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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

198

DATE OF DECISION 3.9.1987

Shri Sunil Misra

Petitioner Applicant

Shri Maheshwar Dayal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.P. Khurana

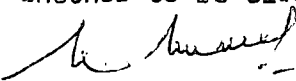
Advocate for the Respondent(s)

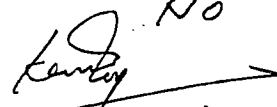
CORAM :

The Hon'ble Mr. JUSTICE K. MADHAVA REDDY, CHAIRMAN

The Hon'ble Mr. KAUSHAL KUMAR, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether to be circulated to all the Benches ? *No*


(KAUSHAL KUMAR)
MEMBER (A)
3.9.1987


(K. MADHAVA REDDY)
CHAIRMAN
3.9.1987

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REGN. NO. D.A. 890/1987.

vs.

CORAM:

Hon'ble Mr. Kaushal Kumar, Administrative Member.

For the Respondents: Shri P.P. Khurana, counsel.

(delivered by Hon'ble Mr. Justice K. Madhava Reddy, Chairman)

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Foreign Service, but was eligible for appointment to the Indian Police Service. He was called for interview on 29th March, 1984 and was directed to appear before the Central Standing Medical Board at Doctor Ram Manohar Lohia Hospital, New Delhi, on 30th March, 1984. The Central Standing Medical Board found Shri Misra unfit for technical post on account of defective colour vision. The findings of the Medical Board declaring him unfit for appointment to all Police services and posts under the Railway Protection Force were communicated to Shri Misra on 11th May, 1984. Shri Misra filed an appeal on 6th August, 1984 against the findings of the Medical Board. His appeal was examined in consultation with the Director-General, Health Services. He was directed to appear before the Appellate Medical Board at Sardarjung Hospital on 23rd August, 1984. The Appellate Medical Board examined Shri Misra and declared as under:-

"Examined candidate on both Ishihara's colour test plates and Edridge Green Latern and found that he has colour vision defect. He has high grade of colour vision defect. Candidate declared unfit for technical services/jobs requiring normal colour vision."

2. Shri Misra submitted another application to the Respondents on 31st August, 1984 alleging that the Appellate Medical Board had not examined him as required by the Rules. In consultation with and on the advice of the Ministry of Health and Family Welfare, Shri Misra was again directed to appear before the Appellate Medical Board at Safdarjung Hospital on 3.1.1985. That Board once again declared him



unfit in the following words:-

"Examined the candidate again and he is found to be totally colour defective. Hence he is declared unfit for technical services including I.P.S."

Accordingly, in consultation with the Ministry of Health and Family Welfare, his candidature for appointment to the Indian Police Service was cancelled by the Ministry of Personnel & Administrative Reforms, Government of India.

3. Refusing to give up, the applicant made a further representation on 4.1.1985 (Annexure 'E') alleging that proper tests were not conducted as he was referred to the same Medical Board. He requested that he may be referred to a Medical Board of a hospital other than the Sakdarjung and Doctor Ram Manohar Lohia Hospitals and alternatively, to constitute a Special Board for grading his colour perception. But that representation was rejected by the Ministry of Personnel & Administrative Reforms, Government of India, and he was informed that his representation dated 4.1.1985 stands rejected. He made yet another representation on 10.4.1985, this time to the Ministry of Health, New Delhi, seeking examination by a Special Board for low grade colour perception. Upon this, an Office Memorandum was issued by the Ministry of Health on 16.10.1985 (Annexure 'I') with copies to the Department of Personnel and Training and to Shri Sunil Misra. That Memorandum reads as under:-

"A-17011/6/85-MS
Government of India
Ministry of Health and Family Welfare
(Department of Health)

New Delhi, the 16th October, 1985.



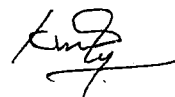
Office Memorandum

Subject: Medical Examination of Shri Sunil Mishra -
unfit for Police Services due to defective
colour vision -

The undersigned is directed to invite reference to the Ministry's O.M. of even number dated 10.9.1985 on the above subject and to say that on reconsideration, it has been decided to refer Shri Sunil Mishra to a Special Medical Board which has been constituted by this Ministry. The Special Board is due to meet on 30.10.1985 at 10. A.M. at Dr. Rajendra Prasad Centre for Ophthalmic Sciences, All India Institute of Medical Sciences, New Delhi. It is requested that Shri Sunil Mishra be directed to report at the above date and time to the Chief, Dr. Rajendra Prasad Centre for Ophthalmic Sciences, New Delhi for examination of his colour vision. The relevant papers relating to earlier medical reports of Shri Sunil Mishra may also be sent to this Ministry immediately.

The decision to constitute a Special Medical Board has the approval of the Health Minister."

6. As required therein, the applicant appeared before a Special Medical Board on 30.10.1985. That Medical Board comprised the Head of (i) the Ophthalmology Department, Lady Harding Medical College, New Delhi (ii) the Head of Ophthalmology Department, Maulana Azad Medical College, New Delhi and (iii) Associate Professor, Ophthalmology Department, All India Institute of Medical Sciences, New Delhi. It is the grievance of the applicant that in spite of several representations, the result of the medical test held by this Board has not been declared till the date of filing of the Application. As a result of non-publication of the result of the test conducted by this Board, he is being deprived of his right to be appointed to Indian Police Service. In these circumstances, he has moved this Tribunal for a direction against the Respondents to declare the result of the medical examination held on 30.10.1985 which he believes declared him fit and for a further direction to appoint him



to the Indian Police Service so as to enable him to join the Training Batch of I.P.S. officers commencing in September, 1987.

4. The facts mentioned above are not in dispute. It is also not disputed that the result of the test held on 30.10.1985 has not been published. A few more facts, which are relevant for resolving the controversy and which are not in dispute, may be taken note of.

5. Unless a person, who has qualified at the Civil Services Examination, referred to above, also passes the medical test and is declared medically fit, he is not eligible to be appointed. The tests contemplated for I.A.S., I.F.S., I.P.S. and other technical and non-technical Civil Services, Class I and Class II (Gazetted) under the Government of India have to conform to what is laid down in Appendix I of the Hand Book on Medical Examination. The instructions governing the tests, so far as they relate to colour vision, read as under:-

"(g) Colour vision.- The testing of colour visions shall be essential in respect of all the services mentioned under the category "TECHNICAL" and also for Services relating to medical, Railway Protection Force and Chemist and Metallurgists under the Ministry of Railways. As regards the Non-technical services/posts, the Ministry/Department concerned will have to inform the Medical Board that the candidate is for a service requiring colour vision examination or not.

N.B.-Colour perception should be graded into a higher and lower grade depending upon the size of aperture in the lantern as described in the table



below:-

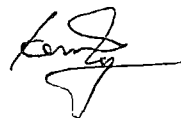
Grade	Higher grade of colour perception	Lower grade of colour perception
1. Distance between the lamp and candidate	16'	16'
2. Size of aperture	1.3 mm	13 mm
3. Time of exposure	5 seconds	5 seconds

For the services concerned with the safety of the public, higher grade of colour vision is essential but for others lower grade of colour vision should be considered sufficient.

Satisfactory colour vision constitutes recognition with ease and without hesitation of signal red, signal green and white colours. The use of Ishihara's plates, shown in good light and a suitable lantern line Edridge Green's shall be considered quite dependable for testing colour vision. While either of the two tests may ordinarily be considered sufficient in respect of the services concerned with road, rail and air traffic, it is essential to carry out the lantern test. In doubtful cases where a candidate fails to qualify when tested by only one of the two tests, both the tests should be employed."

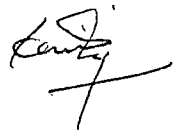
7. The Indian Police Service is classified as a technical post. Under the Regulations, a person to be appointed to the I.P.S. must possess high grade of colour perception. Upon medical test, the applicant was declared as not possessing high grade of colour perception. Thus, the applicant has been declared medically unfit because of defective colour vision. He was accordingly declared unfit to be appointed to the I.P.S. It is also not in dispute and also further established by the record produced before us, that the applicant himself declared against column 11 as under in his statement submitted on 30.3.1984 when he was called for medical test:

"11. Result of the Medical Board's Examination if communicated to you or if known.	1982 - Not known 1981 - Defective colour vision."
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6. In 1982 when the applicant appeared for the test, he did not qualify to be appointed to any of the technical posts. Therefore, the original record is not available. But the Register, which is maintained in this behalf and is produced before us, notes that even in 1982 he was found to have defective colour vision. Now when in the Civil Services Examination, 1983 he qualified in the examination and was first sent for medical test on 30.3.1984, he was declared unfit because of defective colour vision. When upon his appeal, he was sent for a second time for test on 23.8.1984, this time a different Medical Board, after conducting the test, found him to be having defective colour vision and, therefore, unfit to be appointed to a technical post. The Board, which was again constituted for the third time within less than a year to examine him, on 3.1.1985 once again found that he had defective colour vision. The applicant contends now that he was examined by the Board, a fourth time on 30.10.1985 and as he was declared fit, he should be appointed to the I.P.S.


9. Before we go into the merits of the applicant's claim, it is necessary to know the nature and causes of defective or abnormal colour vision. As can be gathered from the Review of Medical Physiology by William F. Ganong,



Maruzen Asian Edition (page 98),

"Abnormal colour vision is present in the human population in about 8% of males and 0.4% of females. Some cases arise as a complication of various eye diseases, but most are inherited. Deuteranomaly is the most common form followed by deuteranopia, protanopia, and protanomaly. These abnormalities are inherited as recessive and X-linked characteristics, i.e., they are due to a mutant gene on the X chromosome..."

10. Thus, defective colour vision, which is congenital, seems to defy correction. The applicant was declared to be possessing defective colour vision not for the first time in 1983 but earlier in 1981 and 1982 as well and on two successive examinations conducted in 1984 by competent medical officers. It is surprising that the fourth medical test should have ever been conducted at all and when conducted should have yielded a result at variance with the earlier ones. Be that as it may, on an examination of the provisions covering the medical test, we find that no second appeal or a third appeal could ever be entertained and a third or fourth test ordered when the applicant was already informed on the basis of the earlier medical tests, which declared him as possessing defective colour vision, that he was unfit to be appointed to the Indian Police Service, a fourth medical test for colour perception was wholly unwarranted. Mr. Maheshwar Dayal, learned counsel for the applicant, however, vehemently pleaded, placing reliance on paragraph 30(a) of the Hand Book on Medical Examination, that a second appeal lay against the opinion given by the Medical Board which recorded its opinion on 23.8.1984 and such an appeal should not have been referred to the same Board. As this third test was done by the same Board which gave its opinion on 23.8.1984 and

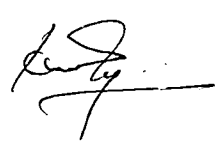


which was questioned in second appeal, the opinion given by that Medical Board on 3.1.1985 cannot be taken into account and the opinion of another Board was rightly called for. The Respondents, therefore, rightly referred the applicant's case to another Medical Board and since that Medical Board has given an opinion in the applicant's favour, that opinion should be acted upon and the applicant appointed to the Indian Police Service. This contention, as we would presently see, is without any merit.

11. According to the Advertisement and paragraph 28 of this Hand Book, only one appeal is allowed against the findings of an examining medical authority. Paragraph 28 reads as under:-

"28. Ordinarily there is no right of appeal from the findings of an examining medical authority but if Government are satisfied on the evidence placed before them by the candidate concerned of the possibility of an error of judgment in the decision of the examining medical authority it will be open to them to allow re-examination, in case where the examining medical authority was a Medical Board by second Medical Board and in other cases, by another Civil Surgeon, a District Medical Officer, a medical officer of equivalent status a specialist or by a Medical Board, as may be considered necessary."

12. If paragraphs 28 and 30(a) are read together, it would be clear that while ordinarily, no appeal lies against the findings of an examining medical authority, the Government, if it is satisfied on evidence placed before them by the candidate concerned of the possibility of an error of judgment in the decision of the examining medical authority, only then it will be open to the Government to allow re-examination.



No second appeal is provided against the findings of a Medical Board except in the circumstances laid down in paragraph 28.

However, when a person is declared medically unfit 'on account of visual acuity' paragraph 30(a) applies and in such cases alone, a second appeal is permissible. That paragraph reads as under:-

"30(a). If a candidate is declared medically unfit on account of visual acuity, any appeal preferred by him/her should be dealt with by a special Medical Board the composition of which should include three ophthalmologists. Ordinarily, the findings of this special Medical Board should be considered as final but a second appeal shall be permissible in doubtful cases and under very special circumstances.

(Ministry of Health D.M. No.F.5(II)-12/57-MII Pt.II) dated the 17th December, 1957.)"

13. This is a special provision applicable to cases of defective visual acuity and not to cases of defective colour perception. Although there was some dispute as to what visual acuity means and the learned counsel for the applicant contended that it also includes defective colour vision or colour blindness, it is fairly clear from the medical authorities that visual acuity has nothing to do with colour perception or defective colour vision. Stedman's Medical Dictionary defines 'acuity' as 'sharpness, clearness, distinctness.' 'Visual acuity' is defined therein as 'acuteness of vision; it is indicated by a fraction in which the numerator is a number expressing the distance in feet at which the patient sees a line of type on the chart (usually 20 feet), and the denominator a number expressing the

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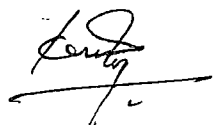
distance in feet at which the normal eye would see the smallest letters which the patient sees at the distance at which he is; thus, if at 20 feet he sees only the letters which the normal eye would see at 50 feet, the formula of his vision will be $V = 20/50$ ". It is more elaborately explained in the Review of Medical Physiology by William F. Ganong (supra) at page 95 as under:-

"Visual Acuity

Physiologic nystagmus is one of the many factors that determine visual acuity. This parameter of vision should not be confused with visual threshold. Visual threshold is the minimal amount of light that elicits a sensation of light; visual acuity is the degree to which the details and contours of objects are perceived. Although there is evidence that other measures are more accurate, visual acuity is usually defined in terms of the minimum separable - i.e., the shortest distance by which 2 lines can be separated and still be perceived as 2 lines. Clinically, visual acuity is often determined by use of the familiar Snellen letter charts viewed at a distance of 20 ft. (6 meters). The individual being tested reads aloud the smallest line he can distinguish. The results are expressed as a fraction. The numerator of the fraction is 20, the distance at which the subject reads the chart. The denominator is the greatest distance from the chart at which a normal individual can read the smallest line the subject can read. Normal visual acuity is 20/20; a subject with 20/15 visual acuity has better than normal vision (not farsightedness); and one with 20/100 visual acuity has subnormal vision...."

14. Thus, acuity has nothing to do with colour perception.

While visual acuity may be corrected by wearing appropriate lenses or other treatment, condition of defective colour perception cannot be set right. From this, it would be clear as to why persons to be appointed to technical posts are required to possess high grade of colour perception. If the applicant did not possess high grade of colour perception



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in 1981, 1982 and in 1984, it is surprising how he could possess high grade colour perception when examined in January, 1985. In fact, he did not contest the report made in 1981. It was on that basis that he was appointed to the post which he is now holding. Even in 1982, he was found to be possessing defective colour vision. Even that he did not dispute. Of course, he tries to explain it away by saying that there was no use contesting the decision then as he did not qualify in the test which would have entitled him for appointment to a technical post. However, the fact remains that the Medical Boards found that he had defective colour vision. The first two Medical Boards appointed in 1984, which comprised ~~xx~~ eminent doctors whose integrity cannot be questioned, also held that he did not possess high grade of colour perception. In fact, when they held that he has defective colour vision, the question of grading him as possessing lower grade of colour perception or higher grade of colour perception obviously cannot arise. Upon medical test, the applicant's defect was found to be not of visual acuity but of colour perception and ^{he} /was, therefore, declared medically unfit for appointment to technical posts including I.P.S. Paragraph 30(a) of the Hand Book on Medical Examination is, therefore, not applicable. Hence, no second appeal lay and a third or fourth medical test could not have been ordered in his case.

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15. The matter should have rested with the opinion of the Medical Board which examined him and gave the certificate on 23.8.1984 declaring him unfit, for only one appeal lay. Merely because under an erroneous view, he was again sent for medical test, the applicant cannot claim that he has a right of second appeal and that he should have been referred to a Board other than the one which gave the opinion on 23.8.1984. When a second appeal does not lie at all, no direction can be given to the Respondents to publish the result of the medical test conducted by the third or the fourth Medical Board which held the test on such second appeal. The applicant can claim for direction in respect of a right he possesses under law and not on the basis of an error committed by the Respondents. When the Respondents themselves did not choose to act on the recommendations of the Special Medical Board having realised that no such Board could have been constituted, as is evident from the record placed before us, which it is unnecessary to refer to in detail, no direction, as sought by the applicant, can be issued. Suffice to note that when on the basis of the earlier medical tests and the reports, the applicant was informed on 24.4.1985 that his candidature was cancelled, the matter should have rested there. However, the applicant directly approached the Ministry of Health and Family Welfare and at his instance, that Ministry issued a Memorandum to the Ministry of Personnel and Training on which the applicant places strong reliance. Even that Memorandum issued

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under the signature of the Under Secretary to the Government of India, Ministry of Health and Family Welfare invites reference to the Office Memorandum of even number dated 10.9.1985 and states that on reconsideration, it has been decided to refer Shri Sunil Mishra to a Special Medical Board which has been constituted by that Ministry. The Special Board was due to meet on 30.10.1985 at 10.00 a.m. and required him to appear before the Board. It further states that this is issued with the approval of the Health Minister. Actually, the Ministry which deals with the appointment of officers to IAS, IPS etc. is the Ministry of Personnel, Training, Administrative Reforms, Public Grievances and Pension. In a preceding Memorandum of 16th October, 1985, the Ministry of Personnel & Administrative Reforms was requested that Shri Sunil Mishra be directed to report on the above date and time to the Chief, Dr. Rajendra Prasad Centre for Ophthalmic Sciences, New Delhi for examination of his colour vision. The Ministry of Personnel & Administrative Reforms never issued any such direction to the applicant. But, somehow, notwithstanding the above, the Ministry of Health under a subsequent Memorandum itself without any further reference to the Ministry of Personnel & Administrative Reforms, constituted the Special Medical Board and required the applicant to appear before the Board. It is also significant to note that the relevant papers relating to the earlier medical reports of Shri Sunil Mishra were not sent to that Medical Board, presumably because the Ministry of Personnel & Administrative Reforms had already taken action on the earlier reports and



notified the applicant specifically that his appointment had been cancelled. The letter informing him that his appointment is cancelled reads as under:-

"No.13014/186/84-AIS(I)
Government of India
Ministry of Personnel & Training, Administrative
Reforms & Public Grievances & Pension
(Department of Personnel & Training)

New Delhi, the 24th April, 1985.

To

Shri Sunil Misra,
4-A, Transit Camp,
State Entry Road,
New Delhi.

Subject: Civil Services Examination, 1983 - Medical
Examination of the candidates in connection
with -

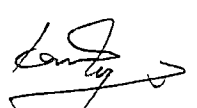
Sir,

I am directed to refer to your representation dated 31st August, 1984 on the subject mentioned above and to say that the Medical Board, which initially examined you and also the Appellate Medical Board which examined you on 23rd August, 1985 and again on 3rd January, 1985 have declared you unfit for appointment to the Indian Police Service due to defective Colour Vision. However, on the basis of your subsequent representation dated 4th January, 1985 the matter was again examined in consultation with the Ministry of Health (Department of Health) and it has been found that you are not fit for appointment to the Indian Police Service.

2. Since you are eligible for appointment to the Indian Police Service only and you being physically unfit for appointment to all Police Services, it would not be possible for the Government of India to offer you appointment on the basis of the results of Civil Services Examination, 1983. Accordingly your candidature for appointment on the basis of the above mentioned examination is hereby cancelled.

3. The receipt of this letter may kindly be acknowledged."

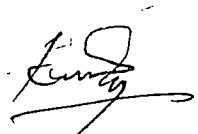
16. When the Ministry of Personnel was not prepared to re-open the matter which was finally concluded by the aforesaid communication, it is surprising that this matter should have been reopened by the Ministry of Health and Family Welfare.



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Although it was stated at the bar that there was some political pressure, we do not wish to go into that aspect at all. Suffice to note that in a matter relating to the appointment to coveted posts in the or cadres of I.A.S., I.F.S.,/I.P.S. for which the aspirants have to face highly competitive examination and rigorous tests, if some candidates are allowed to circumvent the process, the confidence of the candidates and the country at large in the fairness of the selection to these coveted posts will be shaken. The standard of the highest cadre of Government servants will be lowered. The public confidence in the fairness of the selection and quality of the All India Services must be upheld at all costs. The applicant should never have been referred to a third or fourth Medical Board when he was declared medically unfit twice for he was not entitled under law. Moreover, the latest opinion of the Medical Board which met on 30.10.1985 obviously did not have occasion to look into the earlier reports for they were never sent to it by the Ministry of Personnel & Administrative Reforms. Such a report can neither have any legal value nor could it be acted upon as an expert opinion overriding the earlier opinion in respect of which, even before us, the applicant was unable to point out any defect.

17. It was contended for the applicant that irrespective of whether a second appeal lay or not, when



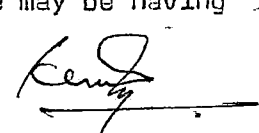
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the Respondents directed the applicant to appear for a medical test on 30.10.1985, the result of that test should have been published and on the basis of that report, he should have been appointed to I.P.S. The Respondents are estopped from disputing the medical report and withholding appointment of the applicant.

In our view, no question of estoppel arises. The applicant was already employed and he has not acted on the representation of the Respondents and changed his position or given up the post which he was already holding. The Medical Report of the subsequent Medical Board was never published. If the test itself should not have been held and when the result of the test is not published ^{it} / cannot vest any right in the applicant, merely because he had appeared for such test. If before the publication of the result of the medical test, it was realised by those that ordered the test that such a test ^{not} could / be ordered or held, the applicant does not get any right nor are the Respondents estopped from taking the stand that no such test should have been held. The representation, if any, based on a misapprehension and which was not acted upon by the Respondents themselves by publishing the result of the test and ^{which} / did not result in the applicant changing his position to his prejudice by acting thereon cannot be made the basis of any order in favour of the applicant. This contention is, therefore, rejected.

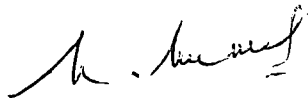
K. S. S.

18. The Respondents specifically pleaded that any Medical Board constituted for the purpose of testing the candidates for appointment to All India Services must comprise only Government servants and not persons holding posts in an autonomous body like the All India Institute of Medical Sciences. The Board which examined the applicant on 30.10.1985 had on it, Doctors who are not Government servants and hence that Board was not competent to examine the applicant or grant the certificate; the Government was not obliged to act on such a certificate. Section II of the Hand Book on Medical Examination lays down that for appointment to Gazetted posts, a Medical Board shall consist of three Class I Medical Officers of the status of Specialists namely, a Physician, a Surgeon and an Ophthalmologist. This clause when it refers to Class I Medical Officers, necessarily implies that they should be Government servants. ~~Howsoever~~ ^{ever} eminent the Doctors concerned may be and how ~~so~~ ^{so} prestigious the Hospital in which they are working may be, if they are ^{not} Government servants of the rank of Class I Medical Officers, they cannot sit on the Board even if they hold the status of a Physician, Surgeon ~~OR~~ an Ophthalmologist. The Members of the Board in question may be of the status of Specialists viz. Physician, Surgeon and an Ophthalmologist, but all of them are not admittedly Class I Medical Officers in Government service. This contention of the Respondents must be upheld for, admittedly, at least one of the Doctors who constituted the Medical Board was not a Government servant of the rank of Class I Medical Officer; he was serving in the All India Institute of Medical Sciences. Though he may be having



an
the status of a Physician, Surgeon or/Ophthalmologist, he not
being a Government servant of the rank of Grade I Medical
Officer ~~and~~ was. ~~therefore~~, not competent to sit on the
Medical Board envisaged for examining candidates for
appointment to a Gazetted post in the Government of India.
The certificate granted by such a Board does not vest any
right in the applicant to claim appointment to I.P.S.

19. In the result, we do not find any merit
in this application and it is accordingly dismissed with
no order as to costs.



(KAUSHAL KUMAR)
MEMBER (A)
3.9.1987



(K. MADHAVA REDDY)
CHAIRMAN
3.9.1987