

**Central Administrative Tribunal  
Principal Bench, New Delhi**

O.A.No.2756/2011

Tuesday, this the 19<sup>th</sup> day of July 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman  
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Ravi Kumar, age 29 years  
s/o Mr. Shish Pal Singh  
r/o 169, Ravidas Murti Wali Gali  
Patel Marg, Shibban Pura  
Ghaziabad

..Applicant

(Mr. S.K. Gupta, Advocate)

Versus

Union of India through

1. The Secretary  
Ministry of Health & Family Welfare  
Nirman Bhawan, New Delhi
2. The Secretary  
Department of Aayush  
Ministry of Health & Family Welfare  
Red Cross Building, Red Cross Road, New Delhi
3. National Institute of Ayurdeva  
Through its Director  
Madhav Vilas Palace, Amer Road, Jaipur
4. The Chairman  
S M S Medical College & Hospital  
Sawai Man Singh, Jaipur (Rajasthan)

..Respondents

(Mr. M.K. Bhardwaj, Advocate)

**O R D E R (ORAL)**

**Justice Permod Kohli:**

The applicant has filed this O.A. challenging the action of the respondents in not allowing him to join the post of Lecturer (Swastha Vritta) in the office of respondent No.2, with a further direction to respondent No.3 to allow him to join the said post.

2. Briefly stated, the facts, as emerge from the record, are that three posts of Lecturer (Swastha Vritta) were advertised vide Vacancy Notification No.1/2010 dated 25.08.2010. One of the posts was reserved for scheduled caste candidate. The applicant, who belongs to scheduled caste category, applied for the post. On completion of process of selection, he was selected and an offer of appointment was given to him vide office order dated 04.02.1011 as Lecturer (Swastha Vritta) in scheduled caste category in Pay Band – 3 `15600-39100 with Grade Pay of `5400/- and other allowances, etc. One of the conditions for appointment was that the candidate should be medically fit. The relevant conditions incorporated in the offer letter are reproduced hereinunder:-

“5. The Appointment will be further subject to:

- a) The Candidate being medically fit for which he should produce a Fitness Certificate from the Medical Board of the SMS Hospital, Jaipur.
- b) Submission of Declaration regarding Marital Status in the enclosed Form.
- c) Verification of Antecedents by Competent Authority for which the enclosed Attestation Form be submitted in 2 copies along with the Acceptance of the Offer of Appointment.
- d) Production of the following Documents:
  - i) Certificate of Educational Qualification, Experience, etc. with attested copies thereof;
  - ii) Certificate in support of candidate's claim to belonging to a Scheduled Caste or Tribe Community or Backward Class, if applicable;
  - iii) Certificate of Age with an attested copy thereof;
  - iv) Any other relevant document whatever required.”

3. The applicant was subjected to the medical examination by the Medical Board of S.M.S. Medical College & Hospital Jaipur. The Board found the applicant fit on the basis of following Note appended with its report dated 15.02.2011:-

“Note:-

The candidate Mr. Ravi Kumar has vision perception only in left eye. The right eye has been enucleated in pediatric age. Since he is being recruited (selected) for the post of Lecturer in Swasth Vritta, we do not consider that he will not be able to do the assigned job or his one eye vision will affect adversely. Therefore, he is declared fit for the post of Lecturer.”

4. It is alleged by the applicant that he was again examined on 15.02.2011 and was again called over telephone on 17.02.2011 by the office of respondent No.4, and the medical certificate was taken back with the understanding that same was required to be forwarded directly to the office of respondent No.3 by the office of respondent No.4. The applicant thereafter made representation dated 25.02.2011 and reminder dated 03.05.2011 to respondent No.3. It is further alleged that after the first Note was written, as referred to hereinabove, the respondent No.4 had written about the nature of post whether technical or non-technical, asking for the standards for the same. The office of respondent No.3 responded saying that it's a technical post and the duties of Lecturer (Swastha Vritta) are teaching, training, demonstration, patient care services (attending to patients in OPD and IPD, examination and prescribing medicines, etc.) research, etc. They further mentioned that there are no guidelines, as is evident from the letter dated 25.04.2011 from the National Institute of Ayurveda, Jaipur (respondent Nos. 3 and 4). It appears that the matter was again referred to the Medical Board and the Board changed its opinion

about the fitness of the applicant by crossing the original Note and appending further two Notes below the medical report dated 15.02.2011.

The second Note dated 14.03.2011 reads as under:-

“Note:-

In the absence of the Medical fitness criteria, the decision for taking Mr. Dr. Ravi Kumar on job will finally be taken by the appointing authority in view of the above mentioned fact that he is a one eye person.”

Even this Note was again crossed and cancelled, and third Note was prepared by the Medical Board on 07.05.2011, which reads thus:-

“07/May/2011

The medial board has desired clarifications ... from the appointing authority vide letter No.288/MB/.../11 Date ... and their reply has been received (dtd. 28/April/2011) vide letter ... F.No.1 (2)/MA/CC/2011/096 (Photocopy enclosed). The Medial Board has reviewed this case and are of the opinion that Dr. Ravi Kumar is UNFIT for the post, as this post has been considered as Technical by the appointing authority.”

On the basis of the aforesaid Note/opinion of the Medical Board, the applicant has been denied appointment to the post of Lecturer (Swastha Vritta).

5. Mr. S.K. Gupta, learned counsel appearing for the applicant has referred to the information obtained under the Right to Information Act, 2005 from the National Institute of Ayurveda, Jaipur. The information, *inter alia*, includes the Notification No.4-2/83-HW.III dated 06.08.1986 issued by the Government of India, Ministry of Welfare. It contains the recommendations of a Committee constituted to recommend standard set of definitions of disabilities, authorized certification authorities and standard tests for purposes of objective certification. This Committee comprised highly qualified medical experts, including Dr. Madan Mohan,

Head, Department of Ophthalmology, All India Institute of Medical Sciences, New Delhi as its Member and Dr. Dr. B. Bisht, Director General of Health Services, Ministry of Health & Family Welfare as its Chairman. The Committee's recommendations on 'Evaluation and Assessment of Visual Disabilities' are to the following effect:-

“Evaluation and Assessment of Visual Disabilities.

The group recommended the classification of visual impairment/ disability may be categorised in four groups for considering various concessions to visually handicapped.

The question regarding one eyed person was considered at length. The Committee is of the view that the guidelines recommended for evaluation of visual loss of persons who have lost one eye but have the other eye normal should be totally unambiguous. The Committee feels that such persons may not be clubbed with other visually handicapped and totally blind are not eroded. If one eyed persons are clubbed with severely/profoundly visually handicapped and totally blind persons, the Committee feels that most of the concessions especially jobs reserved for the blind persons shall go to one-eyed persons as their visual loss is minimal compared to other 2 categories and in this manner most of the Government offices/public sector undertakings will be fulfilling the quota but in actual practice will not be giving jobs to totally blind and persons with severe visual loss.....”

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The Committee also recommended that Ministry of Health and Family Welfare may also take up amending standards for necessary relaxations in respect of mild handicapped in all the categories so that on account of their mild disability, they are not put in a position that neither they are able to get the facility of job reservations nor are eligible otherwise for entering into services in the general category. The medical rules may also indicates in clear terms that loss of one eye will not be considered a disqualification unless the particular post is of such a technical nature that it requires of a person the use of both the eyes or three-dimensional vision. The same medical board at the district level may examine suitability or otherwise of a one eyed person for a particular post.”

6. In the light of the recommendations of the Expert Committee, Mr. Gupta, learned counsel submits that denial of appointment to the applicant is totally unjustified and is a devise to exclude him despite his selection by

the competent selection body, and is violative of Articles 14 and 16 of the Constitution of India.

7. In the counter affidavit filed by the respondent No.3, the only plea raised is that the post in question is of technical in nature and thus the applicant is unfit for the said post. While admitting the fact that the applicant was found fit by the Medical Board, the following averments have been made in paragraph 4.8 of the reply:-

“4.8 ....It is further submitted that the respondent Institute was not aware about the said medical fitness report of the applicant as stated by applicant in this para. In this regard it is respectfully submitted that the respondent No.4 wrote a letter dated 14.03.2011 to the respondent Institute asking an explanation as to whether the post of lecturer is technical or non-technical. The respondent Institute vide its letter dated 25/28.04.2011 replied to the said letter dated 14.03.2011 of the respondent No.4 and interalia stated that the post of the lecturer is of technical nature and the duties and responsibilities attached to the post includes teaching, training, demonstration, patient care (attending to patient to OPD & IPD, examination and prescribing medicine etc.) research etc. thereafter, the answering Institute has received the medical certificate issued by the respondent No.4 vide DO No.473/MB/2011 dated 07.05.2011 whereby the fitness certificate of the applicant was received by the answering respondent in which the applicant was declared medically unfit for the post, then the answering respondent came to know that previously there was a note in which applicant was declared fit and said note was cancelled....”

8. Mr. M.K. Bhardwaj, learned counsel appearing for respondents has vehemently argued that since the Medical Board itself later on found the applicant unfit for the post in question and original certificate having been cancelled, no relief can be granted to him.

9. We have heard the learned counsel for the parties at length.

10. The selection of the applicant for the post of Lecturer (Swastha Vritta) is not in dispute. The only issue that needs consideration by this Tribunal is as to whether the applicant can be denied appointment merely on the

ground that the post is of technical nature and the applicant with one eye vision is medically unfit to handle the post. The only plea raised by the respondents is that the post is of technical nature. There is no definition of technical post under any rules, nor has any rule, regulation or norm been produced before us. The post, to which the applicant had applied and stands selected, is Lecturer (Swastha Vritta) whose duties and responsibilities, as admitted by the respondents, seem to be teaching, training, demonstration, patient care services (attending to patients in OPD and IPD, examination and prescribing medicines, etc.) research, etc. One fails to understand how these duties cannot be performed by a person with one eye vision, as he can definitely read, write and conduct examination of the patients. In any case, no rules, regulations or norms have been pressed into service to show that the applicant suffers from any such disability on account of his one eye vision, which prevents him from performing such duties. To the contrary, on 'Evaluation and Assessment of Visual Disabilities', the Committee has opined as under:-

“The Committee, however, feels that it should be made clear that loss of one eye will not be considered as a disqualification on medical grounds unless a particular post is of such a technical nature that it requires of a person the use of both the eyes or 3 dimensional vision. The Committee also recommends that if a person has been declared unfit due to some temporary visual loss/defect, it should not be construed to mean as disabled if such a temporary impairment in the opinion of a Medical Board can be overcome with treatment or visual aids.”

(Emphasis added)

11. The Committee constituted by the Ministry of Welfare has further mentioned in the said document that the medical rules may also indicate, in clear terms, that loss of one eye will not be considered a disqualification unless the particular post is of such a technical nature that it requires of a

person the use of both the eyes or three-dimensional vision. In the present case, it is not the plea of the respondents that there was any such condition in the Recruitment Rules or under any norms notified by the respondents for the post in question. Therefore, the plea of the respondents is totally unjustified and not sustainable in law. The applicant having been successfully selected and offered the appointment cannot be denied appointment to the post of Lecturer (Swastha Vritta).

12. The O.A. is accordingly allowed. The respondents are directed to appoint the applicant pursuant to the offer of appointment dated 04.02.2011 on the basis of the medical report dated 15.02.2011 wherein he was found fit. The consequential order of appointment be issued within a period of one month from the date of receipt of a copy of this Order. Needless to say that the applicant will be entitled to seniority in the order of merit, if any, and his appointment would be effective from the date other selectees were so appointed. However, he will not be entitled to any arrear of salary, though his pay would be fixed by taking into consideration the increments, which an appointee of the same selection would have earned. No costs.

**( K.N. Shrivastava )**  
**Member (A)**

**( Justice Permod Kohli )**  
**Chairman**

**July 19, 2016**  
**/sunil/**