturbing but relevant to note the certificate issued by a Doctor/Surgeon of "Manoj Narshing Home", Rajendra Chowk, Panapur Langa (Vaishali) dated 7.11.2002 which reads as follows:

"To whom it may concern.

This is to certify that Mr. Kanhaiya Lal Kanak consulted me for the vericocele operation. He was operated by me on 28th July but inadvertently his hydrocele was operated instead of vericocele.

This fact came to my attention only after he was re-examined in Safdarjung Hospital New Delhi".

In view of the above certificate dated 7.11.2002 given by the Doctor who has clearly admitted his inadvertent mistake of operating the applicant for hydrocele instead of vericocele, the findings of the Medical Board on re-examination, following his letter dated 23.7.2002 is correct and cannot be faulted. The facts in the present case reveal a very sorry state of affairs as the applicant is a victim of unfortunate circumstances who was operated by a Doctor at the "Manoj Narshing Home" for a non-existent disease, while leaving the medical condition of Lt. vericocele unattended to. Shri A.K. Bhardwaj, learned counsel has very passionately pleaded that under the Rules, the applicant was required to submit a certificate when he was re-examined, which has not been done and that should save the situation. We are not impressed by this argument as it is not denied by the

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applicant that he was re-examined by the Medical Board at Safdarjung Hospital, only on his own request on 18.10.2002. On his appearance for re-medical examination, that Board had after examining him found that the Lt. vericocele was persisting and, therefore, the Medical Board declared him unfit for the job. Learned counsel for the applicant has also submitted that the applicant had desired in his letter dated 23.7.2002, that he should be examined by the Appellate Medical Board in addition to re-examination by the first Medical Board which were also conditions stated in the respondent's letter dated 8.7.2002 when he was declared temporarily unfit for appointment to Government service on account of Lt. vericocele. The applicant has, however, been examined by the Appellate Medical Board at Ram Manohar Lohia Hospital, New Delhi, for defective colour vision and declared fit for Technical Services.

9. Having regard to the relevant Rules quoted in Paragraph 8 above, as the applicant had earlier been declared temporarily unfit and another Medical Board has re-examined him on 18.10.2002 as per his own request, there appears to be no infirmity in the impugned order passed by the respondents dated 31.10.2002/5.11.2002 declaring him medically unfit for appointment to IPS/Government Service on the basis of the CSE, 2001. In other words, as the Medical Board could not have declared him again temporarily unfit on re-examination they were required to give a final decision in regard to his fitness for appointment or otherwise. Considering the fact that the certificate from the Doctor at "Manoj Narshing Home" dated 7.11.2002 itself states that he had not been operated for LT vericocele, the opinion of the Medical

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Board at Safdarjung Hospital after re-medical examination on 18.10.2002 is neither wrong or arbitrary or against the relevant Medical Rules and Regulations. In the facts and circumstances of the case, the further contentions of the learned counsel for the applicant that the medical certificate should specifically state that his medical unfitness will interfere with his work in case he is appointed to any Service on the basis of the CSE, 2001 which it has not done, cannot be accepted as the respondents have complied with the provisions of the relevant Rules/Regulations.

10. It appears that later on vide letter dated 16.11.2002, the applicant has written to the respondents that subsequently he has been operated for LT varicocele at Sir Gangaram Hospital, New Delhi on 14.11.2002. He has also enclosed a copy of the certificate to this effect. In the circumstances, he has prayed that he may now be declared fit by another third Medical Board. The O.A. has been filed on 10.12.2002 for a direction to the respondents to get him re-examined and to give him consequential appointment to IPS on the basis of the CSE, 2001.

11. As mentioned above, the applicant has been a victim of unfortunate circumstances at the hands of a medical practitioner at Vaishali, but at the same time the respondents cannot also be held to have taken any illegal action de hors the relevant Rules while issuing the impugned order dated 31.10.2002/5.11.2002. The applicant has, however, also not shown sufficient care and prudence which would be expected from a normal person in his own case wanting to join an All India Service.

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12. The applicant belongs to the OBC category. The respondents have submitted that initially one OBC vacancy was kept reserved for the applicant, keeping in view that he was declared temporarily unfit on account of Lt. vericocele and was given an opportunity for medical re-examination. Subsequently, Lt. vericocele was found to be persisting on re-examination and he was declared finally unfit for appointment to the service. Consequently, the vacancy kept reserved for the applicant has been released and filled by another OBC candidate next in merit. In the circumstances, the respondents have submitted that since all the OBC vacancies have been duly filled up, the prayer of the applicant for conducting another re-examination to determine his physical fitness for Government service would be of no avail as no OBC vacancy exists on the basis of the CSE, 2001. In the absence of such a vacancy he cannot be considered for appointment even if he is found to be free from medical defect on further re-examination. Accordingly, they have stated that the applicant's case has become infructuous and the application may be dismissed.

13. The learned counsel for the applicant has submitted that since six months as provided under the Regulations (supra) was not over before the applicant again submitted himself for second medical re-examination in November, 2002, the respondents' action was illegal. He has also contended that the respondents ought not to have hurried in appointing another OBC candidate who was below him in merit. These contentions cannot be accepted because the period mentioned in the Regulations is what is the normal outer limit for such re-examination and not

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that the respondents cannot take an appropriate decision in the matter, on the representation made by the applicant himself within the period of six months. In the circumstances and interpreting the Regulations quoted in Para 7 above in its plain meaning, the respondents' actions cannot be held to be illegal, hurried or arbitrary as contended by applicant's counsel to justify any interference in the matter exercise of the power of judicial review. It is relevant to note that the applicant wants to be appointed in a prestigious service like the IPS. Under the Regulations, the candidates had also been informed to get themselves examined earlier so as to satisfy themselves that they fulfil the prescribed conditions.

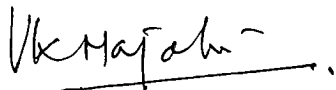
14. So the applicant cannot insist that under the Regulations he has a right to be medically re-examined another time although in the particular facts of the case we recommend this purely on sympathetic considerations and also the fact that he belongs to OBC category. In view of the above, the OA fails and is liable to be dismissed.

15. However, we note from the facts mentioned above that the applicant is a victim of unfortunate circumstances at the hands of a Doctor who has admitted his fault in wrongly operating the applicant for hydrocele instead of vericocele on 7.11.2002. This negligence on the part of the Doctor, which he has categorically admitted is a matter for the competent authority, that is the Indian Medical Council (IMC) to look into and take appropriate action under the relevant Act, to ensure that such incidences do not recur in the public interest. Accordingly, as an exceptional case, in case the applicant

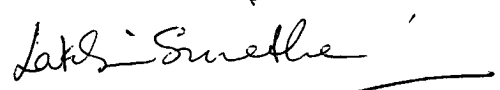
is now found medically fit it is left open to the respondents to consider appointing him, if he is otherwise qualified to be placed in the Indian Police Service on the basis of the CSE, 2001, against any available or future vacancy for OBC category in CSE. We, however, make it clear that this will not be treated as a precedent nor the applicant will be entitled to any claims for seniority, back wages or any other benefits if he is so appointed by the respondents.

16. In the result, the O.A. fails and is dismissed, subject to the observations made above. No order as to costs.

17. Let a copy of this order be issued to the President, Indian Medical Council, New Delhi for further necessary action as the Council deems fit, with reference to the Medical Certificate dated 7.11.2002 issued by the Doctor, referred to above.



(V.K. Majotra)
Member (A)



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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