

Central Administrative Tribunal  
Principal Bench: New Delhi

(9)

OA No.1947/95

New Delhi this the 18th day of July 1996.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)  
Hon'ble Mr K.Muthukumar, Member (A)

Ravinder Kumar  
S/o Sh. Raghbir Singh  
R/o 347, Baniawara  
Village & P.O. Pooth Khurd  
Delhi-110 039.

...Applicant.

(By Advocate: Sh.Shankar Raju)

Versus

1. Secretary  
Ministry of Health & Family Welfare  
Nirman Bhawan  
New Delhi.

2. Director General  
Dte. General of Health Services  
Nirman Bhawan  
New Delhi.

3. The Medical Superintendent  
LNJP Hospital  
New Delhi-110 002.

4. The Commissioner of Police  
Police Headquarters  
M.S.O.Building  
I.P.Estate  
New Delhi.

...Respondents.

(By Advocate:

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

This is an unfortunate case of a young man who was thrown out at the threshold of a career in the Delhi Police. He being successful in the selection process for appointment to the post of Sub Inspector in the Delhi Police was examined for ascertaining his physical fitness. Unfortunately for him, the Medical Superintendent, Civil Hospital, Delhi at his examination on 2.11.93 found the applicant unfit to hold the post of Sub Inspector and declared him unfit vide certificate at Annexure A.2, on the ground that he was suffering from "Old Fracture Left Elbow Malunion" (Restricted Movement Extension). At the request of the applicant, he was sent for a second medical examination

by a medical board constituted in the LNJP Hospital and he was examined by the Medical Board on 3.1.94. The doctors who examined him directed X' Ray to be taken and he was advised treatment. Accordingly, he had undergone surgical treatment. However, before the treatment was completed, the Medical Board communicated its finding that the applicant was unfit vide report dated 17.5.95. The applicant took up the matter with the department as also the medical authorities. In one letter sent by Dr. S.K.Malik, Chairman, Medical Board on 5th Aug. 1994 to the Commissioner of Police, referring to his letter on the request of the applicant for review of the decision, it was mentioned that after the Orthopaedics Sugeon declared him fit, the applicant might request for the Appellate Medical Board so that the case could be reviewed in proper perspective and a final opinion would be given by appellate medical authority. However, ultimately, Director General of Health Services gave a decision that it was not possible to conduct a third medical examination as there was no provision in that regard under the rules. In these circumstances, the applicant was informed by the impugned order dated 22.9.95 by the Deputy Commissioner of Police, the fourth respondent that his request for further examination by a third Medical Board could not be acceded to as the Director General of Health Services had said that ' there is no provision for constituting of a third medical board'. It is aggrieved by that and the action of the respondents in not appointing him as a Sub Inspector in the Delhi Police on the basis of his selection, the applicant has filed this application under Section 19 of the A.T. Act, praying for quashing the order dated 22.9.95 (Annexure A-1) and for a direction to the respondents to appoint him as a Sub Inspector.

2. Though respondents 1 & 2 were served notices, none appeared. Respondents 3 & 4 entered appearance through learned counsel Ms. Jyotsana Kaushik and Mr Raj Singh respectively. They have filed replies opposing grant of relief.

3. We have perused the pleadings on record and have heard Mr Shankar Raju, learned counsel for the applicant and Ms Jyotsana Kaushik and Mr Raj Singh for respondents. Coming to the facts and circumstances emerging from the pleadings and various materials placed on record, we are unable to find any infirmity in the decision taken either by the Commissioner of Police or by the Director General of Health Services. According to provisions of SR 4, only a second Medical Board is permissible and that too, when the competent authority has decided that it is necessary to constitute a second medical board. There is no provision for a third Medical Board. The second Medical Board has, after examining the applicant on 3.1.94 and after getting his X' Ray taken, confirmed the opinion that he was unfit to hold the post of Sub Inspector and made a report to that effect though belatedly on 17.5.95. It is true that later Dr. S.K.Malik who subsequently became Chairman of the Medical Board had written to the Commissioner of Police in reply to his letter that as and when Orthopaedics Surgeon declared the applicant fit, he might apply for Appellate Medical Board when a final decision would be taken by the Appellate Medical Board. This letter of Dr. S.K.Malik does not confer on the applicant any right, as such a right is not available under the rules. A right which is not available under rules cannot be granted by a medical officer. The matter was again considered by the Director

General of Health Services and it has been held that as there was no provision for a third medical examination, the request of the applicant could not be acceded to. This decision which is in conformity with rules cannot be faulted at all, though the facts and circumstances of the case are very unfortunate. What the Medical Board was constituted for really was to examine the applicant and to ascertain and report his fitness or unfitness on the date of his examination. That was done on 17.5.95. May be after the surgical intervention, the condition of the applicant bettered and now he may be probably fit but that was not what the Medical Board was called upon to say.

4. In the light of what is stated above, we do not find any legitimate grievance of the applicant which could be redressed, and therefore, we dismiss the application, leaving the parties to bear their own costs.

  
(K. Muchukumar)  
Member (A)

  
(A.V. Haridasan)  
Vice Chairman (J)

A.Ashraf