

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

W.P. No. 26098 of 2017

ORDER:-

The case of the petitioner is that she applied for the post of Transport Constable in Transport Department in pursuance of Notification No.5/2016 issued by the 2nd respondent and was selected in the written test. It is stated that after verification of her documents, she was found fit in the Medical Examination conducted by the 3rd respondent, based on which, when she searched for her number in the list of selected candidates uploaded in the month of May, 2017, it was not found. Subsequently, vide communication dated 09.06.2017, the 2nd respondent informed the petitioner that as per the Medical Report, she was found medically unfit for the post. Now, the grievance of the petitioner is that even though she submitted a letter dated 22.06.2017 to the 2nd respondent requesting him to send her for re-medical examination, there has been no response from him. Hence, the present writ petition is filed seeking appropriate directions.

The learned counsel for the petitioner submits that the petitioner was given an impression that she was medically fit and ultimately she was found unfit and the petitioner suspects the same as foul play in the medical examination. As per the Medical Examination Report issued by the Medical Board, the

difference of chest measurement of the petitioner is wrongly shown as 3 instead of 4 whereby it is understood that the Medical Board has not properly applied its mind. He has also submitted that the petitioner's signature was not obtained in the Medical Report showing her chest measurement, however her signature was obtained in the Medical Report showing the vision of her right eye.

Sri D. Bala Kishan Rao, learned Standing counsel for Telangana State Public Service Commission appearing on behalf of the 2nd respondent, has submitted that the petitioner was disqualified in respect of chest measurement. It is contended that in the absence of any allegations made against the members of the Medical Board, there cannot be any constitution of second Medical Board for conducting re-medical examination of the petitioner.

In this case, admittedly, Medical Examination took place on 31.01.2017 and 01.02.2017 in respect of chest measurement and vision of right eye respectively and selections were made in May, 2017 and as per the submission made by the learned Standing Counsel, appointment orders were also issued. To buttress his argument, the learned counsel for the petitioner has relied upon the judgment of this Court reported in **Pannala Praveen v. State of Andhra**

Pradesh¹ wherein this Court, in similar circumstances, held as follows:

“Since the Government ordered the constitution of the second Medical Board without any reference to the Public Service Commission, ***the very constitution of the second Medical Board is contrary to law in the teeth of Article 320(3) of the Constitution.*** One more aspect that should be borne in mind is that ***no allegations of corrupt practices have been made against the members of the Medical Board to which the task of taking the physical measurements was entrusted by the Public Service Commission before the conduct of the interviews. Adoption of corrupt practices is not to be presumed on the principle of res ipsa loquitur.*** Even if the Medical Board, out of negligence had not carried out its task properly, in September 2010, the candidates or even the Government ought to have requested the Public Service Commission not to go ahead with the interviews in February, 2012 until the cloud of suspicion was cleared. This was not done. Therefore, the very constitution of the second Medical Board is clearly contrary to law.

As we have pointed out earlier, the very Government Memo directing the Director of Medical Education to constitute a second Medical Board was dated 13.07.2012. The Director of Medical Education constituted the second Medical Board by his proceedings dated the very same day namely 13.07.2012. We do not know how it happened with such a lightning speed. Moreover, the Government direction was to constitute a second Medical Board with doctors from two reputed hospitals in Secunderabad and Hyderabad. But the Director of Medical Education constituted the second Medical Board with doctors from Warangal. These facts coupled with the failure of the Government to refer the matter to the Public Service Commission in terms of Article 320(3), renders the exercise of constitution of the second Medical Board, highly arbitrary apart from being illegal and

¹ 2017(3) ALT 728 (D.B)

unconstitutional. Therefore, we are of the considered view that the second Medical Board constituted as a challenge to the physical measurements made by the first Medical Board, was illegal and hence, no action can be initiated on the basis of the report of the second Medical Board.

The grievance of some of the unselected candidates arose only after their participation in the interview and not being able to make it to the final select list.

In other words, the aspiration of most of the unsuccessful candidates, who went before the Tribunal, was that if a few candidates, who out-beat them in the oral interview, could be failed in the physical measurement test conducted much before the interview, these unsuccessful candidates can take their place. Unfortunately, the Government and the Director of Medical Education appear to have fallen a prey to these aspirations of the unsuccessful candidates. This led to the constitution of a second Medical Board and the whole confusion created thereafter. Therefore, we are of the considered view that the constitution of the second Medical Board was arbitrary and contrary to law.

Name of selected candidate	Height measured by second Medical Board on 1.11.2012	Height measured by expert committee on 6.4.2015
1) Malleswari	154.6	155.8
2) J.Prameela	150.0	153.0
3) M.R.Shilpa	156.4	158.5
4)Md.IsmailKhan	161.9	163.9

In the case on hand also, there are no allegations made against the members of the Medical Board. Hence, in view of the specific observation made by this Court in the above cited judgment that constitution of second Medical Board is arbitrary and contrary to law in the teeth of Article 320(3) of the Constitution in the absence of any allegations of corrupt practices made against the members of the Medical Board, I

do not find any merit in the writ petition and the same is accordingly dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

A. RAJASHEKER REDDY, J

16.08.2017

bcj

