

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A./21/848/2017

Date of order : 21-03-2018

Between :

Nenavath Suresh
S/o Late Sri N.Jagannath Singh,
Aged 38 years,
R/o H.No.7-1-632/175,
Bapu Nagar Post, S.R.Nagar,
Hyderabad.

....Applicant

AND

1. The Union of India represented by its Secretary,
Department of Atomic Energy, Baba Atomic Research Centre,
Anushakthi Bhawan, C. S. M. Marg, Mumbai 400 039.
2. The Chief Executive, Nuclear Fuel Complex,
ECIL Post, Hyderabad – 500 062.
3. The Administrative Officer-III, Nuclear Fuel Complex,
ECIL Post, Hyderabad – 500 062.
4. The Assistant Personnel Officer, Recruitment Section,
Nuclear Fuel Complex, ECIL Post,
Hyderabad – 500 062.

...Respondents

Counsel for the Applicant: Dr. P. B. Vijay Kumar

Counsel for the Respondents :Mr.V.VinodKumar, Sr.CGSC

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER
THE HON'BLE MRS. MINNIE MATHEW, ADMINISTRATIVE MEMBER

(Oral order per Hon'ble Mr.Justice R.Kanta Rao, Judicial Member)

Heard Dr. P. B. Vijay Kumar, learned Senior counsel appearing for the
applicant and Mr. V. Vinod Kumar, learned Senior Central Govt., Standing
Counsel for Respondents.

2. This Original Application is filed to declare the letter dated 05.09.2017 of the 5th Respondent as illegal, arbitrary, violative of Article 14 and 16 of Constitution of India and also is clear disregard of the judgment dated 04.04.2017 in OA No.1141 of 2015 on the file of this Tribunal to set aside the same and direct the Respondents to appoint him to the post of Work Assistant "A" / Hospital Work Assistant "A" with all consequential and attendant benefits.

3. The brief facts necessary for considering the issues involved in the OA may be stated as follows :

In pursuance of an advertisement issued by the 2nd Respondent, Nuclear Fuel Complex, Hyderabad, the applicant applied for the post of Work Assistant "A" / Hospital Work Assistant "A" under category No. 6 (Auxiliary Posts), belonging to ST category. He was successful in the written examination and oral interview and was issued with an offer of appointment on adhoc basis vide letter dated 08.06.2013. The applicant has produced medical certificate showing his fitness and submitted all the documents.

4. The other candidates who were selected were issued with appointment orders except the applicant. The Respondents after subjecting him to several medical tests, rejected his candidature on the ground that he was "medically unfit". The medical conditions, according to the Respondents, due to which the applicant was treated as "unfit" are Morbid

Obesity and Uncontrolled Hypertension.

5. Aggrieved by the said rejection order, the applicant filed OA No.1143 of 2015 before this Tribunal. This Tribunal by referring to various judgments rendered in respect of the very same subject, took the view that even if the medical conditions which were noticed by the Medical Board of the Respondents are found to be true, the Respondents are not supposed to deny the appointment to the applicant on the ground that those medical grounds will develop into serious complications which will render him unfit to the post of Attendant at a subsequent period.

6. This Tribunal, however, apart from holding that the Respondents were not justified in denying the applicant the appointment, held in para-9 of the order that 'however, this order shall not preclude the respondents from subjecting the applicants for a fresh medical examination, however, keeping in view the observations made in the order, before issuing orders of appointment, as the applicant was medically examined a couple of years back'.

7. After passing of the order by the Tribunal on 07.06.2017, it seems that the Respondents constituted Medical Board to examine the applicant. The Medical Board examined the applicant and found that the applicant has been suffering from :

(i) Hypertension Stage-III,

(ii) Hypertensive Retinopathy Grade-2
(Target Organ damage),

(iii) Hypertensive Nephropathy Stage-I
(Target Organ damage),

(iv) Morbid Obesity and

(v) Severe Obstructive sleep apnea syndrome.

Upon noticing the aforementioned conditions, the Medical Board opined that the “ applicant cannot perform productive duties and he is not fit for the post of Work Assistant “A” / Hospital Work Assistant “A”.

8. The Respondents again basing on the Medical Report by the Medical Board, rejected the candidature of the applicant by the impugned order, which is now under challenge in this Original Application.

9. In this context, it is required to be mentioned that this Tribunal disposed of OA No.1141/2015 filed by the applicant along with OA No.1234 of 2016 filed by one Mr. Manikya Rao Kolluri who applied for similar post in Railways was denied the appointment on the same grounds, rendering a common order. The Railways challenged the common order in so far as Mr. Manikya Rao, the applicant in OA No.1234/2016 is concerned in WP No. 38196 of 2017. A Division Bench of the Hon’ble High Court of Hyderabad, referring to the judgment in WP No.14760 of 2015 of the Division Bench of the Madras High Court which issued guidelines, in regard to a candidate whose appointment was rejected on the ground that he was Diabetic, held

that there is no justification to interfere with the order passed by this Tribunal. The Division Bench, in the said order, directed the Railway Administration to issue appointment order to the Respondents therein within a specified time.

10. Therefore, in substance, the common order in which the applicant was also one of the party, is confirmed by the Division Bench of the Hon'ble High Court of Hyderabad. Further, the Hon'ble High Court of Hyderabad in the said case did not lay down any condition that the Respondent therein shall undergo Medical Examination again.

11. Now the point for determination in the present case is that whether the Respondents are justified in denying the appointment to the applicant by the impugned order. The Medical Board did not subject the applicant to physical examination to find out as to whether he is able to perform the duties of Work Assistant "A" / Hospital Work Assistant "A". It is to be noted that the medical conditions mentioned at (ii), (iii) and (v) above were not noticed by the Medical Board initially when he was referred to the Medical Board after his selection. These three are some new medical conditions found in the examination conducted after disposal of OA No.1141/2015 filed by the applicant. The learned counsel appearing for the applicant contends that the Respondents took undue advantage of the order passed by the Tribunal permitting them to conduct another medical examination after the disposal of OA No.1141 of 2015.

12. We wish to examine that inspite of medical conditions mentioned in the report submitted by the applicant, whether the applicant can be appointed for the post for which he was selected. In our view, the medical conditions referred to by the Medical Board can be cured and with the above said conditions also the applicant can perform the duties of Work Assistant "A" / Hospital Work Assistant "A" . If that is so, we are of the considered view that the Respondents have no justification in refusing the appointment to the applicant basing on the report of the second Medical Board.

13. The Original Application is therefore deserves to be allowed and accordingly it is allowed. The Respondents are directed to issue appointment order to the applicant within a period of eight weeks from the date of receipt of a copy of this order. It is also made clear that the applicant is entitled for the salary and other allowances only from the date he assumes charge of the post.

14. No order as to costs.

(MINNIE MATHEW)
ADMINISTRATIVE MEMBER

(R.KANTHA RAO)
JUDICIAL MEMBER

Dated : 21st March, 2018.
Dictated in Open Court.

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