

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 10.07.2014**

% **W.P.(C) 1144/2014**

UNION OF INDIA Petitioner
Through: Mr. Malaya Kumar Chand, Advocate.
versus

MS. SATWINDER KAUR Respondent
Through: Ms. Sahila Lambha & Ms. Karuna
Chhatwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 13.11.2013 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ("CAT" in short) in O.A. No.2649/2012, whereby:(i) the CAT allowed the aforesaid original application, and quashed the orders dated 03.05.2012 and 19.06.2012 issued by the petitioner, whereby the respondent was declared as medically "unfit" by the Medical Board and the Appellate Medical Board of the petitioner respectively, and; (ii) it directed the petitioner to take consequential steps with respect to the respondent's selection for Engineering Services Examination – 2011 in accordance with the rules & instructions, within a period not exceeding four months from

the date of receipt of the impugned order.

2. The respondent has a Bachelors Degree in Engineering from Thapar University, Patiala in Electronics & Communication, having secured 73.3% marks in the year 2008. The respondent joined M/s HCL Technologies Limited as a Software Engineer and served in the said organisation between 30.07.2008 and 17.12.2009. The respondent appeared in the Engineering Services Examination – 2011 conducted by the Union Public Service Commission (“UPSC” in short) in May 2011. The selection process for the said examination consisted of a written test followed by personality test/ interview. The selected candidates were required to undergo medical examination before their recruitment.

3. It is not in dispute that the respondent was declared selected to Electronics and Telecommunication Group on the basis of written examination and interview results. The respondent attained merit position No.129 in the final list of successful candidates. The respondent was then called for medical examination at Lalit Narayan Mishra Railway Hospital, North Eastern Railway, Gorakhpur on 19.04.2012. The respondent appeared before the Medical Board. Respondent No.2, namely the Ministry of Railways declared the respondent medically “unfit” for all the services, namely IRSSE, AEE(EME), IOFS, INAS, ANSO, WPC/MO, IRSS, ISS, ITS Gp ‘A’ and ITS Gp ‘B’ in JTO on account of her suffering from Systemic Lupus Erythematosus (“SLE” for short).

4. The respondent got herself examined at Post Graduate Institute of Medical Education and Research (“PGIMER” in short), Chandigarh. Dr. Shefali K. Sharma, Assistant Professor, Department of Internal Medicine, PGIMER, Chandigarh, upon examination of the respondent issued a certificate dated 14.05.2012 certifying that the respondent was suffering from SLE. She further stated in the certificate that:

“SLE is a chronic disease with a varied spectrum. She has only skin involvement and no major organ is involved. Also since the last one year the skin problem is quiescent on minimal treatment.

On examination she has residual scars of a previous SLE rash and alopecia. No other systemic abnormalities are present. Her investigations reveal normal hemogram, renal function test, liver function test, urine routine and chest x-ray.

I strongly recommend that she is medically fit.”

5. The respondent preferred an appeal for her second medical examination supported by the aforesaid medical certificate. The respondent was medically examined by the Appellate Medical Board at North Central Railway Hospital, Allahabad on 04.06.2012 and once again declared her “unfit” on the same ground vide communication dated 19.06.2012.

6. The respondent again went back to PGIMER, Chandigarh for medical examination and she was once again declared medically “fit” vide certificate dated 31.07.2012, again issued by Dr. Shefali K.

Sharma. The certificate issued by Dr. Shefali K. Sharma on this occasion reads as follows:

“This is to certify that Miss Satwinder Kaur D/o Mr. Gurbax Singh, 25/F CR No. 201102756529 is suffering from Systemic Lupus Erythematosus (SLE) which is a chronic disease with a varied presentation.

My patient has only skin involvement and no major organ is involved. Also since the last one year the skin problem is quiescent on minimal treatment.

She is fit to do any kind of job. She is living a normal life.

On examination she has residual scars of a previous SLE rash and alopecia. No other systemic abnormalities are present. Her investigations reveal normal hemogram, renal function test, liver function test, urine routine and chest x-ray.”

7. In the aforesaid background, the respondent preferred the original application before the CAT, Principal Bench, New Delhi.

8. The grievance of the respondent was that a proper medical examination was not conducted by the petitioner. It was also the respondent's case that the petitioner had not objectively assessed the respondent's case and had not examined whether her medical condition, i.e. the disease SLE was such as to interfere in the discharge of her responsibilities while in service. Merely because the said disease is incurable and chronic, she could not be declared “unfit”.

9. The grievance of the respondent was that the opinions of the Medical Board as well as the Appellate Medical Board did not contain any reasons for the same. Even though the medical certificate issued by Dr. Shefali K. Sharma was placed before the Appellate Medical Board, the said Appellate Medical Board did not indicate any reasons for its disagreement with the said medical certificate.

10. The CAT in its order concluded that neither the opinion of the Medical Board, nor that of the Appellate Medical Board contain the basis on which the opinion with regard to the unfitness of the respondent was confirmed. The CAT observed that the said opinions were non-speaking, and thus, do not comply with the principles of natural justice. This was so, particularly in the face of the medical opinion of Dr. Shefali K. Sharma.

11. The CAT also observed that the main object of the medical examination was to examine whether the candidate could render continuous effective service for the petitioner. In this respect, reference was made to a Gazette notification dated 08.01.2011 bearing No.2010/E.(GR)I/18/2, whereby the Engineering Services Examination Rules –2011 were notified by the Ministry of Railways (Railway Board). The CAT relied upon paragraph 13 of Appendix-II which sets out the regulations relating to physical examination of candidates. The said paragraph, in effect, states that *“in case of doubt regarding health of a candidate the Chairman of the Medical Board may consult a suitable Hospital Specialist to decide the issue of fitness or unfitness of the candidate for Government Service.*

When any defect is found it must be noted in the certificate and the medical examiner should state his opinion whether or not, it is likely to interfere with the efficient performance of the duties which will be required of the candidate”.

12. The CAT held that in the present case, there was no evidence to suggest, nor had the petitioner stated, that any reference was made to consult a suitable hospital specialist to decide on the fitness, or otherwise, of the respondent and that there was no conclusion, much less any material to support the conclusion, that the respondent was medically “unfit” such that the unfitness is likely to interfere with the efficient performance of the duties, which would be required of her.

13. The Tribunal also considered the fact that Dr. Shefali K. Sharma was aware of the purpose of the respondent’s medical examination - that the respondent had applied for the service in question, and on that basis, she had opined that the respondent was “fit” for the job. The extent of the respondent’s disease was also taken note of, by observing that only the respondent’s skin was involved and there was no major organ involved in the disease. The fact that the respondent had worked for over a year with M/s HCL Technologies Ltd. as a Software Engineer between the period 30.07.2008 and 17.12.2009, was also taken note of.

14. The CAT also placed reliance on the decision of the Bombay High Court in ***Ranjit Kumar Rajak Vs. State Bank of India***, 2009 (5) BomCR 227, and a few other decisions, including those of this Court

and the Supreme Court.

15. The submission of learned counsel for the petitioner is that the SLE is not a curable disease and complete sustained remissions are rare. He submits that the Medical Board as well as the Appellate Medical Board consisted of experienced, qualified and competent medical doctors. The Medical Board consisted of one Physician, one Surgeon, one Eye Surgeon and two co-opted members including one Dermatologist and Gynaecologist, who were competent to give their opinion with regard to the medical fitness/ unfitness of the candidate. The Appellate Medical Board consisted of one Physician, one Surgeon, one Ophthalmologist along with a Senior DMO. The submission is that the Medical Board had a senior qualified Physician with the same basic qualifications as that of Dr. Shefali K. Sharma, Assistant Professor, Department of Internal Medicine, PGIMER, Chandigarh.

16. Learned counsel submits that the purpose of conducting medical examination of the successful candidates is to ensure that the recruited candidates are able to render efficient and continuous service to the petitioner, and the disease does not interfere with the efficient performance of the duties, which would be required of the recruited candidates. Learned counsel submits that the fact that the Medical Board, as well as the Appellate Medical Board, had opined that the respondent was “unfit” shows that the said Medical Boards had considered the aspect whether the medical condition of the respondent would interfere with the efficient performance of her duties, which

would be required of the respondent.

17. On the other hand, the submission of learned counsel for the respondent is that all manifestations of SLE are not debilitating. She submits that neither the Medical Board, nor the Appellate Medical Board have opined with regard to the effect that SLE has had on the respondent. On the other hand, Dr. Shefali K. Sharma has opined that only the respondent's skin is involved in the said disease, and no major organ is involved. She has further opined that the respondent has residual scars of a previous SLE rash and alopecia. No other systemic abnormalities were found to be present. The respondent's investigations reveal normal hemogram, renal function test, urine routing and chest x-ray. She submits that merely because the respondent is suffering from SLE, she does not automatically become liable to be declared "unfit", as it needed examination by the Medical Board and the Appellate Medical Board whether the said disease was such as to interfere with the efficient performance of her duties, which would be assigned to the respondent.

18. She submits that even though the respondent had placed the first medical certificate issued by Dr. Shefali K. Sharma - certifying her to be medically "fit" before the Appellate Medical Board, the Appellate Medical Board has neither dealt with the said medical certificate, nor addressed the issue whether the manifestation of SLE in the respondent was such as to interfere with the efficient performance of her duties, which would be required of the respondent.

19. Having heard learned counsel for the parties, perused the documents and the impugned order, we are of the opinion that there is no illegality in the order passed by the CAT, which would call for interference by this Court in exercise of its power of judicial review.

20. No doubt, the opinion of the Medical Board and the Appellate Medical Board cannot be contested by resort to medical opinion of another specialist in the field. However, it is evident that neither the Medical Board, nor the Appellate Medical Board have addressed themselves to the issue whether the defect/ disease suffered by the respondent, and its manifestation, is likely to interfere with the efficient performance of duties by the respondent required of her. The petitioner has proceeded only on the basis that the respondent is suffering from a chronic disease.

21. The petitioner has relied upon paragraphs 11(i) and 11(k) of Appendix-II of the aforesaid rules which, in effect, state that the Medical Board should observe the following additional points: “(i) *that he does not suffer from any invertebrate skin disease; (k) that he does not bear traces of acute chronic disease pointing to an impaired constitution;*”. The Medical Board, as well as the Appellate Medical Board, appear to have proceeded only on the basis that the respondent suffers from SLE, which is incurable and a chronic disease. However, that, by itself, could not have been a ground to reject the respondent’s case as being medically “unfit”. Before doing so, the Medical Board as well as the Appellate Medical Board ought to have examined whether the disease, or defect was

likely to interfere with the efficient performance of her duties, which would be required of the respondent. On this aspect, there is no opinion given by either by the Medical Board, or the Appellate Medical Board despite the fact that, at least, the Appellate Medical Board was aware of the medical opinion given by another expert, namely Dr. Shefali K. Sharma, Assistant Professor, Department of Internal Medicine, PGIMER, Chandigarh.

22. It also appears that the petitioner did not take care to constitute the Medical Board, as well as the Appellate Medical Board, with due application of mind. When the respondent was found to be suffering from SLE, in the Appellate Medical Board, the petitioner should have ensured the inclusion of a medical doctor with expertise in the relevant field, i.e. in the field of internal medicine. The petitioner appears to have gone about the rejection of the respondent's candidature in a casual manner, which betrays non-application of mind by the Appellate Medical Board to the relevant considerations.

23. Merely because a disease may be chronic, or incurable, it cannot lead to medical unfitness for seeking employment with the respondent. For example, Diabetes can be chronic and incurable. Can it be said that a patient of Diabetes would be denied employment by the petitioner without any other considerations? In our view, the answer cannot be an absolute 'No'. It would need examination as to what is the nature of employment; what are the conditions of service, the nature of duties and responsibilities to be performed by the candidate, if appointed; and such other relevant considerations before

answering the issue whether the candidate is ‘fit’ or ‘unfit’ for the job in question. The aforesaid aspects have not been considered either by the Medical Board, or by the Appellate Medical Board. The respondent is a Computer Engineer and her job would entail working on the computer in an office environment. There is nothing on record to suggest that she would not be able to efficiently discharge her duties & responsibilities, if employed by the petitioner, particularly when she has successfully rendered service for over a year with an established Indian entity in the field of computers.

24. For the aforesaid reasons, we are not inclined to interfere with the impugned order and, accordingly, dismiss this petition leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

S. RAVINDRA BHAT, J

JULY 10, 2014

B.S. Rohella