

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 3752/2017

New Delhi, this the 6th day of November, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Ajay Mishra
S/o Shri Sita Ram Mishra
81, Aruna Nagar, Etah,
U.P.-207001.

.. Applicant

(By Advocate: Shri Dhananjai Rana)

Versus

1. Employee Provident Fund Organization
Through Additional Central Provident
Fund Commissioner (HR)
Head Office
Bhavisya Nidhi Bhawan
14, Bhikaji Cama Place
New Delhi-66.
2. Regional Provident Fund Commissioner
Regional Office
Employee Provident Organization
Kanpur, U.P.
3. Additional Central Provident Fund
Commissioner (HR)
Employee Provident Fund Organization
Head Office
Bhavisya Nidhi Bhawan
14, Bhikaji Cama Place
New Delhi-66.

.. Respondents

(By Advocate : Shri Keshav Mohan)

O R D E R (ORAL)**Justice L. Narasimha Reddy, Chairman**

253 posts of Assistant Provident Fund Commissioner (APFC) in Employees' Provident Fund Organization (EPFO) were proposed to be filled in the year 2012. The selection process was entrusted to the UPSC and that, in turn, issued an Advertisement on 14.04.2012. The applicant responded to the Advertisement. A written examination was conducted, followed by an interview. The results were declared on 16.08.2013; and the applicant topped in the list. An offer of appointment was also issued on 21.12.2013. The dossier of the applicant was forwarded to the EPFO, the 1st respondent herein, for taking necessary steps.

2. After receipt of the dossier, the 1st respondent required the applicant to appear before a Medical Board. The 1st respondent addressed letter dated 09.01.2014 to the Chief Medical Officer, Govt. Hospital Etah, with a request to constitute a Medical Board for examining the applicant and to issue a certificate. The applicant

appeared before the Medical Board on 21.02.2014 and the Board certified his fitness. The certificate was forwarded to the 1st respondent.

3. Six months thereafter, the 1st respondent addressed a letter dated 01.08.2014 to the Regional Provident Fund Commissioner (RPFC), Kanpur, the 2nd respondent herein, stating that the Medical Fitness Certificate dated 21.02.2014 issued to the applicant, is not in order. The 2nd respondent was requested to make necessary arrangement for medical examination of the applicant in any nearby Government hospital.

4. The applicant states that he was waiting for a communication from the 2nd respondent for medical examination and visited the office on number of occasions. It is stated that he made a written representation on 29.06.2017 in this behalf. He was informed through a letter dated 28.08.2017 that his candidature was cancelled through Office Memorandum dated 20.07.2016. This O.A. is filed challenging the communication as well as the Office Memorandum.

5. The applicant contends that as required by the respondents, he appeared before the Medical Board in February 2014 and it was only 6 months thereafter, that a communication was sent by the 1st respondent to the 2nd respondent, taking the view that the Medical Certificate was not valid. It is stated that no reasons, whatever, was mentioned as to why the Medical Fitness Certificate was not valid. It is also stated that the 2nd respondent never informed the applicant about the constitution of the Medical Board, as directed by the communication dated 01.08.2014, and he was kept in complete dark in the entire episode. The applicant further states that the so called final notice dated 12.10.2015 was not served upon him and the impugned order dated 20.07.2016 is in violation of principles of natural justice.

6. The respondents filed a detailed counter affidavit. The basic facts are not disputed and they are borne out by record. It is stated that the Medical Fitness Certificate obtained by the applicant was not found to be in order

and, accordingly, the 2nd respondent was required to arrange for medical examination of the applicant. It is stated that the applicant was under obligation to keep in touch with the respondents and instead, he remained indifferent; despite the fact that a final notice was issued. They contend that long after the cancellation of his candidature, the applicant addressed a letter on 29.06.2017. It is also stated that the dossier of the applicant was returned to the UPSC and, at this stage, nothing can be done.

7. We heard Shri Dhananjai Rana, learned counsel for the applicant and Shri Keshav Mohan, learned counsel for the respondents and perused the entire record.

8. The applicant responded to the Advertisement issued by the UPSC for the post of APFC in the EPFO. In the selection process, he topped the list. The procedure evolved by the respondents for appointing the selected candidates stipulates the certification of medical fitness of the candidates. It is in this context, that the 1st respondent addressed a letter to the Medical

Superintendent, Govt. Hospital, Etah. Promptly enough, the applicant appeared before the Medical Board, constituted by the Medical Superintendent, Etah and the Medical Fitness Certificate was issued on 21.02.2014.

9. If the certificate issued to the applicant by the Medical Board was not proper in any manner, it was expected from the 1st respondent to indicate the same immediately thereafter. It was only on 01.08.2014, that the 1st respondent addressed a letter to the 2nd respondent and it reads as under:

“Subject:- Medical Examination from Medical Board in respect of Sh. Ajay Mishra for appointment as Assistant Provident Fund Commissioner (Group A) in the Employees’ Provident Fund Organisation.

Sir,

It is to intimate that the process for filling up the post APFCs under DR quota is under way. In this process; the name of Sh. Ajay Mishra was recommended by the UPSC for appointment to the post of APFC. Accordingly, he was advised to appear before Medical Board at Govt. Hospital, Etah vide this office letter No. HRM-II/A-10(3)2007/DR APFC/Pt. I/20926-28 dated 09.01.2014.

2. Now, we have received a medical fitness certificate in respect of Sh. Ajay Mishra as issued

by Chief Medical Superintendent, Etah (UP) on 21.02.2014 (copy enclosed).

3. It is pertinent to mention here that as per Govt.'s instruction "A Medical Board should consist of three Group 'A' Medical Officers of the status of specialists, namely a Physician, a Surgeon and an Ophthalmologist. When a woman candidate is to be examined by a Medical Board, there should be on the Board a woman doctor possessing a medical qualification in prescribe the First, Second or Part II of the Third Schedule, to the Indian Medical Council Act, 1956 (102 of 1956). As far as possible the members of the Board should be comparable in status of each other and not ordinarily be officers immediately subordinate to one another. Further the prescribed fees are payable by the candidate in the first instance and the same is reimbursable to him by this Organization, in case he is found medically fit and join the post.

3. In view of above, the medical fitness certificate as issued by the Chief Medical Superintendent, Etah is not acceptable because the certificate has not been issued by a proper medical board.

4. Therefore, you are requested to make necessary arrangement for medical examination of Sh. Ajay Mishra by a Medical Board in any nearby Government Hospital. Address of the candidate is mentioned hereinafter.

5. This may please be treated as MOST URGENT."

10. It is necessary to mention that the 1st respondent did not undertake any correspondence with the Medical Board, Etah. For all practical purposes, the Medical Fitness Certificate issued was declared as invalid and

further steps are required to be taken by the 2nd respondent himself.

11. Para 4 of the letter dated 01.08.2014 discloses that the 2nd respondent was required to arrange for medical examination of the applicant by constitution of a Medical Board. There is nothing on record to disclose that except addressing a letter dated 21.08.2014 to the Chief Medical Officer, Etah, the 2nd respondent has taken any further steps. The letter reads as under:

**“Sub: Medical Examination from Medical Board
in respect of Sh. Ajay Mishra for
appointment as Assistant Provident Fund
Commissioner (Group-A) in the Employees’
Provident Fund Organisation.**

Ref: EPFO, Head Office, New Delhi letter No. HRM-II/A-10(3)2007/DR APFC/Pt. I/20926-28 dated 09.01.14.

Sir,

Please refer to Head Office of Employees’ Provident Fund Organisation letter No. HRM-II/A-10(1)13/605/10832 dated 01.08.2014 (copy enclosed for ready reference) on the subject cited above.

2. A medical fitness certificate in respect of Sh. Ajay Mishra issued by Chief Medical Superintendent, Etah (UP) on 21.02.2014 (copy enclosed) can not be entertained as the certificate has not been issued by a proper Medical Board.

3. It is, therefore, requested to arrange medical examination of Sh. Ajay Mishra by a Medical Board and as per the instructions/guidelines laid down in the aforesaid letter to examine fitness of the candidate for the above post.

This may please be treated as MOST URGENT."

12. Mere addressing a letter did not serve the purpose. Even otherwise, the 2nd respondent was not only under obligation to ensure the constitution of Medical Board as per their requirement, but also to inform the applicant to appear before it. There is nothing on record to disclose that the 2nd respondent informed the applicant either about the constitution of the Medical Board or requiring him to appear before the Board. The so called final notice was issued on 12.10.2015. It reads as under:

"FINAL NOTICE

Consequent to the recommendation the name of Sh. Ajay Mishra in the select list for the post of Asst. Provident Fund Commissioner in Employees' Provident Fund Organization by UPSC, he was issued Offer of Appointment vide this office memorandum no. HRM-II/A-10(1)2013/606/1017 dated 21.12.2013.

2. Whereas his medical examination report dated 21.12.2014 has been issued by the Chief Medical Superintendent, District Hospital, Etah. In accordance with extant provision, a medical report should consist of three Group 'A' medical officers of

the status of specialist whereas the said report has been signed by Chief Medical Superintendent only. Hence, Sh. Ajay Mishra was intimated vide this office letter of number HRM-II/A-10(1)13/605/10832-33 dated 1.8.14 to undergo for medical examination by a Medical Board in any nearby Government Hospital.

3. As nothing has been heard from Sh. Ajay Mishra with reference to his appointment to the post of Assistant Provident Fund Commissioner, it seems he is not interested in joining the post of Assistant Provident Fund Commissioner in the organization. However, Sh. Ajay Mishra is hereby advised to make sure to forward his medical examination board report within 10 days from the date of issue of this letter failing which, it will be presumed that Sh. Ajay Mishra is not interested in the job of Assistant Provident Fund Commissioner in this Organization and appropriate action for cancellation his candidature to the post of APFC will be taken.”

13. In this letter, it was not mentioned as to what steps were taken by the 2nd respondent for constitution of the Medical Board. It is not in the hands of the applicant to constitute a Medical Board. When the Board itself was not constituted at all, the question of the failure of the applicant to appear before it, does not arise.

14. The applicant states that he did not receive the final notice dated 12.10.2015. In his representation dated 29.06.2017, the applicant *inter alia* stated as under:

“That the applicant has approached the Chief Medical Officer as he has also got the copy of the letter of

conduct of medical though he was not informed independently by CMO in any manner. The medical certificate was issued to the applicant and the applicant has submitted the same to the appropriate authority in the month of Feb. 2014 itself.

That thereafter a letter dated 01st August, 2014 was issued by the office of Regional Provident Fund Commissioner (HRM) to the Regional PF commissioner, RO Kanpur requesting him to make necessary arrangement for medical examination of the applicant by a medical board in the nearby Govt. Hospital and the ground for request was that the medical submitted by the applicant was not as per norms though no such norms were ever informed to the applicant and it was not possible to have something different than as provided by the Chief Medical Officer, Etah.

Sir even after the best efforts of the applicant and various visits to the offices concerned till date no medical board has been constituted nor any information for joining the post has been issued and a long time has already elapsed.

Hence the applicant is constrained to write you the present request cum representation hereby requesting you with folded hands to complete the formalities if any and to allow the applicant to join the concerned post as soon as possible and for this act of kindness he shall feel deeply obliged.”

He clearly stated that he made number of visits to the office, but no Medical Board was constituted. He has also stated in para 4(h) of the O.A. that he made more than 20 visits to the office. In the counter affidavit, this statement was not contradicted at all. However, the candidature of the applicant was cancelled, through order dated

20.07.2016. Except stating that a final notice was issued on 12.10.2015, it was not even mentioned that Medical Board was constituted at any point of time and the applicant did not turn up.

15. The facts which are borne out by record speak for themselves. With dint of hard work, the applicant ranked at the top of the list. When he was asked to appear before the Medical Board, he promptly did that and was issued a Medical Fitness Certificate. The 1st respondent took exception to the Medical Certificate only about 6 months thereafter. In none of the letters addressed by the 1st respondent, the exact defect of the Medical Certificate is mentioned. In fact, the Medical Certificate, which was directly communicated to the 1st respondent, is not filed before this Tribunal at all.

16. Be that as it may, the applicant can be found fault with, only if the respondent Nos. 1 and 2 constituted a Medical Board and the applicant did not appear before it. When there is nothing on record to disclose that they have ever constituted a Medical Board, after distrusting

the certificate issued to the applicant by the Medical Board, Etah, the cancellation of his candidature cannot be said to be valid. The right of the applicant, that accrued to him, on being selected and issued offer of appointment, cannot be taken away in such a perfunctory manner.

17. The mere fact that the dossier was returned to the UPSC or that subsequent selections were made, should not make any difference. As against 253 vacancies that were advertised, only 246 candidates were selected and the applicant was the topper. It is a large organisation and there should not be any difficulty to adjust an officer, who topped the list.

18. We, therefore, allow the O.A. and set aside the impugned order dated 20.07.2016. The respondent Nos. 1 and 2 shall arrange for a Medical Board for examination of the applicant. To avoid further complication in the matter, the 1st respondent shall address a letter to the Safdarjung Hospital, New Delhi, for constitution of a Medical Board within a period of one

month from today and issue intimation to the applicant in this regard. The applicant shall appear before the Medical Board on a specified date. In case the applicant is found fit, he shall be issued order of appointment. In the event of the applicant being appointed:

- (a) he shall not be entitled to be paid any arrears of salary; and
- (b) he shall be entitled to count his notional seniority, on the basis of the ranking assigned to him by the UPSC.

There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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