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7 were considered for allotment of the said post. The applicant has thereafter been allotted Indian Customs & Excise Services. 11

2. The applicant in this application has prayed for the grant of reliefs that a direction be issued to the respondents that the applicant is eligible for appointment in IPS on the basis of the result CSE held in 1992 and the respondents to appoint the applicant in IPS on the basis of CSE 1992 with all consequential benefits. The applicant has also prayed for a direction to the respondents to set aside and quash the verbal order of the respondents deleting the name of the applicant from the list of IPS probationers on the basis of CSE 1992.

3. The respondents contested this application and stated in the reply that a candidate for appointment to the IPS post, according to the Civil Service Examination Rules, must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties on his appointment. The allocation of candidates included in the merit list in different services is made

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(2)

according to the rank of the candidates in the merit list and the preference for service exercised by the candidates subject to physical fitness for appointment. The classification of various services under the two categories, namely 'Technical Services' and Non-technical Services' is as follows :-

A. TECHNICAL

- (i) India Police Service and other Central Police Services, Group 'B'
- (ii) Indian Railway Traffic Service
- (iii) Group 'A' posts in the Railway Protection Force.

B. NON-TECHNICAL

IAS, IFS, IA&AS, Indian Customs & Central Excise Service, Indian Civil Accounts Service, Indian Railway Accounts Service, Indian Railway Personnel Service, Indian Defence Accounts Service, Indian Revenue Service, Indian Ordnance Factories Service, Indian Postal Service, Indian Defence Estates Service and other Central Civil Services, Group 'A' and 'B'.

4. The medical standard for various Central Services are determined by the Ministry of Health after taking into consideration the job requirements. The physical requirement

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is given in Appendix III of the Civil Services Examination Rules and all requirements relating to physical examination provides the physical standards for appointment to the said service. The rule 2 of the Regulation even provides that the Government of India reserves to themselves absolute discretion to reject or accept any candidate after consideration of the report of the Medical Board.

5. For the Indian Police Service the minimum standard for chest girth is 84 Cms when fully expanded with 5 Cms expansion for men; and these physical standards are mandatory and under no circumstances relaxation is allowed except as provided in the Rules.

6. The grievance of the applicant is that though he was initially earmarked for IPS on the basis of the results of the Civil Services Examination 1992. But subsequently, on his initial examination by the Medical Board at Lok Nayak Jai Prakash Narain Hospital, he has been declared unfit for the Indian Police Force on account of sub-standard chest expansion. The applicant also preferred an appeal against the findings of the Medical Board. The applicant was directed to appear

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before the Medical Board of Sufdarjang Hospital on 26.7.93 and again declared him unfit for technical services on the same grounds i.e. sub-standard chest expansion. This time the girth of his chest with full inspiration was 81 cms and with full ~~full~~ expiration was 78 cms. The application of the applicant for the grant of the reliefs mentioned in Para 8 of the application which are reproduced below :-

- (i) To call for the records of the case and specifically the reports of the Original and Appellate Board in respect of the applicant;
- (ii) set-aside and quash the verbal order of the respondents deleting the name of the applicant from the list of IPS probationers on the basis of CSE 1992.
- (iii) Declare that the applicant is eligible for appointment in IPS on the basis of his results in CSE, 1992;
- (iv) direct the respondents to give all consequential benefits to the applicant
- (v) Direct the respondents to the litigation to the applicant.

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7. The respondents in their reply contested the application and stated that the applicant was found medical~~y~~ unfit for appointment to the Police Service by the Medical Board and Appellate Medical Board also affirmed the view of the Medical Board holding that the applicant has sub-standard chest expansion as mentioned above in para-6.

8. Earlier before the Medical Board the girth of the chest after full inspiration was 81 cms and with full expiration was 78cms and the chest expansion was less than 5 cms. The Medical Appellate Board also declared him unfit for technical services not only on the same grounds but also on account of sub-standard chest measurement. There is no provision in the Rules for third Examination and the applicant cannot be examined by a second Appellate Medical Board. It is further stated that the process of conduct of Civil Services Examination and subsequent allocation/ appointment of successful candidates to various services is a time bound programme and the date of training is determined sufficiently in advance in consultation with the various Academies/College. In view of this, the

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allocation/appointments have to be finalised on a particular date and in these circumstances, the candidate cannot be given unlimited chances for an indefinite period. Thus the applicant has no case. The applicant has also filed rejoinder reiterating the same facts as alleged in the same application. However, in the rejoinder, the applicant has referred to one Shri A.K. Das who was given the opportunity to appear for the third time, before the Medical Board in exactly similar circumstances. However, the same has been denied to the applicant. In the rejoinder, the applicant has referred to the case of one Shri Kulbhusan Kumar Jain who was appointed in the Engineering Services and was subsequently appointed in the said service on the basis of a direction from the CAT and the report of AIIMS. The SLP of the respondents against this judgement was also dismissed by the Hon'ble Supreme Court. The applicant has also referred to the case of Shri Srikant Mahiyaria, who was declared unfit for appointment in Indian Railway Traffic service on the basis of the results of CSE 1992. He too filed an application in CAT vide O.A.No.2709/93 and he ~~and he~~ was examined by another Medical Board,

and was found to be fit. for appoint^{-ment} in IRTS. The applicant has also referred to the case of Mr Rakesh Chandra Panwar, who was declared unfit in Indian Forerst Service by both the standing Board and appellate Medical Board, approached the Central Administrative Tribunal vide O.A. No.168/86. And the Tribunal in that case, directed that the petitioner ~~be~~ be examined medically by the AIIMS strictly in accordance with the regulation relating to physical examination, and on the basis of that examination Shri Panwar was found perfectly fit for appointment in IFS. Thus on the basis of the above examplares, the applicant also needs sympathetic consideration.

9. We have heard the learned counsel for both the parties at length and perused the record of the case. Firstly, we find that in the Original Application, the applicant has not made any prayer for his Medical re-examination by another Competent Authority. The Tribunal cannot grant the relief which is not prayed for, the reliefs prayed for by the applicant in the application referred to are actually reproduced in Paragraph 6 above.

10. Regarding the decision of the Appellate Medical Board, the Tribunal cannot sit as an Appellate Authority as an Expert body. In Para 5.2 of the grounds, the challenge to the opinion of the Medical Board is only to the effect that in the year 1991 when the applicant also took Civil Services Examination he was not declared unfit for the IPS and was considered for all the Central Services including IPS, and further that the Medical Board examined the applicant in connection with the candidature for CSE 1992 has clearly erred in holding that the applicant is not eligible for appointment. This ground does not make out any attack on grounds of malafide or arbitrariness. The medical examination with regard to CSE of 1991 is totally irrelevant. It is the medical examination of CSE 1992 which is relevant and applicant cannot challenge the findings unless they are malafide, or do not actually conform to the standard prescribed in Appendix-III referred to above for the medical standards prescribed for the post. But the contention of the learned counsel that the physical fitness of the applicant fully satisfies the medical requirements cannot be accepted

in the light of the opinion of the Medical Board and that of the Appellate Medical Board.

11. The contention of the learned counsel that sub-standard chest expansion is not a permanent disability and the applicant could not have been declared unfit permanently and at the most he could have been declared temporary unfit and should have been given another opportunity of examination in accordance with the regulations relating to physical examination.

12. Regarding this aspect the applicant was reexamined by the Appellate Medical Board and there was sufficient gap between the earlier examination i.e. the gap of 2 months & about 20 days, held by the Medical Board and his re-examination by Appellate Medical Board in Safdarjang Hospital. Thus the applicant who aspires to make up the deficiency, could not remove the deficiency in the interim period of the two Medical Examinations. The candidate suitability could be determined only on the basis of the facts obtaining at the time of taking

a decision and not on the basis of hope which might or might not be fulfilled on future date.

13. Here it may be relevant to mention that the applicant was initially examined by the Medical Board on 7.5.93 and re-examined by the Appellate Medical Board on 26.7.93, thus, the applicant was having ample time of 2 months & 20 days to get the deficiency removed, which he could not. As there is no provision in the rule for the CSE for second Appellate Medical Board, applicant cannot be given third opportunity. Thus this contention of the learned counsel for the applicant cannot be accepted.

14. The learned counsel for the applicant has also referred to the decision of Shri Kulbushan Jain V/s Union of India in O.A.NO.16/88, who was a candidate for CSE 1983. This judgement was decided by the Tribunal on 9.12.91. In this case, the Tribunal has directed for re-examination of the petitioner by a Medical Board of All India Institute of Medical Sciences. But this judgement cannot be said to be an exemplary. It is

relevant to the case; that was a case of hypertension. But here is a case of physical disability. Similarly the case of Rakash Chand Panwar who approached CAT vide O.A.168/86 which was decided by the Tribunal by the judgement dated 16.6.86, does not help the case of the applicant. In that case, the petitioner belonged to the Indian Forest Service and in spite of the medical opinion, the petitioner was declared fit. However, the recent decision of the State of India Vs G.C. Dashak reported in 1994; 26 ATC P. _____ the Hon'ble Supreme Court has held that the Tribunal or the Court cannot sit as an Appellate Authority or Expert Body. In this similar case the High Court considered the report of the Medical Board regarding the defective vision of the petitioner of the respondents G.C. Dashak and ordered that the appointment can be made as the vision of the respondent did not disqualify him for appointment. The Hon'ble Supreme Court considering the law on the point held that the High Court has erred, in sitting as an expert body and the judgement of the High Court was quashed and the opinion of the Medical Board was upheld.

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The learned counsel for the respondents has also referred to the fact that the National Police Academy, Hyderabad, through its Director has informed that the Government of India with persons having physical deficiencies have been allotted the I.P.S. and have felt it difficult to cope with the training in the Institute. In view of this, the Government of India is reluctant to relax the standard of physical fitness duly laid down in the regulation of the Appendix III of the Rules. It is also stated that the tentative allotment does not confer any right because Foundational Course is common for all the services and the candidates are allocated tentatively to the service. This tentative service allocation is merely to send candidates to foundational course. This tentative allocation may under go a change in the final allocation in view of the candidates being declared physically fit for appointment to the service or not. There were 9 other candidates who have been allocated to IPS by virtue of their rank in the merit list and preference expressed by them but for physical unfitness; since such candidates did not have the girth of the expanded chest at least of 84 cms prescribed

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under the rules, so they were not found fit for allocation to IPS. In fact, the Appellate Medical Board has found that the chest girth after full inspiration was only 81 cms which is much below the required stand of 84 cms.

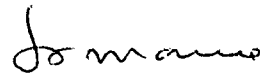
15. In view of the above facts and circumstances, the physical test of the applicant by the Medical Board and subsequently by the Appellate medical Board cannot be said to be arrived at arbitrarily or there is any malafide approach to the Medical examination of the applicant.

16. The learned counsel for the applicant fervently argued that in certain decided cases the opinion of AIIMS can be considered and the case of the applicant may be referred to the third Medical Board. Firstly, the applicant has not prayed for the grant of any such relief and secondly at this point of time when the applicant had been allotted the Indian Customs & Central Excise Services, it is not in the public interest to direct the respondents to subject the applicant to third Medical Board.

17. In view of the above facts and
circumstances we do not find any merit in
this application and the same is dismissed
as such, leaving the parties to bear their
own costs.



(B.K. SINGH)
MEMBER (A)



(J.P. SHARMA)
MEMBER (J)

SSS