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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. CCP 152/92 in
RA 21/91 in
OA 1885/87

DATE OF DECISION: 21.9.1992.

V.K. Sahdev.

... Petitioner.

Versus

Union of India & Ors.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner.

... In person.

For the Respondents.

... Shri P.H.
Ramchandani,
Sr. Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The grievance of the petitioner is about non-compliance with the directions issued by the Tribunal in the Review Petition No. 21/91. It was directed that the respondents shall consider condonation of the short-fall in the physical measurements of the petitioner in view of the instructions dated 15.12.1962 and pass appropriate orders as regards his physical fitness for the post of Inspector (Ordinary Grade). It was further directed that if the petitioner is found physically fit and if his ACRs during the relevant period are found to be upto the mark by the DPC, he shall be promoted as Inspector from the due date with all consequential benefits.

2. The petitioner's complaint in this contempt petition is that the respondents were not justified in calling upon the petitioner to appear for physical examination once again for the purpose of complying with the directions of the Tribunal. The petitioner, who argued the case personally, submitted that the clear effect of the judgement of the Tribunal is to direct the respondents to consider the question of condonation in regard to physical standards in accordance with the order of the Ministry dated 15.12.1962 on the basis of physical examination, which was held in the year 1979. It was submitted that the petitioner having been permitted to take the written test, it must be presumed that he had been cleared so far as his physical fitness is concerned. He submitted that the action of the respondents in calling upon the petitioner to appear for the ^{physical} test afresh was in gross violation of the judgement of the Tribunal.

3. It is not possible to accede to the contention of the petitioner that the authorities were ^{not} required to proceed on the basis that the petitioner's physical fitness was again required to be examined. The clear direction of the Tribunal is to consider condonation of the short-fall in the physical measurements of the petitioner and to pass appropriate orders. Hence, it is not possible to say that the authorities were not required to examine the question as to whether this is a fit case in which physical measurements should be condoned

or not. It is not possible to understand the judgement as directing the respondents to promote the petitioner on the basis that the short-fall in physical measurements shall be deemed to have been condoned.

4. The next question is as to whether the petitioner is right in his contention that the decision regarding condonation should have been taken on the basis of the physical test held in the year 1979 and that, therefore, the respondents were not right in calling upon the petitioner to appear for the fresh medical examination. It was submitted by the petitioner that at this length of time, it would not be proper to determine the physical fitness of the petitioner on the basis of the present physical standard. He, therefore, urged with considerable emphasis that his case should have been examined for condonation taking into consideration the instructions of Ministry dated 15.12.1962 and the physical measurements that were obtained in the year 1979. We were shown the original proceedings of the review D.P.C. held on 11.5.1992. On a perusal of the same we find that the DPC has actually taken into consideration the physical measurements that were made in the year 1979. It shows that his height was 5'1 $\frac{3}{4}$ " and that his normal chest was 37" and fully expanded 38 $\frac{1}{4}$ ". It is further stated that the physical measurements were examined in the light of ^{the} Ministry's letter F.No.88/D/1/62/-Admn.III B dated 15.12.1962 and on consideration of the same the DPC found him not fit. We have,

therefore, no hesitation, on the basis of the proceedings of the DPC, to take the view that the first attempt by the authorities was to consider the physical standard on the basis of the measurements made in the year 1979. It is further stated that the physical test report for the years 1980 and 1982 were not available in the department and, therefore, an opportunity was given to the petitioner to appear for a fresh physical standard test. The petitioner did not avail of the opportunity afforded to him and, therefore, the DPC had to proceed to record its finding on the basis of the materials that were available before it. The petitioner's own contention is that his case should have been decided on the basis of the 1979 physical measurements. As we find that has been done by the DPC, we see no good ground ^{to hold} ~~that~~ any contempt has been committed in this case.

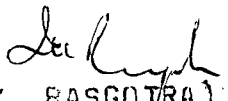
5. The petitioner obviously has not understood the directions of the Tribunal properly and under wrong advice he declined to offer himself for a fresh physical test. We asked him whether he is willing even at this stage to avail of the opportunity to appear for a fresh physical examination whereupon he said that he is agreeable. In the circumstances, by way of indulgence and having regard to the justice of the matter, we direct the respondents to make the physical examination of the petitioner.


within a period of one month from this date.

After securing his physical measurements, they shall consider the question of condonation of the physical standard, if necessary, in accordance with the Ministry's letter F.No.88/D/1/62/Admn.III dated 15.12.1962.

Final decision after interview, if necessary, shall be taken within a period of two months after the physical examination.

6. With these directions, this CCP is disposed of. No costs.


(I.K. RASGOTRA)
MEMBER (A)


(V.S. MALIMATH)
CHAIRMAN