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

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Date of Judgment: 27th July, 2018

+ LPA 355/2017

DR RAHUL KUMAR

..... Appellant

Through : Mr.Pradeep Kumar and Mr.Parveen
K. Nagpal, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr.Ripu Daman Bhardwaj, CGSC,
and Mr.T.P. Singh, Adv. for
respondents no.1 to 3.
Mr.V.N. Koura and Mr.Paramjit
Benipal, Advs. for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE P.S. TEJI

G.S.SISTANI, J. (ORAL)

1. Present appeal is directed against the order dated 10.11.2016 passed by a learned Single Judge of this Court in W.P.(C)No.7804/2015 whereby the petition filed by the petitioner was rejected.
2. The necessary facts, to be noticed for disposal of the present appeal, are that an advertisement was published by respondent no.2 inviting applications from the eligible candidates for the post of Quality Control Officer (Grade-A), Boiler Operations Engineers, Medical Officer, Assistant Officer, Human Resource Officer, etc. The appellant, who claims to be Ph.D from IIT, Roorkee, in Environmental Analytical Chemistry, and is stated to have worked as Senior Research

Fellow in the Chemistry Department of IIT Roorkee, had applied for the post of Quality Control Officer in the General Category with the Registration no.105526. The appellant was called to appear in the written test, wherein he was declared successful. Thereafter he was called for Group Discussion/Group Task and interview by respondent no.2 scheduled for 28.8.2014, which were cleared by him. The appellant was finally selected for the post of Quality Control Officer and was issued an offer of appointment dated 17.12.2014 in Grade A in the pay scale of Rs.24,900-50,500/-. Vide email dated 5.1.2015 sent by respondent no.2, the appellant was informed that the offer of appointment issued had been returned undelivered and the appellant was asked to remain in touch with the office of respondent no.2 so that offer of appointment could be handed over to him. Thereafter the offer of appointment was delivered to the appellant, which was duly accepted by him. The appellant submitted a signed copy of the offer of appointment along with requisite documents mentioned therein to respondent no.2. Subsequently, pursuant to a medical examination conducted by the Medical Board of respondent no.2, the appellant was declared FIT in the Pre-Employment Medical Examination and he was issued a certificate dated 6.1.2015. The distant vision of the right eye of the appellant, without glasses, was stated to be 6/6 and 5/60 for the left eye, and with glasses it was stated to be 6/36 for the left eye. The appellant was declared FIT for the abovementioned post. On 12.1.2015, when the appellant went to join the office, the CMO of respondent no.2 did not allow him to join the duties on the ground that he is medically unfit as his left eye vision is 6/36.

3. Learned counsel for the appellant submits that respondent no.2 vide Certificate dated 6.1.2015 had declared the appellant FIT for the said post and they cannot declare him unfit without conducting further medical check-up. Counsel further submits that no further medical report was provided to the appellant and the CMO simply wrote Clause 6.19(i) medically unfit left eye 6/36 and ignored the FIT Certificate already issued by the Medical Board.
4. Counsel for the appellant further submits that subsequently the appellant had consulted some of the Government Doctors and Eye specialists, who opined that the low vision in the left eye is amblyopia and advised him to wear glasses, besides exercise and certain medicines. Counsel further submits that the appellant followed the advice of the Doctor for about a week due to which his vision improved significantly to 6/18P and sometimes 6/18. In support of this contention, counsel has drawn the attention of the Court to the reports of medical examination issued by District Hospital, Ghaziabad; Eque-Q-Vision Pvt. Ltd., Roorkee; AIIMS, New Delhi; and Kailash Hospital and Heard Institute, Noida.
5. Learned counsel for the appellant contends that the appellant sent an email dated 21.3.2015 to respondent no.2 pointing out that as per Clause 2.2 of their Guidelines, Pre-medical examination shall be a part of selection procedure of a candidate for a particular post in respect of Engineers/officers recruited through All India Open Advertisement. The appellant also pointed out that he is not a one-eyed person and, thus, could not be disqualified as per point 6.23 of IOC guidelines. The appellant also referred to the Guidelines of Ministry of Social

Justice and Empowerment in this regard. The appellant also sent an email dated 21.3.2015 to the Chief Commissioner for Persons with Disabilities at New Delhi.

6. Learned counsel for the appellant submits that the appellant was re-examined on 25.3.2015 and 27.3.2015 but copy of report of re-examination was not provided to him till 19.7.2015 despite various emails sent by him and the same was supplied only on 20.7.2015. Counsel further submits that the Chief Manager (HRD) of respondent no.2 vide its letter/order dated 22.4.2015 conveyed to the appellant that he has been found medically unfit by the duly constituted medical board and ordered for cancellation of offer of appointment issued to the appellant. Being aggrieved, the appellant made various representations to respondent no.2, however, no fruitful result was achieved. Counsel contends that the appellant also made various requests, emails and RTI dated 12.6.2015 to provide him service rules relating to medical fitness of candidate for the post of Quality Control Officer other than pre-employment medical guidelines, however, they were not supplied to him, which led to the filing of a writ petition, which was dismissed by a learned Single Judge of this Court.
7. The submissions made before the learned Single Judge have been reiterated before this court. It has been strongly urged before this Court that clause 2.2 of the Guidelines and Criteria for physical fitness would not apply to engineers/officers. Learned counsel has contended, while relying on Clause 6.19 of the Guidelines and Criteria for physical fitness for pre-employment Medical Examination, that the appellant would automatically become eligible once he crosses the age

of 35 years. It has been strongly urged before us that Clause 2.2 of the Guidelines would not apply to the engineers/officers and, thus, the rejection letter is liable to be quashed.

8. This petition has been vehemently opposed by learned counsel for respondents, who submit that there is no infirmity in the order passed by the learned Single Judge. Reliance is placed by learned counsel for respondent no.2 on the advertisement, more particularly the following clause, which deals with physical fitness:

“Physical Fitness

Selected candidates will be required to undergo ‘Pre-employment Medical Examination’ and should be declared medically fit as per Indian Oil’s pre-employment medical standard. Candidates are advised to go through the ‘Guidelines and criteria for Physical Fitness for Pre-employment medical examination’. The guidelines are available in the following link:

<http://www.iocl.com/PeopleCareers/Pre-employment Guiding Principles 11th mar 2011. PDF.”>

9. Learned counsel for respondent no.2 further submits that the selected candidates were required to undergo the pre-employment medical examination and had to be declared medically fit as per the Indian oil Pre-Employment Medical standard. Counsel further submits that, admittedly, the appellant was declared medically unfit. Reliance has been placed on copies of documents, which have been filed on record. It has also been contended by the counsel that it is not for the appellant to decide the medical standards and, thus, no relief can be granted to the appellant.

10. We have heard learned counsel for the parties and considered their rival submissions. It is not in dispute that pursuant to an advertisement published by respondent no.2/IOC, the appellant had applied for the post of Quality Control Officer in the General Category. The appellant appeared in the written test, Group Discussion/Group Task and interview and was declared successful therein. Thereafter an offer of appointment was issued to him on 17.12.2014. Before grant of final letter in terms of the advertisement, the appellant had to undergo a fitness/medical test. Initially, the appellant was found medically fit and was also issued a certificate dated 6.1.2015 but before he could join the Department, the concerned medical officer, as per his note dated 12.1.2015, reported that the appellant was medically unfit on account of vision of his left eye, being 6/36. The appellant underwent another medical examination and he was found to be medically unfit because his distant vision in the left eye was found to be 6/18(P) whereas the standard requirement is that the vision in one of the eyes cannot be less than 6/12.
11. As regards to the submission made by counsel for the appellant that Clause 2.2 of the Guidelines would not apply to the engineers/officers and, thus, the rejection letter is liable to be quashed, we find no force in this submission made by learned counsel for the appellant. It has been submitted before us that the medical criteria have been uniformly applied to all the employees and, thus, it is not for this Court to substitute its opinion with regard to medical standards, which would be required for the employment. Although Clause 2.2 does require that the same would not apply to officers and engineers but a medical

examination for selected candidates across the Board in almost all organisations is a pre-requisite. Thus, it cannot be held that for a particular category, no medical examination or no standard of medical examination would be prescribed. This aspect gains importance especially when the advertisement and the post applied for by the appellant made it clear that a person would have to satisfy the prescribed medical criteria.

12. In the light of the above, we find no infirmity in the view taken by the learned Single Judge. No grounds are made out to entertain the present appeal and the same is accordingly dismissed.

G.S.SISTANI, J

P.S. TEJI, J

JULY 27, 2018

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