

(S)
(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.2552/94

New Delhi this the 4th Day of August, 1995.

Hon'ble Sh. J.P. Sharma, Member(J)
Hon'ble Sh. B.K. Singh, Member(A)

Shri Gaurav Kumar,
S/o Sh. Ravi Kumar,
R/o 33/26, Rajpur Road,
Delhi-54.

Applicant

(through Sh. V.K. Rao, advocate)

versus

1. Union of India,
through the Secretary,
Ministry of Personnel,
Public Grievances & Pension,
North Block, New Delhi.

2. The Secretary,
Ministry of Finance,
Administration-II,
North Block,
New Delhi.

Respondents

(through Sh. V.S.R. Krishna, advocate)

ORDER(ORAL)

delivered by Hon'ble Sh. J.P. Sharma, Member(J)

The applicant appeared in Civil Services Examination in 1993 and he was provisionally allotted to Indian Police Service. He was put to a medical examination including physical test for the technical post which are I.P.S. and Indian Railway Traffic Service and other Central Police Services Group-B and Group-A posts in the Railway Protection Force. The Union Public Service Commission has prescribed standards in Appendix-III of the advertisement, a copy of which has been annexed with the O.A. as Annexure A-6. For Indian Police Service Group-A posts in Railway Protection Force and other Central Police Services Group-B, the height should be 165 cm, the

chest expanded should be 84 cm and expansion should be 5 cm for men. The aforesaid instructions also lay down the manner in which the measurement of chest will be taken and i.e. reproduced below:-

"The candidates chest will be measured as follows:

He will be made to stand erect with his feet together and to raise arms over his head. The tape will be so adjusted round the chest that its upper edge touches the inferior angles of the shoulder blades behind and lies in the same horizontal plane when the tape is taken round the chest. The arms will then be lowered to hang loosely by the side and care will be taken that the shoulders are not thrown upwards or backwards so as to displace the tape. The candidate will then be directed to take a deep inspiration several times and the maximum expansion of the chest will be carefully noted and the minimum and maximum will then be recorded in centimetres 84-89 86-93.5 etc. In recording the measurements fractions of less than half a centimetre should not be noted.

N.B.- The height and chest of the candidates should be measured twice before coming to a final decision."

By the letter dated 15.12.94 the applicant

was offered an appointment to Group-A in Indian Customs & Central Excise Service. Earlier the applicant by the letter dated 4.7.94 was informed by Department of Personnel & Training that because of sub-standard chest he has been declared unfit for Police Services (IPS/CISF/RPF/ and Group-B Police Services including CBI) and further he was also declared unfit for Railway Services (IRTS/RPF) on account of sub-standard chest. The applicant has also made representation to that effect and thereafter he filed the present application in December, 1994 praying for the grant of reliefs that the direction be issued to the respondents to treat the applicant medically fit in view of the certificate

le

issued by the reputed doctor dated 21.12.94 or in the alternative the respondents be directed to re-measure the chest of the applicant by a properly constituted Medical Board and on the basis of that result the respondents be directed to give allotment to the applicant in Indian Police Service.

On notice the respondents filed their reply stating that the applicant was examined as per rules and the minimum standard for chest girth without which a candidate cannot be accepted to the Indian Police Service is 84 cms. fully expanded with 5 cms expansion for men and 79 cms fully expanded with 5 cms expansion for women. The physical requirements are mandatory and under no circumstances relaxation is allowed. It is stated that when he was examined by the Medical Board the girth of his chest after full inspiration was 81 cms and full expiration 77 cms. Thus, the chest expansion was less than 5 cms and it could be expanded only 4 cms and the chest after full inspiration is required to be 84 cms. The Appellate Medical Board also declared him unfit because of sub-standard chest measurement and chest expansion and he could not be allotted to the I.P.S.

The applicant has also filed rejoinder reiterating the facts already taken in the application. It is stated that the applicant fully satisfy the physical requirements and standard for the post of I.P.S.

↓

12

We heard the learned counsel for the parties at length and perused the record. We also summoned the medical report of the applicant. The applicant appeared before the Medical Board. On physical examination his height was taken as 173 cms, wieght 51 kgs, the girth of chest after inspiration as 81 cms and after full inspiration 77 cms. The applicant was initially medically examined on 13.6.94 when he was declared unfit for technical services on account of sub-standard chest measurement. On 11.10.94 the measurements by the Appellate Medical Board were taken and chest after inspiration, it was found 78 cms and after expiration it was found 83 cms but the expansion was of the required prescribed standard of 5 cms. We find that there is a material difference in the examination conducted by the Medical Board and the Appellate Medical Board. Earlier after inspiration the measurement was taken as 77 cms while Appellate Medical Board on re-measurement after about 4 months founded 78 cms and after full inspiration earlier by the Medical Board it was 81 cms. while the Appellate Medical Board on full inspiration found 83 cms.

The contention of the applicant's counsel is that both the Medical Board as well as Appellate Medical Board have not taken the measurements of the chest twice as is not exhibited in either of the reports. The note below para-4 quoted above clearly show that twice the measurements have to be taken. The report placed before us does not show that measurements have been taken twice. The contention of the respondents' counsel is that the note, aforesaid

Je

para-4) only makes obligatory for the Medical Board or Appellate Medical Board to measure twice and did not require noting measurements and only indicating conclusion. But when a fact is challenged on the basis of another certificate filed and we find that the opinion found of the Medical Board or the Appellate Medical Board does not show the measurements taken twice as per the required instructions and that the applicant has to be re-examined by the same Appellate Medical Board and if doctors are not available then another competent doctors may join. We are not directing that de novo statutory Appellate Medical Board be constituted.

The learned counsel for the respondents has rightly pointed out that this will not in any case end the matter and every time if a candidate is found unfit in the Medical examination, will approach for judicial review. We are not laying down a law on the point but we do find certain unexplained grave variation in chest measurement in the report of the Medical Board of the applicant as well as of the Appellate Medical Board ultimately the unrebutted examination done by reputed Private expert Doctor gives another version. In view of this variation, we are of the opinion that the applicant may be subjected to another physical examination as regards the chest measurement, in particular, taking into account the para-4 of the instructions of the note referred to above. This time the Appellate Medical Board will measure the chest of the applicant keeping in view that they have to measure the chest twice and the measurement of each time should

be noted and thereafter the decision be given considering the measurements taken each time. A copy of the certificate of private expert Doctor filed by the applicant shall also be placed before the Appellate Medical Board.

The learned counsel for the applicant pointed out that the applicant is an exempted probationer of the 1993 batch and the training of the next batch has not yet commenced and is likely to commence in January, 1996, the applicant may be called to join that batch. In view of this, it will not upset the commencement of course or candidates called for the course even if ultimately the applicant on being declared fit is allotted I.P.S. on the basis of his merit in 1993 C.S.E. The applicant has not joined the allotted Indian Customs and Central Excise Service or its foundation course though he has given his acceptance for that post and he is exempted probationer of Indian Customs and Central Excise Service. There is an interim order passed after hearing the parties that the allotment of the Revenue service shall be subject to the out come of this O.A.

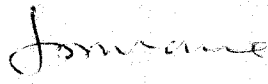
The application is, therefore, disposed of with the direction to the respondents that the applicant shall be subjected to further physical medical examination by the same Appellate Medical Board, or if any of the Doctors who constituted earlier Appellate Board is not available, may be replaced by other with similar capability, within a period of six

weeks from today and thereafter the respondents will take decision as per the result of the Review Appellate Medical Board conveyed to them.

Costs on parties.


(B.K. Singh)

Member (A)


(J.P. Sharma)

Member (J)

/vv/