

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

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No. O.A. 1002 of 2016

Date of order: 3.7.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Kashi Nath Porey,  
Son of Late S. Porey,  
Worked as Casual labour (with break),  
Under Coast Guard Squadron-700,  
Kolkata,  
Residing at Vill. Kachidar, P.O. Sarada,  
P.S. Amta,  
Dist. Howrah,  
Pin - 711413.

... Applicant

VERSUS

1. The Union of India,  
Through the Secretary,  
Ministry of Defence,  
South Block,  
New Delhi - 110 001.
2. The Commander,  
Coast Guard,  
Region, North East,  
Rajarhat, New Town,  
Kolkata - 700 157.
3. The Commandant Officer (CG),  
700 Squadron Coast Guard,  
Netaji Subhas Chandra Bose International  
Airport,  
Kolkata - 700 052.
4. The Commandant Officer (CG),  
Coast Guard Head Quarter,  
Rajarhat, New Town,  
Kolkata - 700 157.

.. Respondents

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For the Applicant : Mr. N. Roy, Counsel

For the Respondents : Mr. B.B. Chatterjee, Counsel

**ORDER (Oral)**

**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- (a) To issue direction upon the respondent to give appointment to the applicant forthwith.
- (b) To issue further direction upon the respondent to implement the order of the Hon'ble CAT/Calcutta Bench along with Hon'ble High Court forthwith.
- (c) To issue further direction to the respondent authority to quash/cancel and/or setting aside the impugned order dated 02.07.2014 forthwith.
- (d) Any other order or orders as the Learned Tribunal deem fit and proper.
- (e) To produce connected departmental record at the time of hearing.
2. Heard both Ld. Counsel, examined pleadings, documents on record as well as the orders and judgments as referred to by the applicant.
3. The facts of this matter, in a narrow compass, is that, the applicant was posted as a Casual Labour with the Coast Guard, and, on, April, 2000, after being sponsored by Employment Exchange, he was medically examined for the purpose of being empanelled in the post of Enrolled Follower in the Coast Guard but he was declared temporarily disqualified in the said medical examination.

On February, 2001, the applicant obtained a certificate from the Primary Health Centre stating that he was no longer suffering from ailments in question. The applicant thereafter issued a lawyer's notice to the respondent authorities and, not having received any response to the same, approached the Tribunal in O.A. No. 945 of 2003 and the Tribunal disposed of the matter on 21.9.2004 directing the respondent authorities that the applicant may be considered for appointment, if found medically fit. The respondents challenged the decision of the Tribunal by filing

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WPCT No. 11/2005 but a Division Bench disposed of the WPCT confirming the orders of the Tribunal.

Thereafter, the applicant received some information under Right to Information Act vide which he learnt that the respondents have made certain appointments against available vacancies while ignoring his case. Accordingly, he moved a CAN No. 4934/2013 for appropriate orders in WPCT No. 11/2005. A Division Bench dismissed the CAN and granted the petitioner liberty to initiate contempt proceedings which was disposed of by a Division Bench of the Honble Calcutta High Court, Calcutta with the following orders:-

" The purpose of the order dated January 31, 2005 could not be, and in our reading, was not that the petitioner was to be considered for appointment in a limitless future time. The Tribunal by its order dated September 21, 2004 had directed the respondents in the O.A. to comply with the order within three months from the date of receipt thereof. While not interfering with the order of the Tribunal this court only observed that the petitioners in the WPCT would comply with the order of the Tribunal.

It means that the directions of the Tribunal were to be complied with within three months from January 31, 2005. If the petitioner was of the view that the petitioner in the WPCT committed a contempt of this court, then he ought to have presented the petition seeking initiation of a civil contempt proceeding within the period of limitation prescribed in s.20 of the Contempt of Courts Act, 1971. We are unable to accept that by the order dated January 31, 2005 this court granted the petitioner an enforceable benefit.

The WPCT was filed by the respondents in the O.A. feeling aggrieved by the order of the Tribunal asking them to consider the petitioner for appointment. The Division Bench passing the order dated January 31, 2005 found no reason to interfere with the order of the Tribunal. Under the circumstances, there was no scope for the Division Bench to give the petitioner a benefit larger than the one the Tribunal had granted him, especially when he did not question the order of the Tribunal.

Thereafter, the applicant again represented the respondent authorities through a legal notice. In response, he received a reply dated 2.7.2014 in which the respondent authorities rejected his prayer on the ground that despite several notices, the applicant had failed to comply with their directions to appear before the medical board and, hence, his case does not deserve consideration.

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4. The sole issue before us is to decide whether the applicant deserves to be appointed and, particularly, in terms of judicial decisions in his regard.

5. At the outset, we refer to the orders of the Tribunal in O.A. No. 945 of 2003 issued on 21.9.2004, which stated as follows:-

"5. Thus, in the back ground, we ask the respondent authorities to constitute a Medical Board through the Command Hospital and the applicant's physical fitness be determined. If he is found medically fit, then his case may be considered accordingly for appointment for which he was already selected. In case he is found unsuitable, no further direction is necessary to be passed in this regard. This exercise be completed within three months from the date of communication of this order."

Thereafter, the orders of the Hon'ble High Court in WPCT No. 11 of 2005 filed by the respondent authorities are reproduced as below:-

"In view of above contention we direct the petitioner authorities to comply with the direction given by the learned Tribunal and to give respondent appointment if he is found medically fit against the next available vacancy in the concerned post in accordance with the Rules.

With the above observation this writ application is disposed of."

The orders of the Hon'ble High Court in CAN No. 4934 of 2013 filed by the applicant is as under:-

"Leave is granted to the Applicant/Respondent to withdraw the civil application, being CAN No. 4934 of 2013, with liberty to take action before the appropriate Forum for redressal of his grievances."

And finally, the orders of the Hon'ble High Court, Calcutta in CPAN No. 1905 of 2014 as quoted in para 3 above are noted.

From the above, it clearly transpires that directions on the respondent authorities were to constitute a medical board through the Command Hospital which had to determine the physical fitness of the applicant. Thereafter, if he was found medically fit, his case would be considered for appointment and, in case he was found unsuitable, further directions as necessary were to be passed in this regard. This order of the Tribunal was passed on 21.9.2004 and as annexed in written statement to the reply, Annexures R-1 colly. it appears that the respondent authorities thereafter issued letters dated 26.4.2005, 9.5.05 and 16.5.05 to the applicant to appear before the duly constituted

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medical board. It is also on record that the notice dated 16.5.2005, which refers to the earlier notices of 26.4.2005 and 9.5.2005, have been received by the applicant in person.

In the rejoinder, the applicant has nowhere denied that he had not received the instructions for appearing before the medical board. As pleaded in his rejoinder, the applicant considers that such examination before the medical board is unnecessary when he has obtained medical certificate from a Health Centre towards his fitness.

This argument of the applicant is unreasonable and cannot be accepted under any circumstances. The applicant had approached the Tribunal for relief. The Tribunal had directed the respondent authorities to constitute a medical board to examine him. The respondent authorities notified the applicant to appear before the medical board and it is not the applicant's case that he was not in receipt of such notice. The applicant, however, adamantly refused to appear before the medical board on grounds of some unauthorized certificate justifying his medical fitness.

Hence, as the applicant has violated the orders of the Tribunal and the confirming orders of the Hon'ble High Court, Calcutta, he has no justifiable claim and has approached the Tribunal with a superfluous and misconceived application thereby wasting the valuable time of the Tribunal.

6. We, accordingly, dismiss the O.A. on merit and direct that the applicant shall be liable to pay a cost of Rs. 5000/- to the respondent authorities.

**(Dr. Nandita Chatterjee)**  
**Administrative Member**

**(Bidisha Banerjee)**  
**Judicial Member**

**SP**