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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2845/2003

This the 7th day of July, 2004

HON'BLE JUSTICE SH. V.S.AGGARWAL, CHAIRMAN
HON'BLE SH. S.A.SINGH, MEMBER (A)

Balendra Singh
C/o IES Made Easy
25-A, Bersarai,
(Opposite Old JNU Campus)
New Delhi-110016.

Applicant.

(By advocate: Ms. S.Janani)

Versus

1. U.P.S.C.
through its Secretary,
Dholpur House,
Shahjhan Road,
New Delhi.
2. Union of India
through Secretary,
Ministry of Railway,
Rail Bhawan,
New Delhi.
3. Joint Director Establishment(Gazette
Recruitment) Railway Board,
Ministry of Railways, Rail Bhawan,
Raisina Road, New Delhi.

...Respondents.

(By advocate: Shri Rajinder Khatter)

O R D E R (ORAL)

By Shri S.A.Singh, Member(A)

The applicant, who is a B.Tech in Civil Engineering, qualified in the Engineering Service Examination of 2002 and was placed at rank 12. He was called for medical examination but was declared unfit for all services on account of "Superior Medistinal Widening". He was called for second medical examination, which was held on 30.7.2003 and he was informed vide letter dated 5.9.2003 that he had been declared unfit. He submitted a representation, which was rejected on

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14.10.2003. Aggrieved by impugned order dated 5.9.2003 declaring him unfit for all services, the applicant filed present OA.

2. The case of the applicant is that he was ~~that he was~~ ^L wrongly rejected as his disease was curable and he should have been given six months time, as per rules, before re-examination. Respondents by conducting Second Medical Board within one and a half month after the first Medical Board have discriminated against the applicant.

3. The first Medical Board did not examine him properly. Had they done so by conducting other relevant tests, it would have been revealed that the applicant's ailment was curable and in such circumstances he would have given six months time to undergo treatment before rejecting his application. The applicant is now fully cured. He is thus entitled for appointment.

4. The respondents have strongly contested this case stating that the applicant was informed, on the basis of the first medical examination, that he was suffering from Superior Medistinal Widening and if the applicant was aware that this condition was curable, he should have brought this to the notice of the authorities and asked for sometime to get disease medically cured. If he had done so the competent authority would have taken cognizance of this fact and acted accordingly. Whereas, the applicant claimed that he was not suffering

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from the said disease and enclosed a false certificate and tried to misguide the Ministry.

5. The Appellate Medical Board examined the applicant and came to the conclusion that he is suffering from 'Tuberculosis' which was curable and as he had already started on ATT on 20.6.2003 came to the conclusion he was temporarily unfit. The Appellate Medical Board had erred in this regard as they were unaware of the rules wherein they cannot declare a candidate temporarily unfit. The findings of the Appellate Medical Board were, therefore, referred to the competent authority, Director-General, Health Services, who held that the applicant was unfit for all services on the date of medical examination.

6. The applicant having exhausted the remedy of second examination by appealing to the Appellate Medical Board has no further remedy, because as per rules, no appeal is permitted after the findings of the Appellate Medical Board. The respondents also relied upon the judgement of this Tribunal in OA 2480/2002 dated 4.12.2002 in the case of Rajesh Verma Vs. The Secretary, Govt. of India and Another wherein an OBC candidate succeeded in the Engineering Services Examination but was found medically unfit. The reason assigned was defective colour vision. He was examined by the second Medical Board and he was again found unfit. He appealed and it was held that there was no provision for a third Medical Board.



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7. We have heard the counsels and perused the material on record. We find that the applicant was found unfit for all services because he was suffering from Superior Mediastinal Widening. The Medical Board mentioned as under:

The Medical Board (Annexure CR.I) on the above condition has mentioned that

"Superior Mediastinal Widening can be a serious matter. It may include a number of conditions like lymphnode enlargement which can be infective, tubercular lymphadenitis, lymphoma or secondaries. Vascular conditions like aneurysm of aorta and dilation of superior venacava. Other conditions like cysts, thymoma and retrosternal goitre may also be there. For making a definitive diagnosis further sophisticated investigations like C.T. Scan, MRI may be required. It is beyond the purview of Medical Board to go into the details on these points. Hence Medical Board declared the candidates as 'Unfit' for all categories.

As the limitations of the Medical Board did not allow it to go into the details of the conditions and as Superior Mediastinal Widening could be a serious matter with a lot of complications, the Medical Board declared him unfit."

8. It is apparent that the Medical Board did not go further into the issue of whether the disease was curable or not due to lack of CT Scan, MRI and other facilities.

9. On the other hand, the Appellate Medical Board examined the applicant and their findings as under:

The Appellate Medical Board examined the applicant on 30.07.2003. Their findings are as under:-

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"TEMPORARY UNFIT ON ACCOUNT OF MEDIASTINAL
LYMPHADENOPATHY CAUSE TUBERCULAR"

10. From the above, reading of the two opinions, it is seen that the applicant was suffering from the disease but was curable and as such, he was declared temporarily unfit by the Appellate Medical Board. As per rules for guidance of the medical board examination published in the Gazette of India Extraordinary Vol.I, the following procedure is laid down:

In case where a candidate is declared unfit for appointment in the Government service, the ground for rejection may be communicated to the candidate in broad terms without giving minute details regarding the defects pointed out by the Medical Board.

In case where a Medical Board considers that a minor disability disqualifying a candidate for Government service can be cured by treatment (medical or surgical) a statement to that effect should be recorded by the Medical Board. There is no objection to a candidate being informed of the Board's opinion to this effect by the appointing authority and when a cure has been effected it will be open to the authority concerned to ask for another Medical Board.

In the case of candidates who are to be declared "Temporarily Unfit" the period specified for re-examination should not ordinarily exceed six months at the maximum. On re-examination after the specified period these candidates should not be declared temporarily unfit for a further period but a final decision in regard to their fitness for appointment or otherwise should be given.

The Medical re-examination shall be deemed to be part of the 1st Medical Examination and candidates may, if they so desire, appeal against its decision."

11. As per this procedure when a candidate can be cured for treatment (medical or surgical) statement to

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that effect should be recorded by the Medical Board. Clearly the Medical Board has failed to do so in the case of the applicant. Had this been done the applicant would have been called for re-examination as a part of the first medical examination within a period of six months. This opportunity was not provided to the applicant. On the contrary, the order declared him medically unfit for all services and stipulated that he was required to make an appeal, if any, against this order within ten days, which the applicant has done. Had he been declared temporarily unfit he would have filed an appeal within six months for appearing for the second Medical Board.

12. Respondents have pleaded that the rules do not permitted a third medical examination as such the applicant's case cannot be considered. They take support of the case of Rajesh Verma (supra).

13. We have gone through the case of Rajesh Verma (supra) and find that the case of applicant is distinguishable from that of Rajesh Verma. In the case of Rajesh Verma, the applicant had been declared medically unfit on account of defective colour vision, which is not curable. In the case of the applicant, it has been found that he is suffering from a curable disease and as such he was declared temporarily unfit by the Appellate Medical Board.

14. We have heard the counsels for both parties and gone through the record. We find that the Medical

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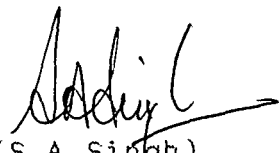
Board erred in declaring the applicant unfit for all services. We, therefore, set aside the findings of the Medical Board.


15. The Appellate Medical Board (now the first Medical Board) has declared the applicant as temporarily unfit. The applicant is entitled to medical re-examination as part of the first medical examination as per rules.

16. The OA, therefore, is allowed in the following terms:

- a) the applicant should be re-examined by the Medical Board:
- b) the Medical Board shall opine if the applicant is medically fit; and
- c) thereupon appropriate action should be taken.

17. This exercise should be completed within three months from the date of communication of the present order.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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