

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 302 of 2017

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Sri Pareswar Dash, aged about 35 years, Son of Maheswar Dash, At.-Ranabhanjapur, P.O. _ Kharashpur, Dist. – Balesore, Odisha – 756046.

.....Applicant.

VERSUS

1. Secretary, Union Public Service Commission, Dholpur House, Sahajan Road, New Delhi – 110069.
2. Union of India, represented through Secretary, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training, Room No. 209 C, North Block, New Delhi.
3. Chairman, Medical Board, Room No. 236, 2nd Floor, OPD Block, Ram Manohar Lohia Hospital, New Delhi.

.....Respondents.

For the applicant : Mr. N. R. Routray, Advocate

For the respondents: Mr. S. Behera, Advocate

Heard & reserved on : 11.02.2020

Order on : 13.05.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *To quash the impugned orders of rejection dtd. 29.09.2015 and Aug, 2016 under Ann. – A/9 & A/12 respectively;*
- (ii) *And to direct the Respondent No. 2 to send the applicant to appear before the Appellate Medical Board at Guru Nanak Eye Center, New Delhi;*
- (iii) *And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;*

2. The case of the applicant in brief is that in pursuance to notice vide Annexure A/1 he had appeared in personality test as seen from Annexure A/3. He had submitted his disability certificate vide Annexure A/5 which was issued by District Hospital, Balasore. The medical board at Lok Nayak Jai Prakash Narayn Hospital had assessed his visual disability as 30% as seen from Annexure A/6. The applicant appeared in medical re-examination on 05.09.2015. Subsequently the respondent No. 2 intimated the applicant as per letter vide Annexure A/9 dated 29th September 2015 that he is not entitled for allotment of any service on the basis of examination in question, as he was not found to be physically handicapped. Accordingly his candidature was cancelled for the said examination. As per the direction of this Tribunal passed in OA No. 293/2016, vide Annexure A/11, respondents No. 2 was directed to dispose of representation dated 04.04.2016 of the applicant. Since his representation was rejected as per order vide Annexure A/12, therefore he filed the present O.A. seeking the reliefs in question.

3. In the counter the Respondents have inter alia averred that the medical examination of the applicant was scheduled at Central Standing Medical Board (CSMB), Lok Nayak Jai Prakash (LNJP) Hospital, New Delhi on 07.05.2015 by the Respondent as per CSE Rules – 2014. CSMB, LNJP Hospital informed that the medical examination of the applicant was incomplete and he was provided second opportunity for completion of his medical examination on 20.07.2017 vide Department's notice dated 15.07.2015 (Annexure –

R1). CSMB, LNJP Hospital further informed that the applicant did not appear before them on schedule date i.e. 20.07.2017, hence he was provided third opportunity for completion of medical examination on 03.08.2015 vide Department's notice dated 25.07.2015 (Annexure R3). CSMB, LNJP Hospital after consultation with Guru Nanak Eye Centre (GNEC) declared the applicant in its medical examination report (Annexure R/3) as:

“Visual Disability is 30% (Thirty) which is less than Disability Criteria”.

After the medical examination report of the applicant was uploaded on Department's website he was provided a chance to prefer an appeal against the findings of the CSMB, LNJP Hospital as per CSE Rules-2014. The applicant appealed and accordingly, as per CSE Rules – 2914 the applicant's Appellate Board Medical Examination was scheduled at Appellate Medical Board (AMB), Dr. Ram Manohar Lohia (RML) Hospital, New Delhi on 29.08.2015 vide Department's notice dated 19.08.2015, which would have otherwise been scheduled at GNEC if he had not already been referred to GNEC by CSMN, LNJP Hospital earlier since it is evident from the medical examination report of the applicant that he had been medically examined at GNEC, New Delhi before the final findings in his respect was provided by the CSMB, LNJP Hospital. The Appellate Medical Board, Ram Manohar Lohia (RML) Hospital vide letter dated 01.09.2015 informed that the applicant appeared before AMB on 29.08.2015 but did not submit medical certificate in prescribed pro forma in support of his claim at the time of re-

medical examination and he was asked to appear again before medical board on 05.09.2015 and further on request of the AMB since 05.09.2015 happened to be Gazetted holiday the applicant was directed to appear before the Appellate Medical Board RML Hospital on 12.09.2015 at 09.00 a.m. The AMB Dr. Ram Manohal Lohia Hospital vide its report dated 12.09.2015 declared him as **20% visual handicap.** On the basis of the medical findings provided by the CSMB, LNJP Hospital after consultation with GNEC Hospital and Appellate Medical Board, RML Hospital, candidature of the applicant was cancelled as per CSE Rules-2014 as he did not meet the minimum criteria of Benchmark Disability of 40% to be considered as Physically Handicapped candidate and he was informed vide order dated 29.09.2015 (Annexure R/4). The applicant then filed OA No. 293/2016 in this Tribunal. The Hon'ble Tribunal vide order dated 18.05.2016 directed following:-

"We dispose of this O.A. at the stage of admission by directing Respondent No. 2 to consider the representation dated 04.04.2016, if the same is still pending, as per the extant Rule and communicate the result thereof to the applicant by way of a reasoned/speaking order within a period of 02 (two) months from the date of receipt of a copy of this order."

As per the Hon'ble Tribunal's order a speaking order dated 09.08.2016 (Annexure – R/5) was issued to the applicant.

The Respondents further averred that as Per Rule 6 (II) of the Appendix-III of CSE Rules-2014 (Annexure R/6):-

“ II. In case of doubt regarding health of a candidate the Chairman of the CSMB may consult a suitable Hospital Specialist in the designated hospital to decide the issue of fitness or unfitness of the candidate for Government Service e.g. if a candidate is suspected to be suffering from any mental defect or aberration, the Chairman of the Board may consult a Psychiatrist, Psychologist, etc. in the designated hospital.”

Applicant’s Medical tests had already been conducted at Guru Nanak Eye Centre as he was referred to GNEC by CSMB, LNJP Hospital which is as per CSE Rules. Further, Rule 2.4 of the Appendix III of CSE Rules-2014 provides as:

“2.4. Candidates requiring Appellate Specialized Medical Board for eye conditions may be sent to Guru Nanak Eye Centre, New Delhi.”

As per CSE Rules Appellate Board Medical Examination of the applicant should had been scheduled at Guru Nanak Eye Centre. However since CSMB, LNJP Hospital had already referred the applicant to GNEC for eye related test it would not be appropriate to send the applicant to same hospital again where his medical examination/test had already been done.

4. It is seen from copy of the documents filed by the respondents along with counter that the applicant was examined by Appellate Medical Board comprising of three specialist at Dr. Ram Manohar Lohia Hospital, New Delhi on 12.09.2015. They found that the applicant has got 20% visual handicap. The signature of the applicant was also taken on the said document. Under the circumstances it is not proper on the part of the applicant to claim that he was not examined by any such medical board. This Tribunal cannot dis-believe the said documents in the facts and circumstances of the present case and in absences of any compelling grounds or materials produced by the applicants in this regard. Since the applicant was not found to be medically disabled as per the requirement of the respondents, therefore, he was not found qualified to avail physically disabled candidate.

5. In the rejoinder it has been *inter alia* mentioned by the applicant that the applicant is not against the opinion of appellate medical board but he has challenged the action of the respondents in not following the procedure established by the law. By adopting wrong procedure the result may be erroneous. Besides that the department was not following the procedure as per the law as mentioned in para 8 of page 30 of the counter. If the contents of the applicants is accepted for the sake of the argument then the applicant should have been sent to Guru Nanak Eye Centre Hospital as per the rule in question. In that case if the result would have gone against the applicant, then certainly the plea of bias could have been raised since they had done first medical

examination. It is settled principle of law that a man cannot be judge of his own cause, therefore in the present case the medical board of Guru Nanak Eye Center Hospital having already examined the applicant earlier, it could not have been proper for them again to examine him by forming one appellate board in the same institution. Therefore both on the ground of propriety and to make the system transparent and to avoid any allegation of bias against the authority, the respondents have not preferred to again send the applicant to same medical institution as it was not mandatory to do so. Therefore this Tribunal does not find any irregularity or illegality committed by the respondents by following the procedure in question. No malafide or biasness has been put against the respondents.

6. Though it was submitted by the Learned counsel for the applicants that the ground for which the appellate board for medical examination of the applicant was scheduled at RML Hospital, New Delhi, with the approval of the Competent Authority has been mentioned at Para 8 of Annexure A/12 and the same has also been reiterated by Learned counsel for the Respondents, Para 8 of Annexure A/12 reads as follows:

“Whereas, as per records available i.e. medical report of the Shri Pareswar Dash, it is found that the candidate had already been referred to Guru Nanak Eye Center (GNEC) by Central Standing Medical Board, LNJP Hospital before giving their medical findings in respect of Shri Pareswar Dash. Therefore, as per practice, candidate’s appellate board

medical examination was to be scheduled at hospital other than GNEC. Accordingly, his appellate board medical examination was scheduled at RML Hospital New Delhi, with the approval of competent authority.”

7. This Tribunal is satisfied that there is nothing wrong under the circumstances, in sending the applicant to RML Hospital for his medical examination by appellate medical board, without sending him to Guru Nanak Eye Centre or to the Central Standing Medical Board, LNJP Hospital again since the applicant was earlier medically examined at Guru Nanak Eye Center Hospital. This was done in order to have transparency and to avoid allegation of bias against the applicant.

8. Therefore this Tribunal doesn't find any sufficient reason to interfere in the matter. Just because some allegations and claims have been made by the applicant against the concerned authorities, it cannot be said that those have been duly proved or has reasonable basis. In the circumstances there is nothing to disbelieve the version of the respondents regarding the transparent and impartial procedure followed by them in examining the applicant for the medical test in question. It has been specifically mentioned in para 6 of the counter “that on the basis of the medical findings provided by the Central Standing Medical Board, LNJP Hospital after consultation with GNEC Hospital and Appellate Medical Board, RML Hospital, candidature of Shri Pareswar Dash was cancelled as per CSE Rules-2014 as he did not meet the minimum criteria of Benchmark Disability of 40% to be considered

as Physically Handicapped candidate and the candidate was informed accordingly vide order dated 29.09.2015." The said aspect also finds support from the document i.e. Medical report dated 12.09.2015 which is at page 27 filed along with the counter.

9. Under the circumstances this Tribunal is satisfied that no illegality or irregularity has been committed by the respondents. Hence this OA being devoid of merit is dismissed, but in the circumstances without any order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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