

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH
JAIPUR

Date of decision: 19.1.90

O.A.739 of 1988

Anil Kumar Gupta
Mr. Ajay Rastogi

Applicant
Counsel for applicant

VERSUS

Union of India & another
Mr. Manish Bhandari

Respondents
Counsel for respondents

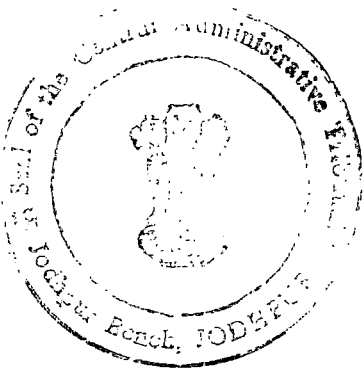
CORAM:

THE HON'BLE MR. KAUSHAL KUMAR
THE HON'BLE MR. S. R. SAGAR

VICE CHAIRMAN
JUDICIAL MEMBER

KAUSHAL KUMAR

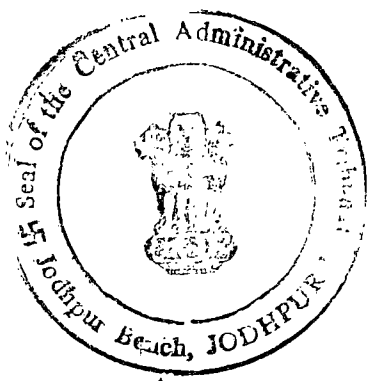
The applicant is a Junior Engineer in Public Works Department of Rajasthan, Jaipur, since 2.11.87 on regular basis and at present he is on deputation with the Rajasthan State Bridge and Construction Corporation, Jaipur. The applicant appeared in the Engineering Services Examination, 1987, conducted by the Union Public Service Commission. He qualified in the written examination held in August 1987 and appeared for viva voce test on 23.3.88. He was simultaneously asked to appear before the medical board on 24.3.88 at Northern Railway Hospital, New Delhi. He was informed vide letter dated 25.4.88 by the Ministry of Railways (Railway Board) that the Medical Board which had examined him on 24.3.88 had declared him medically unfit for the Railway Engineering Services Grade 'A' (Civil, Electrical, Mechanical & Signal), CES Gr.A and CEMES Gr.A on account of 'amputation left Little Finger Middle of Middle Phalana'. However, he was declared medically fit for certain other services mentioned at serial Nos.2 to 7 in the said communication. He preferred an appeal against the decision of the Medical Board on 10.5.88 vide Annexure-A.2 Filed



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with the Application. During the pendency of the appeal the result of the examination was declared by the U.P.S.C. and the applicant was placed at serial No.192 in the overall merit list. According to his placement in the merit list the applicant was to be considered for appointment in the services in category 2 and not in category 1 for which he had been declared medically unfit. The applicant was called again for medical examination by a second medical examination board ^{before} which he appeared on 14.7.88. He was informed vide letter dated 10.8.88 by the Ministry of Railways (Railway Board) filed as Annexure-A.4 to the Application that he had been found medically unfit for appointment to all the services mentioned in the said letter. This included not only the services mentioned under category 1 group A mentioned at serial No.(i) but also other services under category 2 mentioned at serial Nos.(ii) to (vii) for which he had earlier been declared fit by the first medical board.

2. The grievance of the applicant is that he had preferred the appeal only in regard to his unfitness regarding Services under category 1 for which he had been declared unfit and if he were aware of the final result declared by the U.P.S.C. and his placement in the merit list, he would not have preferred even this appeal since according to his placement he was in any case entitled to appointment to category 2 services for which he had been declared medically fit by the first medical board. He has accordingly prayed for quashing of the order dated 10.8.88 by which he had been found medically unfit for appointment to all services and for a direction to the respondents to consider his candidature in accordance with the communication dated 25.4.88 for the services for which he was found



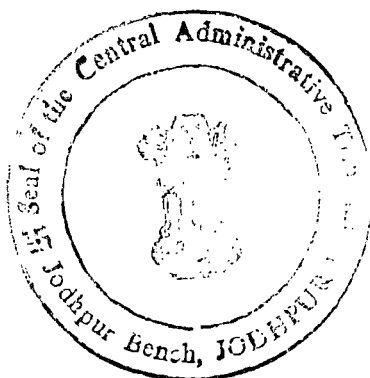
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medically fit by the first medical board with all consequential benefits.

3. The learned counsel for the applicant contended that when the appeal was confined to medical unfitness for services mentioned at serial No.1 in the letter dated 25.4.88 the second medical board could not re-examine him for the other services for which he had already been declared fit by the first medical board. The second ground of challenge is that the applicant was denied an opportunity to put across his case before being declared unfit in respect of services for which he had already been declared fit. The third ground of attack is that whereas the composition of the first medical board which examined the applicant on 24.3.88 was Chief Medical Superintendent, Northern Railway Hospital, New Delhi as Chairman and two medical officers of the rank of Senior Divisional Medical Officers as Members, the composition of the second medical board which examined him on 14.7.88 was Senior Divisional Medical Officer, Northern Railway, Central Hospital as Chairman and two Divisional Medical Officers as Members which medical board was of a lower standing in comparison with the first medical board.

4. The above facts are not controverted by the respondents. In the counter reply filed on behalf of the respondents a point has been raised in para 4 regarding the jurisdiction of this Tribunal to entertain the Application but this was not pressed during the course of arguments. The respondents have also relied on certain guidelines issued by the Ministry of Railways' letter dated 18.9.87 in which it has been provided 'that the new medical board will examine the candidate in totality for his fitness for the post for which he is being examined. The fresh examination



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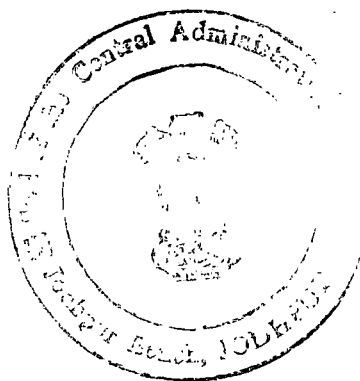
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could not be limited only to the defects found by the First Medical Board'. It has also been stated in the counter that the appellate medical board examines a candidate af-fresh irrespective of the finding given by the First Medical Board.

5. We have considered the contentions advanced on both the sides and are of the view that the composition of the appellate medical board should not have been of medical officers lower in status than that of those who constituted the first medical board. In view of contradictory findings given by the two medical boards in respect of the applicant's fitness for category 2 services and also considering that the members of the second medical board were lower in rank than those who constituted the first medical board, a fresh examination by another medical board is called for.

6. The learned counsel for respondents gave willingness for a fresh medical examination being conducted by another board.

7. We accordingly direct that the respondents will constitute another medical board comprising of a Chief Medical Superintendent and two Medical Officers not lower in rank than that of Senior Divisional Medical Officers and none of these officers should be from amongst those who constituted the two medical boards which have already examined the applicant earlier. The new medical board shall examine the applicant for his medical fitness only in regard to services mentioned at serial Nos.2 to 7 of the impugned letter dated 25.4.88. This medical examination will be conducted within a period of two months from the date of receipt of a copy of this judgment by the Respondents and in case the applicant is declared medically fit, he shall

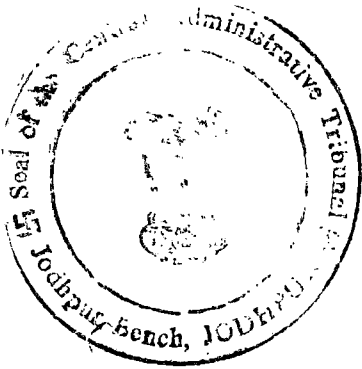


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be entitled to all consequential benefits in regard to his seniority and appointment. There shall be no order as to costs.



[Signature]
19.1.90
(S.R. Sagar)
Jud. Member

[Signature]
19.1.90
(Kaushal Kumar)
Vice Chairman