

(11)

23.04.2007

OA 441/2005

Present : Mr. K.K.Mathur, proxy counsel for
Mr. R.N. Mathur, counsel for the applicant.
Mr. T.P.Sharma, counsel for the respondents.

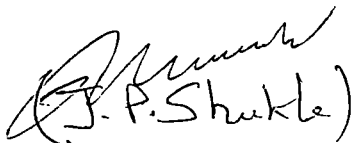
This case has been listed before the Deputy Registrar
due to non-availability of Division Bench. Be listed before the
Hon'ble Bench on 17.07.2007.


akv


(GURMIT SINGH)
DEPUTY REGISTRAR

17-7-2007 Mr. R.N.-Mathur, Counsel for applicant
Mr. S.R. Samothra, Proxy Counsel for
Mr. T.P. ^{Deborah} Sharma, Counsel for respondents

Heard. The OA is disposed of by
a separate order.


(J.P. Shukla)
M(A)


(Kuldip Singh)
vr.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 17th day of July, 2007

ORIGINAL APPLICATION No.441/2005

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

Arvind Kumar Agarwal,
s/o Shri O.P.Agarwal,
aged about 23 years,
r/o A-233 Mahesh Nagar,
Jaipur.

.. Applicant

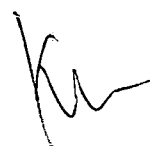
(By Advocate: Shri R.N.Mathur)

Versus

1. Union of India through
Chairman, Railway Board,
Ministry of Railways,
New Delhi.
2. Union Public Service Commission,
Dholpur House,
New Delhi through its Secretary.

.. Respondents

(By Advocate: Shri S.R.Samota, proxy counsel for Mr.
Tej Prakash Sharma)



O R D E R (ORAL)

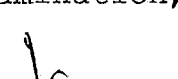
The applicant has filed this OA seeking quashing of the order Ann.A1 dated 23rd June, 2005 and also quashing of the order Ann.A2 dated 10th August, 2005 vide which candidature of the applicant for Engineering Service Examination, 2004 has been rejected as the applicant had been found medically unfit for the service. Ann.A2 is the order passed by the Medical Board constituted on the appeal filed by the applicant and the Appellate Medical Board had also rejected candidature of the applicant for Engineering Services Examination-2004 as the applicant had been declared unfit for all services.

2. Facts, in brief, are that the applicant being a qualified engineer applied for appearing in the Combined Engineering Services Examination 2004 in response to a notification issued by the Union Public Service Commission. The applicant qualified the Engineer Service Examination, 2004. He appeared in the medical examination on 18th May, 2005 at Jagjiwan Ram Hospital, Western Railway, Mumbai where he was examined by the Board. Thereafter he was informed by communication dated 23rd June, 2005 that he has been found unfit for all services on account of 'Pathological Myopia more than 4 D'. The applicant was also advised that he can file appeal against the findings of the Medical Board. Accordingly, the



applicant submitted an appeal. He had also furnished certificates issued by various Doctors who have given categorical finding that the applicant is not suffering from 'Pathological Myopia'. However, the Appellate Medical Board had assembled on 21st July, 2005 and the applicant was examined by the Board. Vide Ann.A2 he was again informed that he has been declared unfit for all services. Hence, this OA.

In the grounds to challenge the impugned orders Ann.A1 and A2, the applicant submits that in view of the certificates issued by expert Doctors and also certificate issued by the Doctor of Dr. R.P. Centre for Ophthalmic Sciences, AIIMS, New Delhi, who examined the applicant and found that the applicant is medically fit, the Appellate Medical Board ought to have considered the certificates, but they preferred to ignore the same. It is also alleged that even the Appellate Medical Board did not consist of experts in 'Vitreous Retinal' whereas the Doctors who have issued him certificate of fitness are experts in 'Vitreous Retinal'. Hence, findings of the Appellate Medical Board are also erroneous, so the same be quashed and the respondents be directed to recommend name of the applicant for appointment in Group 'A' service in pursuance of the Engineering Service Examination, 2004.



3. The respondents are contesting the OA by filing reply.

4. We have heard the learned counsel for the parties and gone through the record.

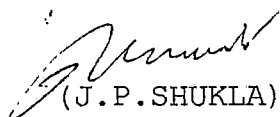
5. The learned counsel for the applicant submitted that once a candidate is rejected by the Medical Board then the candidate is given a chance to appear before the Appellate Medical Board where the finding may be given that the findings recorded by the Medical Board are not correct and in the alternative the applicant may also take time for treatment and ^{get a} ^{if he} cured his disease and may ask for constitution of Appellate Medical Board or second Medical Board.

The learned counsel for the applicant further contended that 'Pathological Myopia' is such a disease which automatically gets cured by wearing of lenses in the eyes and since the applicant had been wearing the same and he has been cured of the disease, that is why various Doctors have issued certificate that the applicant is not suffering from 'Pathological Myopia' at present, so the Appellate Medical Board should have taken into consideration the certificates and should have recorded finding as observed by the independent Doctors including Doctor of Dr. R.P. Centre for Ophthalmic Sciences, AIIMS, New Delhi. Since there was no expert even in the Appellate Medical Board pertaining to this disease, so there are chances that

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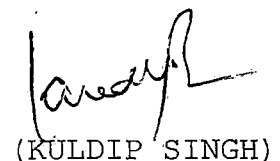
the findings recorded by the Appellate Medical Board may be erroneous and, thus, he had made a prayer that at least instruction be issued for constitution of another Medical Board.

6. We have gone through the documents on record. We find that all those certificates submitted by the applicant, which he had obtained from various private Doctors and Doctors of Dr. R.P. Centre for Ophthalmic Sciences, New Delhi, are of the date prior to the meeting of the Appellate Medical Board and those have been submitted by the applicant to the Appellate Medical Board also. Our presumption is that the Appellate Medical Board which has re-examined the applicant with regard to his disease and particularly to the fact that he was examined in appeal before the Appellate Medical Board, cannot be expected that the Board had not given proper consideration to the certificates submitted by the applicant and since these certificates had been considered by the Appellate Medical Board and there is no provision for constitution of another Medical Board over and above the Appellate Medical Board, as such, we find that the OA is bereft of merit and the same is dismissed with no order as to costs.


(J.P. SHUKLA)

Administrative Member

R/


(KULDIP SINGH)

Vice Chairman