

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00671/16**

Reserved on: 04.07.2019
Pronounced on: 05.07.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Rakshit Shivam Prakash, son of Sri Prem Prakash Verma, Resident of House No. 55, Anugrah Narayan Path, Near Alpana Market, Patna-800013 (Bihar).

.... **Applicant.**

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through Secretary, Department of Personnel and Training, Government of India, New Delhi.
2. The Secretary, Dhaulpur House, Shahjahan Road, New Delhi- 1100069.

.... **Respondents.**

By Advocate: - Mr. H.P. Singh

O R D E R

Per Dinesh Sharma, A.M:- This OA stems from an apparently unfortunate situation in which a person (applicant) who had appeared in the highly competitive Civil Services Examination (2014) and had also eventually qualified to be selected (though through a second, reserved list) could not get selected because of his failure to appear in a re-medical test where he could prove that his weight was within the prescribed Body Mass Index (BMI).

2. The case of the applicant is that he did not appear for this re-medical test on 14.07.2015 because the results of the selection process were declared on 04.07.2015 and his name was not there in the list of 1236

persons declared successful in these results. He apparently thought that he had failed to get selected and therefore did not appear for the re-medical examination which was fixed on 14.07.2015 following his appeal against the original medical examination held on 29.04.2015 in which he was found to be temporarily unfit in view of high BMI (31.70 instead of 30 which amounts to about 5 KG overweight). Apparently, it turns out that his assumption was wrong and his name was recommended by the UPSC for selection in a reserve list of 126 candidates who were declared successful on 19.01.2016. The applicant alleges that this made him assume that he was finally selected and there was no need for him to appear for further medical test and therefore he was surprised when his name did not find mention in the list of Service Allocation which was published on the Website after publication of the reserve list. The applicant has submitted representation for fixing re-medical examination by his letter dated 18.03.2016. However, the respondents are not willing to offer him any opportunity for re-medical examination though he is aware of similar opportunity having been given to other temporarily unfit candidates of the same CSE 2014 Examination. The applicant has prayed for a relief of allocation of service to the applicant against CSE 2014 henceforth at par with other similarly placed persons of the consolidated reserve list dated 19.01.2016 and for other consequential benefits.

3. The respondents have filed a written statement in which they have denied the claim of the applicant. They have quoted Rule-3.1.5 of Appendix-III of CSE Rules, 2014 which is reproduced below:-

“ 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.”

They have also informed that the list of temporary unfit candidates was also placed on the Department’s website and a notice dated 09.07.2015 was put on this website to submit medical fitness certificate within the prescribed limit of six months from the date of uploading of the medical examination report. Since the applicant did not appear on the date when he was scheduled to appear following his appeal against the original finding and also because he did not take any further steps to produce a fitness certificate within a period of six months of uploading of medical examination report the respondents could not consider his case for allocation to any of the services and his status was confirmed as unfit for all services with the approval of competent authority.

4. The applicant has filed a rejoinder in which besides reiterating his earlier claim he alleged that the respondents have issued another list of candidates whose medical status is still temporarily unfit and the name of the applicant does not figure in this list. He has also alleged that no opportunity of showing cause issued to him before cancelling his candidature and thus it is in violation of settled law.

5. We have gone through the pleadings and heard the arguments of learned counsel for the parties. During the course of the arguments, the learned counsel for the respondents produced the decision of this Tribunal (Hyderabad Bench) in OA 726/2016 in which in almost identical circumstances and identical request for re-medical examination and

consideration for appointment was not allowed by this Tribunal. The facts of that case and of the case before us are almost entirely similar. The only difference is with regard to the fact that in the present case the applicant had appealed against the original decision of the Medical Board but did not appear on the scheduled date of re-medical examination while in the case before the Hyderabad Bench the applicant therein had not even appealed. In both the cases it seems that the applicants assumed their non-selection on the basis of their names not appearing in the first list and approached for re-medical examination only after their names did not find a mention in the service allocation even though they found themselves selected in the reserve list which was published almost nine months after the first list. The applicant before us had filed an appeal but apparently forfeited his right under that appeal by not appearing for re-examination. After this, he had ample opportunity to get himself re-examined as per the notice uploaded in the website of the Department of Personnel and Training. The Hyderabad Bench of the Tribunal have found this failure to be a fatal one and have dismissed the OA before them for allowing the applicant therein another chance. We are constrained by our own decision in this matter and taking into account the fact that the applicant before us has also been guilty of assuming things without verifying and not being diligent enough in following up a matter in his own interest we are unable to grant the prayer sought by the applicant. The OA is, accordingly, dismissed. No order as to costs.

**[Dinesh Sharma]
Administrative Member
Sr. K.**

**[Jayesh V. Bhairavia]
Judicial Member**

