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

+ **W.P.(C)4913/2014 & CM.APPL 9831/2014(stay)**

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Judgment dated 21st September, 2015

MISHIRA RAKESH VISHWAMBHAR

..... Petitioner

Through : Mr.Purshottam Sharma Tripathi and
Mr. Mukesh Kumar Singh, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through : Mr. Arun Bhardwaj, CGSC with
Mr. Rishi Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. With the consent of the parties, the writ petition is set down for final hearing and disposal.
2. The necessary facts which are required to be noticed for disposal of this petition are that in the year 2008, the petitioner qualified the All India Competitive Examination held for appointment to the post of Junior Engineer(Electrical). He was appointed by respondent no.3. A joining report was also submitted by the petitioner on 03.06.2008. He was required to report to the Superintending Engineer(Electrical), Delhi by a letter dated 16.07.2008 issued by Central Public Works Department, Delhi Central Electrical, Circle-6, Vidyut Bhawan, New Delhi along with Medical Certificate on or before 18.08.2008. On 26.08.2008, the petitioner was

medically examined at Dr. Ram Manohar Lohia Hospital, New Delhi. While the Medical Board declared the petitioner to be fit for the post noticed that although the petitioner had Congenital Nystagmus (involuntary eye movement since infancy), the same was not considered to a disqualification for the post of Junior Engineer, but the eye specialist declared him to be unfit. On 28.08.2008, the doctors at RML Hospital who examined the petitioner advised him to undergo treatment for Nystagmus. The petitioner addressed a letter to respondent no.4 seeking six months extension for joining duty. The petitioner got his eyes examined at the Shroff Eye Centre, Central Hospital, Ulhasnagar-3 and Sanjivani Hospital, Virar, Distt Thane respectively on 02.09.2008, 20.09.2008 and 22.09.2008, who certified that the petitioner did not suffer from any eyesight related disability due to Nystagmus. The eyesight of the petitioner became normal after the treatment of his eye and therefore, on 23.09.2008 he requested respondent no.4 for a fresh medical check up. On 03.10.2008, the Assistant Engineer(HQ), CPWD sought a direction of respondent no.4 on the request made by the petitioner seeking re-medical check up. On 15.10.2008, respondent no.3 also sought direction of the Additional Director General (S&P), CPWD on the request made by the petitioner for re-medical check up. The petitioner also got his eyes checked at Super Specialty Eye Care & Laser Centre, Kavi Nagar, Ghaziabad, All India Institute of Medical Sciences(AIIMS), New Delhi and Safdarjang Hospital on 13.12.2008, 30.12.2008 and 31.12.2008 respectively. Thereafter, on 02.01.2009, the office of Directorate General of Works, CPWD allowed the petitioner to be re-examined medically. Pursuant to the order dated 05.01.2009, the petitioner was medically re-examined by a Medical Board of the RML Hospital which submitted its report to the Assistant Engineer(HQ), CPWD. On 12.02.2009, the petitioner was informed by the Assistant Engineer(HQ),

CPWD that the petitioner has been declared medically unfit for the post of Junior Engineer(Electrical) by the Medical Board of RML Hospital. Since opinion of the Medical Board of RML Hospital was contrary to the medical reports of eye specialists of AIIMS, Sardarjung Hospital and other premier hospitals besides the fact that the petitioner had never experienced inability in distinguishing colours in the Colour Vision chart and has Colour Vision of High Order, the petitioner made a representation to respondent no.4 on 27.02.2009 to obtain a second medical examination conducted by a different medical board in a different hospital. On 09.03.2009, the Assistant Engineer(HQ) informed the petitioner that his request was under consideration. The petitioner got his eyes checked at Venu Eye Institute and Research Centre on 09.03.2009 which again found that his Colour Vision was normal. On 13.03.2009, respondent no.3 informed the petitioner that his appointment to the post of Junior Engineer (Electrical) was withdrawn. Thereafter, on 16.03.2009 an official note was approved by respondent no.3 forwarding the request of the petitioner for second appeal to respondent no.2, the competent authority. Respondent no.3 on 27.03.2009 addressed a letter to respondent no.2 for taking appropriate action with respect to petitioner's request for constituting a Special Medical Board of different doctors in a different Hospital.

3. We have heard the counsel for the parties.
4. It will be useful to reproduce the report of the Medical Certificate issued by Dr. Ram Manohar Lohia Hospital, New Delhi, which is as under:

“Dr. RAM MANOHAR LOHIA HOSPITAL, NEW DELHI
FORM OF MEDICAL CERTIFICATE

I hereby certify that I have examined Shri Mishra Rakesh Vishwambhar a candidate for the employment in the Ministry Department Office CPWD and cannot discover that he has any

disease (Communicable or otherwise) constitutional weakness of
bodily deformity, except Nystagmus both eye unfit for the post.

I do not consider this a disqualification for the post of Junior
Engineer Shri Mishra Rakesh V. Age is according to his/her on
statement 24 years, and by appearance about 24 years.

Case seen by Eye Spl. And
declared unfit for the post.

UNFIT

Date 26.08.2008

Signature of candidate”

5. The short question, which arises for consideration, is whether there are any reasons as to why the petitioner has been declared unfit for the post of Junior Engineer(Electrical). We may also notice that a review medical board was constituted, which simply gave the opinion “Candidate is unfit for the post”.
6. Keeping in view the contradictory medical opinion and also the fact that no reason for declaring the petitioner unfit has been given, we dispose of this writ petition with the following agreed directions:
 - (i) The petitioner will be examined by a Board of three Doctors of Dr. Rajender Prasad Eye Hospital at All India Institute of Medical Science.
 - (ii) The Hospital will give a report as to whether the petitioner has a problem of Colour Vision. The Department, CPWD will additionally produce the Recruitment Rules to enable the Medical Board to give a specific finding with regard to the fitness of the petitioner for the said post.
 - (iii) Let the report be sent to this Court within six weeks from receipt of the order.

7. We may notice that while issuing notice in the matter, respondents were directed to keep one vacancy available for the post of Junior Engineer(Electrical) in CPWD. Till the opinion of the Board is received and for a period of three weeks thereafter, the post shall not be filled up to enable the petitioner to take recourse to legal remedy in case the report is adverse.
8. A copy of the order be sent to the Director, All India Institute of Medical Science.
9. The petition is disposed of in above terms.
10. List on 11.12.2015 for compliance.
11. Dasti.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

SEPTEMBER 21, 2015

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