

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. No. 762 of 2005

Date of order : 22.6.2007 ^k

C O R A M

**Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Shri Amit Kushari, Member (A)**

Sutikshna , S/o Ram Chandra Mishra, R/o village – Mohalla Lohiya
Nagar, P.S. Begusarai, District – Begusarai.

....Applicant

By Advocate : Shri Dhananjay Kumar

Vs.

1. The Union of India through the Ministry or Railway, Railway Board, New Delhi.
2. The Deputy Director Estt [G.R], Railway Board, New Delhi.
3. The Union Public Service Commission, through the Chairman, Sahjahan Road, Dhaulpur House, New Delhi.
4. The Secretary, Union Public Service Commission, Sahjahan Road, Dhaulpur House, New Delhi.
5. The Section Officer, E-VI, Union Public Service Commission, Sahjahan Road, Dhaulpur House, New Delhi.

....Respondents

By Advocate : Shri B.K. Sinha

ORDER

Sadhna Srivastava, M (J):- This application has been filed by the applicant to quash the Railway Board's letter dated 23.6.05 and 27.9.05 communicating the decision of Medical Board and Appellate Medical Board holding him unfit for appointment as a result of



Combined Engineering Service Examination, 2004.

2. The facts are that pursuant to Rules notified in Gazette by the Ministry of Railways for combined competitive Engineering Service Examination to be held by the Union Public Service Commission (UPSC in short) in the year 2004, the applicant participated in the examination and secured 17th rank in order of merit. However, he was found physically unfit according to Regulations relating to physical examination of candidate as contained in Appendix II of the Rules. The Medical Board as well as Appellate Medical Board have declared him unfit. The finding of Appellate Medical Board, as contained in Annexure R/1, is as follows [filed with the written statement of the respondents].

Engineering Services Examination – 2004

Name of the candidate : Shri Sutikshna

Roll No. : 16763

Discipline : Civil Engineering

Rank : 17

Appellate Medical Examination : Held at Northern Railway Central Hospital, New Delhi on 21.07.2005.

Findings of the Appellate Medical Board.

1. Colour Perception

> On Ishihara Plates – defective



- > Norman Lantern – 1.3mm & 13mm aperture-defective.
- 2. Solitary right Kidney – Left Nephrectomy
 - > Labile mild Hypertension present
 - > Hyperuricemia present
 - > Hyperparathyroidism

Decision of the Appellate Medical Board

1. Is the candidate fit for the field service – No
2. Unfit on account of Findings of the Appellate Medical Board.

Signed/-

Member doctors & Chairman of the Appellate Medical Board.

3. The grounds for challenging the opinion of Medical Appellate Board are specified in para [5] of the Original Application. The challenge is not based on the ground of malafide, arbitrariness or extraneous consideration. Rather the decision of Medical / Appellate Board have been challenged on merits.

4. The respondents, with reference to Rules as laid down in Appendix II, have supported the decision of the Medical / Appellate Board.

5. We have heard the learned counsel for the parties and perused the record.



6. We find that as many as six hospitals have been named in the rules for medical examination of successful candidates. The applicant was examined at Central Hospital, Northern Railway, New Delhi on 18.5.2005. Two tests – Ishihara and Edrige Green Lantern were undergone whereupon colour perception was found defective. The functioning of kidney was also found defective. Therefore, he was declared unfit. However, the rules provided for an appeal to a candidate in any of the prescribed hospital of his choice. It was also provided in the rules that if any candidate chose the same Railway Hospital where his medical examination was conducted, then a different team of doctor i.e other than those who examined him initially, will conduct the appellate medical examination. Thus a ^{fresh} & unbiased medical examination was to be arranged at appellate stage. Since the applicant chose the same hospital, appellate medical board was convened according to rules. However, the appellate medical board reached to the same conclusion. Its report has already been quoted above.

7. Before we proceed to discuss the merits of applicant's claim, it will be worthwhile to state the rule position as laid down by



Government / Ministry of Railway regarding the decision of Medical/Appellate Board. In terms of para 15, Appendix II, Engineering Service Examination Rules, 2004, the decision of Medical/Appellate Board shall be final. In this case the decision of Medical / Appellate Board are concurrent.

8. The next question is about the scope of judicial Review to be exercised by the Tribunal in such a matter. The normal rule is that as and when an expert body is assigned a task, the court can intervene only on a limited grounds like malafides, arbitrariness, extraneous consideration etc. The court/Tribunal cannot arrogate to itself the function of an expert body. We may take the analogy of DPC. The Tribunal can intervene with the decision of DPC only on limited grounds. In our opinion, the Tribunal must also act slowly in the matter of decision of Medical Board. The reason is obvious. The Tribunal lacks expertise in medical field. Our interference is possible only if the decision is assailed on the grounds of malafide, irregularity in procedure or breach of rules. ~~It is not possible to interfere with the decision of the Medical Board on the grounds of malafide, irregularity in procedure or breach of rules.~~ In the instant case, the rules of recruitment as published in the gazette lay down clearly that the decision of Medical /Appellate Board will be final. Therefore,



we have no reason to depart from the rules nor we possess the power and jurisdiction to lay down a different rule to confer benefit on a particular candidate directly or indirectly. Thus, we are supposed to act according to the rules of recruitment as published by the Government/Ministry of Railways. There is no reason to go beyond those rules. There is no allegation that the Board acted in breach of Rules. The decision is assailed on merits only.

9. Resultantly, the OA is dismissed without any order as to the costs.


Amit Kushari] M [A]


[Sadhna Srivastava] M [J]

/cbs/