

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 5.12.02

OA 197/2002

Vikal Roop Rai, Lecturer in Govt. Polytechnic College, Jodhpur, r/o 7-A-50, Mehtab Sadan, Chopasani Housing Board, Jodhpur.

... Applicant

Versus

1. UPSC through its Secretary, Dholpur House, Shahjahan Road, New Delhi.
2. Under Secretary, UPSC, Dholpur House, Shahjahan Road, New Delhi.
3. Joint Director Estt.(GR), Ministry of Railways, Railway Board, New Delhi.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

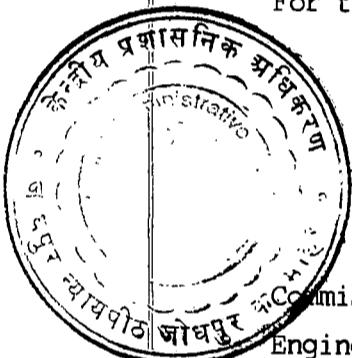
HON'BLE MR.GOPAL SINGH, ADM.MEMBER

For the Applicant

... Mr.Kuldeep Mathur

For the Respondents

... Mr.Manoj Bhandari

O R D E RPER MR.JUSTICE G.L.GUPTA

Vide Examination Notice dated 27.1.2001 the Union Public Service Commission (UPSC) invited applications from eligible candidates for Engineering Services Examination 2001. The applicant, being eligible for appointment under the Mechanical Engineering category, submitted his application to the UPSC. He was allowed to appear in the written test and he qualified for the interview/personality test. He appeared before the UPSC on 13.3.2002 for interview/personality test. He was declared successful candidate and his name appeared at S.No.25 in the list of the candidates recommended for appointment to the Mechanical Engineering Group. The applicant thereafter was asked to appear before the Medical Board for medical examination on 21.6.2002. He did appear before the Medical Board on the scheduled time and date and he was medically examined. Vide letter dated 3.7.2002 the applicant was informed by the Railway Board that the Medical Board had declared him unfit for all services. The applicant was also informed that he had not appeared for second medical examination by the Second Medical Board (SMB, for short) on 25.6.2002. The applicant immediately wrote a letter to the authorities for his further medical examination. He stated in the letter that he had not been given information to appear before the SMB. The applicant was examined by the Appellate Medical Board. He was again declared unfit. Hence this OA.

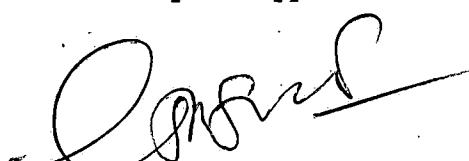
2. The case for the applicant is that he did not get an opportunity of examination by the SMB and it has caused prejudice to his case. It is his further case that fundus examination was not carried out and, therefore, it was not established that pathological condition was present in his case and it was progressive. It is prayed that the letters dated 22.7.2002 and 3.7.2002, issued by the Medical Board, declaring the applicant as medically unfit, be quashed and the respondents be directed to conduct medical examination of the applicant in accordance with Rules and it may be declared that the applicant cannot be declared medically unfit for the Mechanical Engineering Service only on the ground that he had myopia more than 4D.

3. In the counter, it is admitted that the applicant was successful in the written examination and the interview and that he got 25th rank in the Mechanical Engineering discipline. It is further stated that the applicant was not found medically fit in the examination by the Medical Board and he did not appear before the SMB despite intimation to him like any other candidates. It is averred that the Appellate Medical Board has also recorded that there is evidence of pathological/progressive myopia and the applicant is unfit for all services. It is averred that the medical examination was conducted at Central Hospital on and from 20.6.2002 to 25.6.2002 and the candidates who had more than 4D myopia were advised to come before the Special Medical Board on 25.6.2002, but out of the 10 such candidates, two candidates, including the applicant, did not appear.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

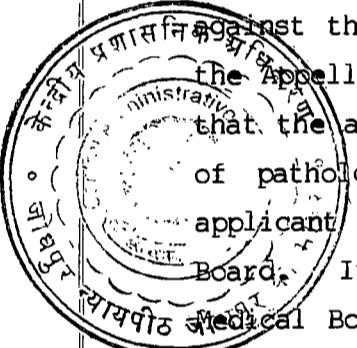
5. It is not in dispute that the applicant was examined by the Medical Board on 21.6.2002. The Medical Board had observed that there was "Myopia more than 4D". The applicant was addressed letter (Ann.A/6) dated 3.7.2002, in which it was clearly stated that the Medical Board had found him unfit for all the services on account of 'Myopia more than 4D' and that he had not appeared before the SMB on 25.6.2002, as advised to him.

6. As to the case for the applicant that he was not asked to appear on 25.6.2002 and hence he was not required to appear before the SMB, it may be stated that, according to the averments made in the counter, all the candidates who had appeared before the Medical Board had been asked orally to appear on 25.6.2002 before the Special Medical Board and out



of ten candidates eight did appear before the Special Medical Board. The applicant has not refuted this fact by way of rejoinder that the eight candidates had appeared before the Special Medical Board on oral advice. When the other candidates had been advised to appear on 25.6.2002 and they did appear, it will have to be presumed that the applicant was also informed in the same manner to appear before the Special Medical Board on 25.6.2002. If he did not appear before the Special Medical Board, it was his fault. It is not the case for the applicant that he was prevented from appearing before the Special Medical Board on 25.6.2002 by the reasons beyond his control. In our opinion, on the ground that the applicant was not examined by the SMB, he cannot succeed in this matter because it was his fault that he did not appear before the SMB on 25.6.2002.

7. It is significant to point out that in the letter dated 3.7.2002 (Ann.A/6) the applicant was informed that if he was aggrieved of the findings of the Medical Board, he could prefer appeal and he would be examined by the Appellate Medical Board. The applicant preferred appeal

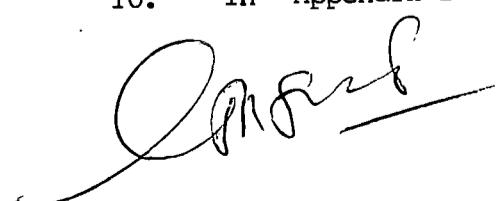


against the decision of the Medical Board and he has been examined by the Appellate Medical Board. The Appellate Medical Board has observed that the applicant had myopia more than 4D and that there was evidence of pathological/progressive myopia. It is not the case for the applicant that he was not properly examined by the Appellate Medical Board. It is also not his stand that the members of the Appellate Medical Board were prejudiced against him and a wrong report has been given.

8. The applicant had filed a report of his medical examination by Dr. Surender Mathur, a private practitioner, alongwith the appeal. In the medical report of Dr. Mathur it was observed that fundus was normal and no myopic degenerative changes seen. The opinion of Dr. Mathur, a private practitioner, cannot be accepted when there is opinion of the First Medical Board and the Appellate Medical Board, which consisted of three senior doctors of the Railway.

9. Admittedly, the applicant has been examined by the Appellate Medical Board. It, therefore, does not matter that he was not examined by the SMB on 25.6.2002. As already stated, the applicant was not examined by the SMB on 25.6.2002 for his own fault. We cannot be justified in directing the further medical examination of the applicant now.

10. In Appendix-II of the Rules for a combined competitive



Engineering Services Examination, it is provided that there are two type of services i.e. 'Technical' & 'Non-Technical'. In the non-technical services, the requirement of the 'distant vision' is 6/9 and the 'near vision' is 6/12. It is further stated in the form of Note-1(a) that in respect of the Technical Services mentioned at A above, the total amount of myopia (including the cylinder) shall not exceed -4.00D and total amount of Hypermetropia (including the cylinder) shall not exceed +4.00D. It is further provided that if the candidate is found unfit for technical services, the matter may be referred to the Special Board of three Ophthalmologists to declare whether the myopia is Pathological or not and if the myopia is not Pathological, the candidate may be declared fit provided he fulfills the visual requirements otherwise.

On the basis of the above provision it was argued that the applicant could be declared fit for non-technical services. This argument cannot be accepted. It is clear from the report of the Appellate Medical Board that the myopia is pathological and progressive. In such circumstances, it cannot be said that the Medical Board had erred when the applicant was declared unfit for all services.

11. Since the applicant has been found medically unfit for all the services on the ground that he is having myopia more than 4D, which is pathological and progressive in nature, the applicant cannot succeed in this OA.

12. Consequently, we find this OA devoid of merit and dismiss it. No order as to costs.


(GOPAL SINGH)

MEMBER (A)


(G.L.GUPTA)

VICE CHAIRMAN