



**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA No.3688/2019

Reserved on: 29.09.2020

Pronounced on: 28.10.2020

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)

Amit Get, Aged-28 Years,
S/o Shri Bhopal Singh,
R/o Ward No.44,
Dada Paths Zamat, Behind Seth Moti Lal
College, Jhunjhunu (Rajasthan)

...Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India, through
The Secretary,
Ministry of Personnel, Public Grievances &
Pensions,
Department of Personnel & Training,
North Block, New Delhi.
2. The Medical Superintendent, Safdarjung Hospital,
New Delhi.
3. The Medical Superintendent,
All India Institute of Medical Sciences
(AIIMS), Ansari Nagar, New Delhi.
4. The Medical Superintendent,
Sucheta Kriplani Hospital,
Shaheed Jeet Singh Marg,
Near Surgical Office, New Delhi-110001
5. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road, New Delhi.

.....Respondents.

(By Advocates: Shri Subhash Gosain, Shri R.V. Sinha &
Shri A.K. Behera)

ORDER**Hon'ble Mr. A.K. Bishnoi, Member (A):**

The applicant in the present case appeared for Civil Services Examination 2018 in the category of OBC as also of physically handicapped candidates in view of certain ocular issues. After qualifying for the interview, he was called for medical examination which was conducted at Safdarjung Hospital on 14.02.2019. To assess the percentage of disability he was referred to the All India Institute of Medical Sciences (hereafter referred to as 'AIIMS') where he was examined between 15.02.2019 and 22.02.2019. On 05.04.2019, the final result of the Civil Services Examination was declared by the Union Public Service Commission (UPSC) and the rank of the applicant was shown as 735.

2. Subsequently, he was asked to appear for further investigation at AIIMS on 22.04.2019. He was examined by a Board of eight doctors whose report mentioned that the applicant was deliberately resorting to obstruction of medical examination and his was a case of malingering. Aggrieved by this order, the applicant decided to submit his appeal and the Appellate Medical Board was constituted in Sucheta Kriplani Hospital (hereafter referred to as SKH) but the actual medical examination was carried out in AIIMS by a team of three doctors on 16.08.2019, which gave the finding dated 23.8.2019 that the behaviour of the applicant is suggestive of functional problem (Malingering). He was informed by AIIMS through communication dated 07.11.2019 that if he so wishes, he can

approach the Department of Personnel & Training (DOPT) by way of appeal.

3. Thereafter, the applicant submitted several representations to DOPT but did not receive any reply.

4. The applicant has contended that he suffers from a specific disease which causes one eye to blink involuntarily and that AIIMS was wrong in coming to a different conclusion. In support of his contention, he has referred to certain medical tests which he had got conducted separately.

5. The applicant has further taken the ground that the percentage of his disability was not ascertained by AIIMS and has also firmly asserted that as per the rules and instructions the authority at the appellate stage should be of a higher level than the body which conducted the initial examination but it was not so in the instant case. He has, without going into much detail, also attributed mala fide to the Chief Technical Officer. In this background he has sought the following relief(s):-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order quashing the impugned medical reports dt. 23.8.2019 and dt. 14.5.2019 issued by AIIMS and consequently, pass an order directing the respondent No.1 refer the applicant to any other Hospital, other than AIIMS, New Delhi for Appellate Medical Board to assess the percentage of disability of the applicant at an early date and consequently take final decision on the basis of the report of fresh Appellate Medical Board.

(ii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the S.K. Hospital to constitute independent Appellate Medical Board as directed by the respondent No.1 and to declare the percentage of disability of the applicant at an early date.

(iii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondent No.1 to finalize the candidature of the applicant for allocation of service in respect of the Civil Service Examination, 2018 at an early date with all the consequential benefits from due date at par with batch mates.

(iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

6. The respondents have filed the counter reply in which the basic facts have not been disputed. However, it has been contended that due to the conduct of the applicant, the medical examination could not be completed and when the matter was referred to Directorate General of Health Services (DGHS), it was opined by them that it was not essential to mention the percentage of disability. They have further contended that what was necessary was that the Appellate Medical Board (hereafter referred to as AMB) should be different from the Board which conducted the initial examination and this has been followed in the present case. It has been mentioned that the concerned Department had taken a conscious decision with the approval of the Competent Authority for conducting both Central Standing Medical Board (hereafter referred to as CSMB) and AMB for candidates who claim reservation under PwD or PwBD level tests for ascertaining the physical disability at AIIMS, New Delhi only. This was since AIIMS, New Delhi is the apex medical institute in the country with availability of latest technology and equipments as well as expert manpower for conducting all

the disability related medical tests objectively. This decision was taken and made applicable in the previous two years i.e. CSE-2017 and CSE-2018. As a result it has been experienced that non-genuine claimants of PwBD reservation are getting weeded out as they are unable to successfully pass the parameters of disability related medical tests and thus the benefit of reservation is reaching to the genuine and deserving PwBD candidates only. The same principle has been applied for CSE-2019 also. Reference has also been made to the notice dated 22.01.2019 issued before the process of examination started.

7. It has been mentioned that since the applicant was not in the category of PwBD, his case could not be considered as such and accordingly his candidature was cancelled as there were other candidates with higher merit. It has also been contended that the report of the committee of doctors of AIIMS conducting the latter medical examination was further sent to SKH. On the issue of extent of disability, it has been argued that the candidate did not suffer from more than 40% disability which is the basic requirement for a candidate to be considered in the category of persons with disabilities.

8. A rejoinder has been filed in which the contentions made in the OA have been further elaborated upon. Specifically reference has been made to Regulation-6 (V), (VI) and (VIII) & 7 (a) (xiii) and (xiv) of Appendix-III of Civil

Services Examination Rules, 2018. Reference has also been made to DoP&T notice dated 22/1/2019 filed with the counter reply.

9. Shri Yogesh Sharma, learned counsel appeared on behalf of the applicant and Shri Subhash Gosain, Shri R.V. Sinha and Shri A.K. Behera, learned counsel appeared on behalf of the respondents.

10. Shri Yogesh Sharma, learned counsel appearing on behalf of the applicant drew our attention to the rules and the notice dated 22/01/2019 issued by DoP&T and referred to in the rejoinder which finds mention in Para-6 above and forcefully argued that these Rules and instructions specifically prescribed that the level of the Appellate Board has to be higher than that of the initial Board. In the instant case, the first examination was carried out by a Board of eight doctors. The subsequent examination at the appellate level was carried out by a team of three doctors of the same institution, viz. AIIMS, with ranks lower than of the members of the Board conducting the initial examination.

11. As per the learned counsel for the applicant, this is totally violative of the rules and any contention made by the respondents to the effect that an executive decision was taken to the contrary carries no weight as an executive decision cannot have the effect of overriding the rules. He also referred to two judgements of this Tribunal.

12. Shri A.K. Behera, learned counsel appearing on behalf of the respondents contended that the basic requirement as per the conscious decision taken by the competent authority was that the constitution of the Appellate Medical Board should be distinct from that of the Board conducting the initial examination and this being so in the present case no fault can be found with the process which was followed. It was also mentioned that the report of the committee of doctors of AIIMS carrying out the second examination was forwarded to another hospital, namely, SKH and so there has been no violation of the rules. He further contended that in view of the malingering by the applicant found during medical examination it was not possible to reliably certify visual disability.

13. We have carefully gone through the pleadings on record and have given full attention to the arguments advanced by the respective counsels.

14. Without getting lost in the technicalities contained in the medical reports most of which pertain basically to issues not relevant to or within the scope of our evaluation, we can straightaway focus on the main issue which is involved in the adjudication of the present matter and that is whether the process was in conformity with the prescribed rules or not.

15. For clarity, the concerned Rules and instructions are re-produced as below:-

“6. Medical Boards-Constitution & Function:

(V) In case, the candidate is not satisfied with the findings of the Central Standing Medical Board he/she may file an appeal in which case the Appellate Medical Board (AMB) will conduct the medical examination in case of the concerned candidate.

(VI) Appellate Medical Board (AMB) will comprise members **who would generally be higher in rank and position vis-a-vis those included in Central Standing Medical Boards and the same would invariably be headed by HOD.**

(VII) xxx xxx

(VIII) Govt. would also constitute Appellate Disability Medical Board (ADMB) for examination of PH candidates on their appeal. **(Emphasis supplied)**

7. General Guidelines for Medical Boards:-

(a) The following intimation is made for the guidance of the Medical examination.

(xiii) Such candidates going into appeal may be referred to the Appellate Medical/Specialized Disability Medical Board of a designated Hospital **other than the one in which previous Medical Examination was conducted.**

(xiv) On receiving the Appeal the MS of the Hospital will get the candidate examined by standing Specialized Medical Board of the particular speciality for which the candidate was made 'Unfit' in the previous Hospital, through Chairman of the CSMB of the Hospital.**(Emphasis supplied)**

DoP&T Notice dated 22nd January 2019, Para 16

reads as follows:-

“16. After filing of appeal by a candidate, within the stipulated period, the appellate medical examination of the candidate would be scheduled by DOPT in **any hospital other than that in which his/her initial medical examination was conducted.** The candidate would be informed of

the schedule through notice on the website of this Department. After appellate medical examination, the findings of the Appellate Medical Board would be treated as final. No application for re-appeal would be considered.”(**Emphasis supplied**)

The opinion of DGHS vide letter dated 05.07.2017 is as follows:-

“This Directorate is of the view that the report of the eight experts of Dr. R.P. Centre for Ophthalmic Sciences, AIIMS, New Delhi is self-explanatory and should be agreed to and Shri Amit Get (Roll No. 1145272), CSE-2018 should not be considered under PWD.”

The concluding portions of the report of the Board conducting the initial medical examination and of the committee carrying out the examination at the appellate stage are as follows:-

Report dated 14.05.2019

“It was also observed that the candidate blinks his eyes constantly and starts rotating his eyes whenever he is examined. When the patient is left alone he stops blinking. This kind of change in behaviour while being examined is **suggestive** of chronic malingering. Due to the constant stance taken by the patient that he is not able to see beyond 6/60 on the distance visual acuity chart (variable responses) and his non-cooperation towards the ocular examination and investigations, it is **not possible to reliably certify visual disability.**” (Emphasis **supplied**)

Report dated 23.08.2019

“Considering the above reports and normal MRI of the patient, the board members are of the opinion that the abnormal movements of his eyes are not consistent of any organic ocular pathology. It was also noted he starts blinking and moving his eyes as soon as he is examined and these abnormal movements stop when the examination is over. This type of behaviour is

suggestive of functional problem
(malingerer).” **(Emphasis supplied)**

16. From a plain reading of Rule-6 (VI), it is abundantly clear that it has been specifically prescribed that the Appellate Medical Board shall consist of members who are of a higher level than the members of the initial Board. Looking at the facts, there is no dispute that, that was not the case nor have we come across any contention in the counter filed by the respondents that it is their case. A bland assertion has been made that it was consciously decided that the constitution of the Appellate Medical Board could be different from that of the Board conducting the initial examination but that does not in any way take away the sanctity of the rules specifically laid down regarding the process to be followed. It is established fact that an order from an executive authority cannot dilute or take away the provisions of rules specifically laid down. It is also clear that both the set of doctors at the initial stage as also the appellate stage belonged to the same medical institution viz. AIIMS. That SKH was designated for the constitution of AMB does not materially alter the situation as the SKH added no input of their own and merely forwarded the report of the Committee constituted at AIIMS at the appellate stage. The Rules specifically prescribe that the medical examination shall be carried out by the AMB and do not leave any opportunity for outsourcing the

same to any other facility, least of all to the one whose finding have been appealed against. Hence reference to SKH was of no consequence as it in no way serves the logic and purpose behind the rules.

17. The opinion of DGHS also adds no value towards deciding the main issue as it is a mere statement without any reference to the specified procedure.

18. We also find that no clear finding has been given that the level of disability was less than 40 percent which is the deciding figure for determining whether the benefit of disability may be given to a candidate or not. It is not enough to state that due to the non-cooperation of the applicant towards the ocular examination and investigations, it is not possible to reliably certify visual disability and this type of behaviour is suggestive of functional problem (malingering). The judgements submitted by the applicants pertain to a different set of facts hence we are not getting into any discussion on them.

19. Under the circumstances we find that the process as laid down in the rules and instructions has not been followed. We, therefore, allow the OA and set aside the findings of the Medical Boards and direct that the applicant shall be medically examined afresh on the issue of disability. For this fresh Medical board, or boards as the situation warrants shall be constituted.

Depending on the outcome, further action, as per rules, shall be taken relating to his candidature.

There shall be no order as to costs.

(A.K. Bishnoi)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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