

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 782/2012

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

Sitoshna Sahoo, aged about 32 years, W/o Saroj Kumar Sahoo,
E/59, CGP Colony, Rasulgarh, Bhubaneswar, Dist-Khurda.

.....Applicant

VERSUS

1. Union of India, represented through Secretary, Ministry of Mines, Govt. of India, New Delhi.
2. Director, Ministry of Mines, Shastri Bhawan, New Delhi.
3. Secretary, Union Public Service commission, Dholpur House, Sahajahan Road, New Delhi.

.....Respondents

For the applicant : Ms.B.K.Pattnaik, counsel

For the respondents: Mr.J.K.Nayak, counsel

Heard & reserved on : 29.11.2019

Order on : 05.12.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant, by filing this OA, has sought for the following reliefs:-

- (i) To direct the respondents to appoint the applicant as Geologist in pursuant to her selection under Annexure A/3.
- (ii) To quash the order dtd. 8.2.08 under Annexure A/4.
- (iii) To direct the respondents to grant all financial and consequential benefits from the date, when others have been appointed.
- (iv) To pass such further order/orders as may be deemed just and proper in the facts and circumstances of the case and allow the original application."

2. The applicant, after qualifying the written examination for the selection to the post of Geologist (Junior), which was being held by the Union Public Service Commission (in short UPSC), has appeared in the personality test on 26.9.2010. After completion of the personality test, the UPSC published the result (Annexure-A/3), in which, the applicant was included in the select list. Thereafter, he was asked to appear in the medical test by the standing board of Safdarjung Hospital. And after medical examination, the applicant was declared 'unfit' on the ground of high myopia and substandard vision, vide order dated 4.2.2008 (Annexure-A/4).

3. The applicant preferred an appeal before the respondents to consider her case. As stated in the OA, no action was taken on the appeal in spite of several representations. On the representation through the Member of Parliament, she

was informed that her case was not approved for re-medical examination vide order dated 11.1.2010 (Annexure-A/5). The applicant submitted a representation dated 25.4.2011, 16.5.2011 and 13.12.2011 (Annexure-A/6 series) stating that the Myopia is a common disease and she can do the work with spectacles.

4. Counter filed by the respondents stating that the OA is barred by limitation since there was delay on the part of the applicant to approach the Tribunal. It is also stated that the applicant has not exhausted alternative remedy before approaching the Tribunal. It is further stated in para 11 of the Counter as under :

“That the decision of the hospital was conveyed to the applicant vide this ministry letter dt. 4.2.2008 stating that if she was not satisfied with the judgment of Medical Board; she can appeal before the Government along with the evidence about the possibility of an error of judgment in the decision of the first Board. The applicant made an appeal dt. 4.3.2008 against the judgment of the safdarganj Hospital. Her case was referred to the Dr. RML Hospital for their options (Appeal case) vide ministry’s of mines letter dt. 24.3.2008. The Dr. RML Hospital conducted the re-medical examination of the applicant on 3.5.2008, whereby she was declared medically unfit on account of Myopia more than 4D in both the eyes. Thereafter, in response to the applicant’s representation for 3rd time re-medical examination, forwarded by Shri Rama Chandra Khuntia, Hon’ble Member of Parliament (Rajya Sabha) was again referred to Dr.RML Hospital for sympathetically consideration. The said Hospital vide its letter dt. 9.11.2009 had informed ‘that there is no provision of another appeal once a candidate has been declared UNFIT by the Standing Medical Board and subsequently appellate medical Board’. The same was conveyed to the applicant vide this ministry letter dt. 11.1.2010.

It is respectfully submitted that moreover the fundamental Rule-(FR)-10 states as under :

“Except as provided by this rule, no person may be substantively appointed in India to a post in Government service without a medical certificate of health. The Central Govt. may make Rules prescribing the form in which medical certificate should be prepared, and the particular medical or other officers by whom they should be signed. It may, in individual cases, dispense with the production of a certificate, and may be general orders exempt any specified class of Government servants from the operation of this rule.”

Further FR-10(2) categorically states “No discretion to ignore certificate declaring one unfit.” That the DoPAR’s OM dated 26.6.1979 also states as “It has been decided that in no case should a person be allowed to join Government service in a pensionable establishment without having been medically examined and found fit.”

5. Heard learned counsel for the applicant. She submitted that as per the rules dated 17.6.2006, there is no provision in the rules to specify that the applicant can be declared medically unfit for Myopia after qualifying in the examination for selection of Geologist (Junior). It was further argued that myopia can be cured now-a-days and hence, for such reason, the applicant cannot be declared medically unfit.

6. Learned counsel for the respondents was heard and he submitted a written note of submissions, reiterating the stand taken in the Counter. It was

submitted that the applicant was examined by the Standard Medical Board on 27.9.2007 and was declared 'unfit' vide the certificate at Annexure-B to the written note. I

7. It was further submitted by the learned counsel for the respondents that the appeal filed by the applicant, the matter was referred to RML Hospital and the applicant was re-examined on 3.5.2008. On re-examination the applicant was declared 'unfit' vide the report of the Appellate Medical Board at Annexure-C of the written note. On receipt of another representation through the Member of parliament, her case was referred to RML Hospital, which informed that there was no provision for another appeal. The provisions of the FR-10 are cited in the written note in support of the respondents' case.

8. The respondents' counsel in the written note, has relied on the following judgments:-

- i) ICAR & Anr. -vs- Smt. Sashi Gupta [AIR 1994 SC 1241]
- ii) Deepak Kumar -vs- Union of India & Ors. [WP (C) No.13159 of 2009]

The judgments lay down the principle that the employer has the inherent right for assessing the medical fitness of the candidates through examination by the medical board as per the rules, which cannot be overlooked by the Tribunal and that the Tribunal has no jurisdiction to quash the medical report. It is also submitted in the written note that the applicant's case is not that she had corrected her vision to the medical standard fixed by the respondents.

9. Learned counsel for the applicant has submitted written notes of argument, reiterating her contention that the applicant cannot be disqualified on the ground of myopia. After discussing the requirement as per the Regulations dated 17.6.2006, it is stated that the requirement of the myopia not exceeding 4.00D, has been mentioned in the 'Note' and not on the main regulations. Hence, it was contended that myopia is not the "main essential requirement" for the post in question. It is further stated that as per the information received by the applicant under the RTI Act vide letter dated 3.1.2012 (Annexure A/7), the letters dated 25.4.2011 and 16.5.2011 have been sent to GSI for consideration.

10. We have considered the pleadings as well as the submissions by learned counsel for the parties. The rules dated 17.6.2006 have the following provisions for the medical fitness for the candidates with regard to the vision vide 'Regulations Relating to the Physical Examination of Candidates' in the Appendix-II of the Rules dated 17.6.2006:-

“6. The candidate’s eye-sight will be tested in accordance with the following rules. The result of each test will be recorded.

- (i) General:- The candidate’s eye will be submitted to a general examination directed to the detection of any disease or abnormality. The candidate will be rejected if he suffers from any squint or morbid conditions of eyes, eyelids or continuous structure of such a sort as to render or are likely at a future date to render him unfit for service.
- (ii) Visual Acuity:- The examination for determining the acuteness of vision includes two tests, one of the distant, the other for near vision,. Each eye will be examined separately.

There shall be no limit for minimum naked eye vision but the naked eye vision of the candidate shall however be recorded by the Medical Board or other medical authority in every case as it will furnish the basic information in regard to the condition of the eye.

The standard for distant and near vision with or without glasses shall be as follows :

Distant		Near Vision	
Better eye	Worse eye	Better eye	Worse eye
6/9	6/9	0.6	0.8
or	Or		
6/6	6/12		

Note: (1) total amount of Myopia (including the cylinder) shall not exceed 4.00 D. The total amount of Hypermetropa (including the cylinder) shall not exceed 4.00D.”

11. The applicant has challenged the order dated 4.2.2008 (A/4) which was based on the Standard Medical Board examination. The averment of the respondents at para 11 of the Counter that the applicant was medically examined again by the Medical Board of the RML Hospital on 3.5.2008 has not been contradicted by the applicant. Hence, it is clear that the cause of action had arisen in the year 2008, when her case was declared as medically unfit by two medical boards. Challenging the decision taken on 4.2.2008 on the basis of first medical examination in this OA is clearly barred by limitation under section 21 of the Administrative Tribunals Act, 1985, as there is no separate application for condoning the delay in filing the OA with explanation for such delay. Hence, the OA is liable to be dismissed on the ground of limitation.

12. On merit of the case, the medical fitness for the post of Geologist (junior) with regard to vision specify under the rules as under :-

“Total amount of Myopia (including the cylinder) shall not exceed 4.00D. The total amount of Hypermetropia (including the cylinder) shall not exceed 4.00D.”

The report of the Medical Board of the RML Hospital on re-examination of the applicant on 3.5.2008 stated that applicant’s myopia is more than 4D. Learned counsel for the applicant in the written statement has argued that myopia is not the main essential requirement as it is specified under ‘Note’. We are unable to agree with such contention. All the specifications under the regulations including the requirements specified under the ‘Note’ are applicable

for the purpose of assessing medical fitness and there is nothing on record to show that the specifications mentioned under 'Note' are not to be followed.

13. From the above discussions, it is clear that the case of the applicant's medical fitness has been examined by two medical boards at Safdarjung Hospital and RML Hospital. After the case has been re-examined by another medical board of RML Hospital on appeal of the applicant and she was found medically unfit, there is no scope under the rules for another examination of the applicant. The applicant's contention that there is no stipulation in the rules regarding myopia is not acceptable, in view of the provision that the myopia should not exceed 4.00D. Regarding the curability of the condition, nothing prevented the applicant to undergo necessary treatment for correcting the vision as per the requirement after first medical examination by the Standard Medical Board at Safdarjung Hospital.

14. In view of the above discussions, the OA is liable to be dismissed both on account of limitation as well as on merit and there is no scope for interference of this Tribunal in the matter. Accordingly, the OA is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)