

**Central Administrative Tribunal
Principal Bench**

OA No.1701 /2019

New Delhi, this the 16th day of October, 2019

Hon'ble Justice Mr. L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Ankit Kumar Shukla
S/o Shri Laxmikant Shukla
Aged about 24 years
R/o village Dhindhar, Post Teonthar
District Rewa (M.P.).

...Applicant

(By Advocate: Ms. Alpana Pandey)

Vs.

1. Union Public Service Commission through
Its Secretary Dholpur House
Shahjahan Road, New Delhi-110069.
2. Govt. of India, Ministry of Railways
(Railway Board) Rail Bhawan, New Delhi
Through its Chairman.
3. Dy. Director Estt.(GR)
R. No.304, 3rd Floor, Rail Bhawan
Railway Board, New Delhi-110001.

...Respondents

(By Advocate: Shri Krishan Kant Sharma)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The Union Public Service Commission (UPSC)
issued an Examination Notice dated 27.02.2016 for

Engineering Services Examination, 2016. Provisions were made for reservation in favour of physically disabled persons of various categories. The applicant claimed the status of handicapped category (Hearing Impaired). Disability certificate issued by the District Medical Board, Rewa showing 40% permanent disability of hearing loss was filed. In the written test, he secured fairly good marks. In the context of ascertaining the physical disability, he was referred to Medical Board of Railways at Jabalpur. In the certificate dated 04.11.2017, it was observed that the disability of the applicant is 40% but he does not fulfil the eligibility criteria for being extended the benefit of reservation as handicapped candidate. He was required to appear before a Medical Board. Through an order dated 30.01.2017, the respondents informed the applicant that the Appellate Medical Board declared him as unfit for all services, on account of not fulfilling the percentage of disability criteria for hearing handicapped.

This O.A. is filed challenging the communication dated 30.01.2017.

2. The applicant contends that the percentage of disability, mentioned under the advertisement or the Recruitment Rules, is 40% and once it was consistently found that his disability is partly 40%, the benefit of reservation ought to have been extended to him, under the relevant provisions of law.

3. The respondents filed a counter affidavit opposing the OA. It is stated that though the disability of the applicant was found to be 40%, it was a correctable one and accordingly, he was denied the benefit of reservation.

4. We heard Ms. Alpana Pandey, learned counsel for the applicant and Shri Krishan Kant Sharma, learned counsel for the respondents, at length.

5. The applicant took part in the selection process for appearing in the Engineering Services Examination, 2016. He claimed the benefit of reservation in favour of hearing handicapped. It is not in dispute that according to the Advertisement, the benefit would be extended to such of the candidates, who suffered the disability to the extent of 40% or more.

6. The applicant got himself examined by a Board at Rewa and they certified him as hearing impaired handicapped of 40%. The department, which the applicant was to have been allotted, namely, Railways, subjected him to a test by the Medical Board. In the certificate, the Medical Board referred to the certificate issued at Rewa. At the end, it was mentioned against Column No.5 as under:-

“As per disability certificate, the percentage of hearing loss is 40%. He does not fulfil the criteria of hearing handicapped, so he is not eligible for reservation in hearing handicapped quota.”

7. There exists a facility of Appellate Medical Board. The applicant is said to have been subjected to the same. The respondents have not placed before the Tribunal, the nature of certification made by the Appellate Board. However, in the impugned order, it was simply mentioned as under:-

“With reference to your medical examination held on 04.01.2017 in connection with your candidature for the above mentioned examination, the Medical Board has declared you Unfit for all services on account of Not fulfilling the % of disability criteria for hearing handicapped. With these medical findings, you cannot be considered for allocation to any services on the basis of the above mentioned examination.”

8. A perusal of the letter dated 17.04.2017, issued by the Railway Board, reads as under:-

"Please refer to this Ministry's letter of even number dated 09.02.2017 wherein you were directed to present yourself before the Appellate Medical Board at Dr. Baba Saheb Ambedkar Railway Hospital, Byculla, Central Railway, Mumbai on 15.02.2017 at 9.00 A.M.

2. The appellate Medical Board has declared you unfit for all services on account of correctable hearing loss.

3. In terms of Para 14 of Engineering Services Examination Rules-2016 appeal fee of Rs.100/- deposited by you in the form of DD No. 0306041 dated 04.02.2017 drawn on Punjab National Bank, Theonthar (Rewa), is hereby forfeited.

4. Please note that in terms of Para 15 of Engineering Services Examination Rules-2016, the decision of Appellate Medical Board is final and no appeal lies against the same. No further correspondence will be entertained in this regard."

9. The benefit of reservation can be denied to a candidate, if only a clear finding is recorded to the effect that he does not satisfy the norms. The percentage of disability, stipulated under the notification, is 40%. The Medical Board at Rewa as well as the one at Jabalpur found the applicant to be having the disability to the extent of 40%. The notification did not add any clauses to such disability, such as whether

it is correctable or otherwise. The final certification is required to be made in absolute terms, but not with conditionalities.

10. We are of the view that the applicant needs to be sent to an Appellate Medical Board, which, in turn, will record a clear finding as to the percentage of disability for hearing suffered by the applicant. If it is 40% or above, he shall be extended the benefit of reservation and if it is below, then he would not be entitled for the same.

11. The OA is allowed, setting aside the impugned order and directing the respondents to cause the examination of the applicant through the Appellate Medical Board at Delhi, within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

PG