

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: N.DELHI.

(15)

O.A. 1744/92.

Date of decision: 7.10.93

A.K. Chaudhary

..Petitioner.

Versus

Union of India through
The Secretary,
Ministry of Urban Development,
New Delhi & 2 Ors.

..Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the petitioner

Sh J.P. Verghese,
Counsel.

For the respondents

Shri Jog Singh,
Counsel.

JUDGEMENT(ORAL)

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

The petitioner, Shri Arvind Kumar Chaudhary, offered himself as a candidate for direct recruitment to the post of Sectional Officer (Horticulture) in C.P.W.D. There were 22 vacancies and the petitioner was one of the 22 candidates duly selected for the said post. An order of appointment was issued in his favour on 10.10.1991 which inter alia states that his appointment will be provisional subject to his being declared medically fit. The necessary requisition was sent to Dr. Ram Manohar Lohia Hospital for medical examination of the petitioner with a copy of the same to him. The petitioner was, however, not given any

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certificate immediately. We are not sure as to whether the petitioner was examined immediately after the requisition was given on 15.10.91. Dr. S.N. Verma, Chief Medical Officer of the said hospital on examining the requisition for medical examination of the petitioner felt handicapped in the matter of examination as he had no prescription in regard to the standard of vision with reference to which the candidate was required to be examined for medical fitness. Dr. Verma, therefore, addressed a letter on 25.10.1991 to the Deputy Director of Horticulture asking him to inform him as to whether the post of Sectional Officer (Horticulture), C.P.W.D. is a technical or a non-technical one and whether colour vision standard higher or lower is prescribed for medical fitness for the said post. The Deputy Director on receipt of the said letter from Dr. S.N. Verma wrote to the Director for necessary information. The Director was also not in a position to furnish the information and he, therefore, addressed a further communication as per Annexure R-7 dated 13.11.1991 to the Director General on the subject. The Director General responded by issuing an official memo as per Annexure R-22 dated

W/29.4.1992. The same reads:

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The undersigned is directed to say that the question regarding requirement of colour vision in medical examination in respect of appointment as Sectional Officer (Hort.), Junior Engineer (Civil) and (Elect.) and Architectural Assistant/ Assistant(Arch. Deptt.) in the Central Public Works Department has been reviewed/considered in this Dte. and it has been decided with the approval of Director General of Works that candidates may be subjected to a colour vision of high order for their medical fitness for appointment as S.O.(Hort.), J.E.(C) & (E) and Arch. Asstt./Asstt.(A.D.)".

It is clear from the copy of the same sent to the Director of Horticulture that this was the response to the request made by the Director as per Annexure R-7. Thus, it is clear that so far as the post of Sectional Officer (Horticulture) with which we are concerned, is concerned, the medical standard required so far as the fitness is concerned, stands regulated by Annexure R-22 dated the 29th April, 1992.

2. Some interesting developments took place in the meanwhile. Though it is not possible to examine the candidates for the medical examination in the absence of the prescription of the standard of fitness, all the other candidates were able to get the necessary certificates of medically fitness from ✓one medical authority or the other of the hospital.

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On the strength of those certificates, all of them had joined duties and they have continued in service. So far as the petitioner is concerned, he also secured a certificate in his favour from the authorities of the Dr. Ram Manohar Lohia Hospital dated 11.11.1991 and on the strength of the said certificate, he claimed a right to be appointed and continued in service. Whereas the petitioner maintains that he was permitted to join duties and he did perform duties for sometime, the stand taken by the respondents is that he was not so permitted as in his case reference regarding medical standard of fitness was awaited from the Director General. A memo was issued to him as per Annexure 'E' dated 2.1.1992 served on 6.1.1992 directing him not to attend the office until the reference made to the higher authority in regard to the medical standard of fitness is duly received and further action taken. It is in this background that the petitioner has approached the Tribunal for appropriate relief.

3. From the materials placed before us, it is clear that the Chief Medical Officer Dr. S.N. Verma expressed his inability to issue the certificate in favour of the petitioner as he was not aware as to whether the post of Sectional Officer (Horticulture) was a technical one or not and as to whether the standard of medical fitness higher or lower was required to be fulfilled. From the facts summarised earlier, it is clear that neither the Deputy Director nor the Director was aware of the

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standard prescribed in this behalf and that, therefore, reference had to be made to the Director General. The Director General also took considerable time and after thorough examination issued a memo dated 29.4.1992 saying that the post in question is a technical one and the standard required for the post is a colour vision of high order. The materials placed before us thus indicate that though medical fitness is a condition precedent for appointment to the post of Sectional Officer (Horticulture), no satisfactory medical examination could be done without the prescription of the medical standard, that is required to be satisfied so far as the post in question is concerned. We will proceed on the basis that there was no prescription of medical standard earlier than the memo dated 29.4.1992. Shri Verghese, learned counsel for the petitioner, submitted that the medical standard which was not in existence when he was appointed and which came to be issued later cannot be made applicable to the petitioner. It is not possible to accede to this contention. It is not and cannot be disputed that medical fitness of the requisite standard is essential for the appointment to the post of Sectional Officer (Horticulture). That is one of the conditions prescribed at Item No. 21 of the offer of appointment. Medical fitness without prescription of standard is not possible.

✓ If there was no prescription, the authorities were under

an obligation to make the required prescription taking into consideration all relevant factors. If before regular appointments were made, Chief Medical Officer felt that the medical standard has to be ascertained and, therefore, postponed the medical examination of the petitioner, we must say that he acted rightly and in public interest. It is in public interest that the public offices are occupied by persons with requisite competence both physical and mental. As investigation in regard to the medical fitness could not be made in this case without the prescription of the standard, Dr. Verma was right in making the reference in this behalf. What should have been consistent with fairness to everyone concerned was to defer the medical examination of all other candidates until the medical standards were duly ascertained and identified. That this was not done and other candidates were issued medical certificates and appointment orders were issued does not mean that the action taken by Dr. Verma in awaiting the prescription of medical standard was not right. In the context and in the state of materials placed before us, we are inclined to take the view that the appointment of all the 22 candidates for clearance ought to have been postponed until such prescription was received by the authorities of the Dr. Ram Manohar Lohia Hospital, they having made a reference for ascertaining the standard. We fail to see as to why the prescription

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of medical standard made by the Director General, who is Head of the Department after having examined all the aspects, should be faulted. There is no material before us to take the view that the prescription of the medical standard by Annexure R-22 has no nexus or is not relevant for proper discharge of the duties and functions of the post of Sectional Officer so as to justify an inference that it is violative under Articles 14 and 16 of the Constitution. In the absence of any statutory prohibition, we see no reason why the Director General could not prescribe the medical standard in this behalf. As the prescription of such medical standard was in public interest and with object of securing the competent persons for the job, we would not be justified in finding fault with such prescription merely on the ground that it was made after the process of selection. We, therefore, do not find any good ground to interfere with the order of the Director General dated 29.4.1992.

4. Shri Verghese, learned counsel for the petitioner, however, contended that any prescription of medical standard must be uniformly applied and that the petitioner should not be picked and chosen for hostile discrimination in this behalf. It is unfortunate that without waiting for the prescription of the medical standard in respect of which Dr. Verma had made a reference, the medical authorities of the Dr. Ram Manohar Lohia Hospital chose to give the medical certificates to ✓ all other candidates certifying that they are medically

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reference, the medical authorities of the Dr. Ram Manohar Lohia Hospital chose to give the medical certificates to all other candidates certifying that they are medically fit. Shri Verghese is right in submitting that if the medical standard prescribed by Annexure R-22 is valid, that must be regarded as valid not only for the petitioner but in respect of other candidates as well. If the authorities did not insist on in respect of others application of the medical standard required for the post, it does not mean that we should issue a direction for that reason that the prescribed medical standard should not be applied to the petitioner. It is settled law that if any action taken is wrong or arbitrary, that does not give rise to a right to other persons for seeking a direction for similar arbitrary action in their favour. That is not the real content of Article 14 of the Constitution. But we do agree that the petitioner could not be singled out for enforcing the medical standard of fitness. When we asked the learned counsel for the respondents Shri Jog Singh whether the department would be willing to submit the remaining 22 candidates also for medical examination, if not already done, with reference to Annexure R-22, he rightly and fairly submitted that that would be done. We record his statement. In view of the fair stand taken in this behalf, we are sure that there would be enforcement of Annexure R-22 on a uniform basis.

5. The petitioner has approached this Tribunal for relief even before the Director General made the


standard prescribed therein. It is obvious that ⁽²³⁾ because of the pendency of these proceedings, no further steps were taken in this behalf. It is, therefore, right and proper that we should call upon the respondents to get the petitioner medically examined with reference to Annexure R-22 dated 29.4.1992 and if the petitioner is found medically fit, to accord to him the appointment to the post of Sectional Officer (Horticulture) and to accord to him the ranking which was assigned to him at the time of his original selection.

6. For the reasons stated above, this application is disposed of with a direction to the respondents to get the petitioner medically examined with reference to Annexure R-22 dated 29.4.1992 and to appoint him to the post of Sectional Officer (Horticulture), if he is found medically fit. If he is appointed, he shall maintain the seniority which was assigned to him at the time of his selection. This order shall be complied with within a period of three months subject to the petitioner cooperating. No costs.

CCP 128/93 in MP 1114/93
OA 1744/92 MP 2367/92

So far as CCP is concerned, Shri Verghese, learned counsel for the petitioner, rightly submitted that he does not press the CCP. It is accordingly rejected.

Consequently, two MPs are also disposed of


(S.R. ADIGE)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN

'SRD'