

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A/020/0056/2018
Date of order : 23-03-2018

Between :

Rizwan Basha Shaik
S/o Abdul Mazeed,
Aged about 29 years,
R/o H.No.7-278, Aditya Nilayam,
Sujatha Nagar, First lane, Kurnool Road,
Ongole-523001, Prakasham District,
Andhra Pradesh. ...Applicant

AND

Union of India,
Rep by its Secretary to Government of India
Department of Personnel & Training (AIS Division),
North Block,
New Delhi – 110 001. ...Respondent

Counsel for the Applicant: Mr. K. Sudhakar Reddy
Counsel for the Respondents : Mrs. K.Rajitha, 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 Mr. K. Sudhakar Reddy, learned counsel appearing for the applicant and Mrs. K. Rajitha, learned Senior Central Government Standing Counsel for Respondents.

2. This Original Application is filed to quash and set aside the order dated 07.11.2017 issued by the Respondent cancelling the selection of the

applicant for the Civil Services Examination by declaring the same as arbitrary, illegal and in violation of the point 3.1.5 of Civil Services Medical Rules and letter dated 05.07.2017 and against the selection procedure and also in clear violation of the applicant's fundamental rights guaranteed under Article 14 of the Constitution of India.

3. Briefly stated, the facts necessary for considering the issue involved in the OA are that the applicant appeared for Civil Services Examination, 2016. Under Visually Impaired category, he was given relaxation considering the certificate produced by him which indicated that he was 40% disabled. He passed the Preliminary Examination. Subsequently he appeared for the Main Examinations and he passed the Main Examination and obtained A-I 48 rank. Thereafter he was subjected to medical examination by the Medical Board. He was examined by the Medical Board, which found that his visual disability is 30% . Regulation 3.1.4 of Regulations relating to physical examination of the candidates provides that in case of dissatisfaction / disagreement with the report of the medical examination/test and its recommendations, the candidate may prefer an appeal to the DoP&T in the prescribed format either by post or online within 7 working days from the date of publication of Medical Report on the website.

4. Under the said provision, the applicant preferred an appeal to the Medical Board. The Appellate Medical Board examined him on 05.07.2017. The Appellate Medical Board examined him again on 14.07.2017 and issued

a certificate stating that the Visual Impairment of the applicant is 40%. In the normal course, the Respondents ought to have selected and appointed the applicant for the Civil Services but it seems that a complaint made by a third party was received by the Chairman of the UPSC stating that the applicant produced a false certificate regarding the disability by increasing the percentage of disability and therefore his selection to the CSE 2016 was to be re-examined and the Respondents referred the case of the applicant to an Expert Committee of the Central Govt., Health Scheme. The Committee examined the case of the applicant without clinically examining him, issued a certificate assessing the disability of the applicant at 30% thereby confirming the percentage assessed at the initial examination. On receiving the said report, the Respondents issued the impugned proceedings cancelling the selection of the applicant for CSE 2016. In this context, it is submitted by the applicant that till receiving the impugned proceedings of cancellation of his selection, he did not know about the Respondents referring his case to the Expert Committee of the CGHS and its report. Thus, according to him, there was no notice to him before referring his case to the Expert Committee nor his presence was required before the said Committee. In these circumstances, he challenged the impugned order.

5. None of the facts which are asserted by the applicant have been refuted by the Respondents. They only state that basing on the complaint from a third party, they have referred the case of the applicant to the Expert Committee and cancelled his selection basing on the report submitted by the Expert Committee. They did not quote any Rule which enables them to

refer the matter to the Expert Committee i.e. Director of CGHS after the decision of the Appellate Medical Board. Their main contentions in the reply statement are as follows :

“ Department received a complaint dated 01.07.2017 against the Applicant regarding the fake disability certificate of the Applicant. It is further submitted that there was a huge difference between the findings of both the Medical Boards i.e. CSMB, SKH, Delhi after the tests conducted at MIIIMS, Delhi declared the Applicant as invalid PH (30% disable) and AMB, GNEC, Delhi declared the Applicant as valid PH candidate (40% disable). Therefore, to arrive at a fair conclusion in the matter, this Department sought comments / opinion from the Ministry of Health & Family Welfare, Directorate General of Health Services (DGHS).”

6. The Department agreed with the report of the DGHS which in turn agrees with the opinion given at Sucheta Kriplani Hospital, New Delhi and Guru Nanak Eye Centre i.e. the applicant is having 30% disability. Thus the version of the Respondents seems to be that some of the Members of the Appellate Medical Board were not in the Expert Committee and they agreed with the opinion of the Expert Committee and hence they did not deviate with the Appellate Medical Board. Hence, basing on the opinion of the Medical Board, Appellate Medical Board and Expert Committee, the Respondents have passed the impugned order.

7. To take a decision on the issue involved in this case, firstly it requires to be noticed, as to what the Regulations of the Examination of the Vision Disability lay down. Regulation 3.1.5 is as follows :-

“3.1.4. In case of dissatisfaction/disagreement with the report of the medical examination/medical test and its recommendations, the candidate may prefer an appeal to DoPT in the prescribed format (**Annexure-II**) either by post or online to reach DOPT within 7 working days from the date of publication of medical report on the website.

Candidate filing an appeal against the decision of the CSMB may, if he/she likes enclose medical certificate in support of his/her claim of being fit. The Medical Examination by the Appellate Medical Board would be arranged at Delhi only and no travelling allowance or daily allowance will be admissible for the journeys performed in connection with the medical examination. No fee will be charged for filing an appeal against the findings of the CSMB.

3.1.5.Candidate filing an appeal will be assigned an Appellate Medical Board by the DoPT and he/she will have to present him/her before this Board on the date and time indicated in the notice for the same which will be uploaded in the website on the dedicated page for the candidate concerned. No separate notice by post would be sent. Failure to appear before the Appellate Medical Board on the appointed day would amount to forfeiture of the opportunity of appeal for the candidate and as a consequence the recommendation of CSMB would be final. The recommendation of this Appellate Medical Board would be final and no appeal would lie against the opinion of this Appellate Medical Board.”

8. It is clear from the aforementioned regulations that, if the candidates fails to appear before the Medical Board on the given date, his right of appeal would be forfeited and the initial recommendation of the CSME would become final. So also, the recommendation of the Appellate Medical Board will be final and no appeal lies against the opinion of the Appellate Medical Board. Therefore, as per these regulations, the decision of the Appellate Medical Board cannot be challenged by any candidate. We do not find any Rule nor did the Respondents brought to our notice any such Rule which enables them to refer the decision of the Appellate Medical Board to further scrutiny.

9. Another submission made by the applicant is that he appeared for other services ie Indian Information Services, 2015, Indian Corporate Law Services, 2016, Indian Railway Accounts Services, 2017 and IFS, 2017 and

ultimately he was selected for the said posts. He opted for Indian Railway Accounts Services and he is working for IRAS. Before issuing appointment orders, he was subjected to Physical Fitness tests and his VI was assessed as 40%. Therefore he submits that basing on the complaint forwarded by a 3rd party, the Respondents ought not to have referred the opinion of the Appellate Medical Board to the Expert Committee for its decision.

10. If the case of the candidate is subjected to successive scrutinies, the results may vary. However, in the instant case, the applicant was not at all directed to be present before the Expert Committee. The Expert Committee only examined the previous record of the initial Medical Board and the Appellate Medical Board and arrived at a different opinion which is in our view cannot be said to be in accordance with the procedure. In any event, the Regulation 3.1.5 which gives finality to the opinion of the Appellate Medical Board, in our view is mandatory and the Respondents in the absence of any enabling provision, cannot subject the opinion of the Appellate Medical Board to further scrutiny. Therefore, the impugned order, whereby and whereunder the selection of the applicant for CSE 2016 is cancelled basing on the Expert Committee Report is not in accordance with Rules and does not stand to the legal scrutiny.

11. Therefore, the impugned order F.No.13014/01/2017-AIS-I, dated 07.11.2017, is set aside and the Respondents are directed to appoint the applicant to Civil Services, 2016 and allocate him suitable post based on the rank he secured in the CSE, 2016, within a period of three months from the

date of receipt of a copy of this order.

12. The Original Application is accordingly allowed.

13. No order as to costs.

(MINNIE MATHEW)
ADMINISTRATIVE MEMBER

(R.KANTHA RAO)
JUDICIAL MEMBER

Dated : 23rd March, 2018.
Dictated in Open Court.

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