

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 3432/2011

Order Reserved on: 02.09.2015
Pronounced on: 21.09.2015

Hon'ble Mr. A. K. Bhardwaj, Member (J)

Hon'ble Mr. V.N. Gaur, Member (A)

Sh. Satya Kant,
S/o Sh. Satya Pal Hudda,
R/o H.No.501, Jogi Mohalla,
Rithala Road,
Delhi-42.

- Applicant

(By Advocate: Sh. Ajesh Luthra)

Vs.

1. Govt. of N.C.T.D.,
Through the Chief Secretary,
5th floor, Delhi Sachivalaya,
New Delhi.

2. The Director,
Directorate of ISM & H,
GNCT of Delhi,
CSC-III, First Floor,
B-Block, Preet Vihar,
Delhi-92.

3. Lok Nayak Hospital,
Through its Medical Superintendent,
GNCT of Delhi
Jawahar Lal Nehru Marg,
New Delhi-2.

4. Guru Nanak Eye Centre,
Through its Medical Superintendent,

GNCT of Delhi
Maharaja Ranjit Singh Marg,
New Delhi-2.

- Respondents

(By Advocate: Ms. Alka Sharma)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

The applicant is questioning the action of the respondents in declaring him medically unfit on account of colour blindness for the post of Homoeopathic Pharmacist. The applicant had applied for the post of Homoeopathic Pharmacist under Directorate of Indian System of Medicine & Homoeopathy (ISM&H), Govt. of NCT of Delhi advertised through DSSSB in 2008. He was declared successful in the result published on 03.06.2010 and recommended for appointment. The Medical Board of the Lok Nayak Jai Prakash Narayan (LNJP) Hospital, which examined the applicant, declared him unfit due to colour blindness as it was a technical post.

2. Learned counsel appearing for the applicant submitted that the respondents have acted arbitrarily in rejecting the candidature of the applicant on account of colour blindness as the nature of duties and responsibilities of the post of Homoeopathic Pharmacist do not have any involvement of colours. The dispensation of homoeopathic medicines was confined to white pills and transparent liquid medicines in which by no stretch of imagination colour blindness can be considered as a handicap. The rules of

ISM&H also do not prescribe colour vision as an essential requirement. The applicant was not having any functional disability to act as Homoeopathic Pharmacist. The nature of duties attached to the post, as obtained by the applicant under the RTI Act, does not indicate any duty that will be hampered if a candidate lacks in colour vision. In response to RTI information, which is annexed as Annexure-4 to the OA, the respondents have admitted that there was no document to indicate the effect of colour blindness on the routine duties of a Pharmacist. The department further stated that they did not have any information regarding the colours used in homoeopathic medicines. There was also no supporting document to show that the post of Homoeopathic Pharmacist was a technical post. Considering this, it was apparent that the respondents have declared the post of Homoeopathic Pharmacist as technical dehors the rules. Learned counsel further pointed out that this Tribunal vide order dated 06.12.2012 passed in the present OA had directed the respondents to refer the matter to a competent Medical Board to certify whether the colour blindness is a disqualification for the post of Homoeopathic Pharmacist under the Govt. of NCT of Delhi. The respondents have filed an affidavit on 03.04.2013 intimating that they had constituted the competent Medical Board which had opined that the post of Pharmacist (Homoeopathy) is covered under technical post and medical examination for colour vision has been done as per stipulated guidelines. However, it was the same Board

which had conducted the medical examination of the applicant earlier and declared him colour blind; therefore, it will not only defend its earlier action. The action taken by the respondents in referring the matter to the same Board was not in accordance with the directions given by this Tribunal given on 06.12.2012. He further submitted that the competent Medical Board had only referred to the stand taken by the department that Homoeopathic Pharmacist's post was a technical post and reiterated the finding of its earlier medical examination. The competent Medical Board did not give its own view as to whether the post in question was a technical post or not. Learned counsel further referred to the list of Para-medical Staff obtained through RTI, which is annexed at page 10-11 of the reply to the additional affidavit filed by the applicant, and submitted that the post of Homoeopathic Pharmacist was not listed in the list of Para-medical staff. According to him it was a conscious decision of the respondents to keep the post of homoeopathic pharmacist out of that as the medical standards applicable to the technical Para-medical post could not be applied to Homoeopathic Pharmacist. The learned counsel relied on the following cases:

- (1) **Vijay Kumar vs. Union of India & ors.**, OA No.1503/98 decided on 28.06.1999.
- (2) **Sanker Reddy vs. Chief Medical Officer**, 1989 (5) SLR 612
- (3) **Smt. K.Indira vs. SBI, Hyderabad**, 1983 (2) SLR 376 of Hon'ble A.P.High Court

- (4) **Dinesh Kumar vs. Commissioner of Police**, OA No. 2581/2009 decided on 10.09.2009
- (5) **Kamal Kumar vs. Govt. of NCT of Delhi**, TA No.454/2009 decided on 16.07.2009
- (6) **Union of India vs. Satya Prakash Vasisht**, Civil Appeal No.1705/1987 decided on 27.10.1993 by Hon'ble Supreme Court.
- (7) **Satish Kumar vs. State of Haryana and others**, CWP No.13338/2008 decided on 29.04.2009 by Hon'ble High Court of Punjab abd Haryana.
- (8) **Manish Kumar Jain vs. BSNL & ors.**, 2009 (3) AISLJ 471

3. Learned counsel for the respondents, on the other hand, argued that it was wrong to say that there was no requirement of colour vision for the post of Homoeopathic Pharmacist. It would be too simplistic to say that Homoeopathic Pharmacist has to deal with only colourless liquids and white pills. The incumbent will have to read labels which may have colour codes. Besides that, one of the duties of the Homoeopathic Pharmacist is to see that the medicines do not suffer from any contamination or degradation. Any change in the colour of medicine due to contamination could pose risk to the health of general public using the services of that Homoeopathic Pharmacist. The department, therefore, took a conscious decision that Homoeopathic Pharmacist was a technical post and it was advertised as such in the year 2008. Learned counsel further denied that the direction of this Tribunal was not fully complied with in sending the reference to the same Medical Board. He

submitted that though the composition of Medical Board might have been the same, the question posed to the Medical Board was different. The competent Medical Board clarified that they had examined the applicant by the standard of a technical post as intimated by the user department. According to the learned counsel, the user department was at liberty to decide the medical standard required for any particular post. Since there was nothing to classify the post as technical or non-technical in the recruitment rules, the respondents had filled up the gap through an executive order which was a valid legal action.

4. We have heard the learned counsels and perused the record. The applicant was referred to a Medical Board in LNJP Hospital by respondent no.2 vide letter dated 15.06.2010. The LNJP Hospital sought a clarification whether the post of Homoeopathic Pharmacist was a technical or non-technical post to which the respondent no.2 clarified that “the post was a Class III Non-Ministerial Non-Gazetted post as per notified Recruitment Rules and is a technical post having a pay scale of Rs.5200-20200 + 2800 (Grade Pay)”. The Medical Board declared the applicant unfit on 20.01.2011 by applying the medical standards as in the case of a technical post. Before giving their final verdict, the Medical Board had referred the applicant to Guru Nanak Eye Centre for expert opinion regarding colour vision defect. He was examined by an Eye Specialist, who further referred the applicant to a Special Eye Board of three

Consultants to examine him on 30.08.2010. The Medical Board finally recorded that the applicant could read only 2 plates out of 17 Ishihara plates. It is, therefore, undisputed that the applicant is colour blind. He is not fit for technical Para-medical post for which 'low colour vision' is permitted by Govt. Circular dated 03.12.2010 (Annexure-V to the additional affidavit filed by the respondents on 01.07.2013).

5. The question that needs consideration is

- (i) whether the post of Homoeopathic Pharmacist is a Para-medical post since it does not figure in the list of Para-medical posts supplied by the respondents to the applicant in response to a RTI query and
- (ii) what is the standard of colour vision required for the post of Homoeopathic Pharmacist.

6. The learned counsel for the applicant has submitted that the respondents have wrongly applied the medical standards applicable for Para-medical staff as the post of Homoeopathic Pharmacist does not even figure in the list of Para-medical staff. However, it is noticed that the list supplied to the applicant, a copy of which is filed along with the reply to additional affidavit filed by the respondents, is not a copy of any official letter, notification etc. It is, therefore, difficult to conclude that this is an exhaustive list of all the Para-medical posts under respondent no.2. It also cannot be

concluded that there is no other order or notification dealing with the post under reference. We therefore leave it to the respondents to first take a view whether the list supplied to the applicant is complete and any post not mentioned there, especially the post of Homoeopathic Pharmacist is not a paramedical post. This question will not be however material in the context of the direction of this Tribunal dated 06.12.2012 as the respondents have to independently evaluate the colour vision requirement taking into account the functional requirements of the post without reference to its categorisation.

7. The next question that needs to be addressed is what is the colour vision standard required for the post of Homoeopathic Pharmacist. In the original advertisement for the post issued in the year 2008, the post of Pharmacist (Homoeopathy) was categorised under technical post. The applicant has not challenged this advertisement. Therefore, once the post has been categorised as technical post, the department and the Medical Board applied the medical standards prescribed for a technical post. On the issue of colour vision the circular dated 03.12.2010 prescribes the standard and the relevant portion of the same reads as follows:

“All heads of Departments of Hospitals/Medical Institutions are requested to follow the following Criteria/Medical Standards in respect of Color Blindness for Para-Medical/Staff Nurse Posts:

1. Colour Blindness – whether considered as fit for the post of Staff Nurse/Paramedical
2. For non-technical and unfit for technical

For Point (illegible)

- (a) Staff Nurse/Paramedical – falling in Group-C paramedical technical
- (b) As per letter No. A.12034/3/2008-CHS, Govt. Of India, Ministry of Health & Family Welfare (CHS I Section) dated 22nd September 2008 “LOW GRADE OF COLOUR VISION” is acceptable for Technical Services other than Indian Railway Medical Services. “LOW GRADE OF COLOUR VISION” may be defined as follows based on recommendation of health and safety executive guidance note MS7 (3rd edition).

The first 17 plates of ISHIHARA CHART can decide the amount of colour blindness

Normal make less than or equal to 3 errors

Most colour blinds make more than or equal to 12 errors

- (i) LOW GRADE OF COLOUR VISION ON TESTING WITH ISHIHARA CHART THEREFORE MAY BE CONSIDERED AS THOSE WHO MAKE 4-11 ERRORS WHILE READING THESE 17 PLATES.
- (ii) LOW GRADE OF COLOUR VISION MAY ALSO BE TESTED BY Edrige Green Lantern and should fulfil the following criteria
 - (a) Distance between the Lamp and the candidate 16 ft.
 - (b) Size or aperture 13 mm
 - (c) Time of Exposure 5 sec.

For Point (illegible) 2: Fit for Non technical and unfit for technical – the guidelines are pre existent which says:

As regards the Non technical Services/Posts, the Ministry/Department concerned will have to inform the medical board that the candidate is for a service requiring colour vision examination or not.”

8. As the candidate has read only two plates out of 17 Ishihara plates, the applicant has been categorised as colour blind and he could not cross the threshold even of “low colour vision”.

9. It is obvious that if normal standard of technical posts are applied, the applicant would not qualify for the post. If the post is considered as “non-technical” the aforementioned circular of

03.12.2010 requires that “the Ministry/Department concerned will have to inform the Medical Board that the candidate is for a service requiring colour vision examination or not.” In our view this principle will apply even to a non para medical non technical post.

10. It is in the above background that this Tribunal had directed the respondents by order dated 06.12.2012 to refer the matter to the competent Medical Board who could take a view whether colour blindness was a disqualification for the post of Homoeopathic Pharmacist. Relevant part of the order is as under:

“We, therefore, direct the respondents to refer the matter to the Competent Medical Board to certify whether the colour blindness is a disqualification for the post of Homoeopathic Pharmacist under the Govt. of NCT of Delhi. Let the report be produced before us within the next six weeks by way of filing the affidavit with an advance copy to the applicant’s counsel.”

11. From the correspondence placed on record, it can be seen that the Medical Board, to whom this question was referred, gave its opinion based on the premise that the post was a technical post for which there was defined standard for colour vision. It did not apply its mind to the issue, taking into account the functional requirement of the post, whether colour vision was required for the post of Homoeopathic Pharmacist. It is also observed that there is nothing on record to show that any Doctor or expert from homoeopathic field was associated in the Medical Board while the views of such expert will be important in taking a decision on the

issue. In our view the spirit of the direction given by this Tribunal on 06.12.2012 has not been followed.

12. We have considered the cited judgments. In **Satya Prakash Vasisht** (supra), the applicants therein were candidates for the post of Sub-Inspector (Executive) in Delhi Police and the question of colour blindness was examined with reference to the provisions contained in the recruitment rules. The question before the Apex Court was whether “shall be free from colour blindness” written in the Recruitment Rules would be applicable for both categories of posts, namely, (1) Constable, Head Constable, Sub-Inspector (Executive) and (2) Drivers and Traffic staff and only to the Drivers and Traffic staff. On interpreting the rules, the Hon’ble Supreme Court held that the above stipulation applied to the post of Constable, Head Constable, Sub-Inspector (Executive) etc.

13. In **K. Indira’s case** (supra) the Hon’ble High Court of Andhra Pradesh took a view that “if the state refuses the employment if any person suffers from eye sight using glasses, a large number of citizens have to be disqualified but if a special talent is necessary and a particular eye sight is required for a special employment the state may be justified in insisting higher standards of eye sight”.

14. In CWP No.13338/2008 also, the Hon’ble High Court of Punjab and Haryana relying on **Satya Prakash Vasisht** (supra) set

aside the order of the respondents declaring a candidate unfit for the post of Constable due to the fact that he was colour blind.

15. Taking into account the ratio of these judgments we can not conclude that disqualification on the basis of colour blindness is an unjust requirement or that the employer does not have authority to decide the standard of colour vision required for any of the posts under its control. Obviously no general rule can be laid down in this regard and a decision will have to be taken on case to case basis after taking into consideration the job requirements. In this context, it is instructive to recall the decision in **Bharat Petroleum Corporation Ltd. & another vs. N.R.Vairamani & another** (AIR 2004 SC 4778) where the Hon'ble Supreme Court held that orders and judgments of the Courts should not be read as statute but should be viewed with reference to the facts of each case. The Court also observed:-

“Court should not place reliance on decisions without discussing as to how the actual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.”

16. Considering the entire conspectus of the case and for the reasons mentioned above, we direct the respondents to constitute a Medical Board comprising head of Nehru Homoeopathic

Medical College under Govt. of NCT of Delhi, head of Homoeopathic Wing of the Directorate of ISM&H and Head of Ophthalmology Department of LNJP Hospital to take a view with regard to the level of colour vision required from the functional point of view for the post of Homoeopathic Pharmacist under Govt. of NCT of Delhi. This action may be completed within four weeks from the date of receipt of the order. After the completion of the aforesaid action, the respondent shall pass a reasoned and speaking order with regard to the candidature of the applicant in the context of his earlier rejection on the ground of colour blindness, within four weeks from the date of receipt of the report of the aforementioned Medical Board. No costs.

(V.N. Gaur)
Member (A)

'sd'

(A.K. Bhardwaj)
Member (J)