

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF  
ANDHRA PRADESH

\* \* \* \*

WRIT PETITION NO.23647 OF 2018

Between:

Union of India rep. by its Secretary to  
Government of India, Department of  
Personnel & Training (AIS Division),  
New Delhi ... Petitioner

and

Rizwan Basha Shaik ... Respondent

Date of Judgment Pronouncement: 31<sup>st</sup> AUGUST, 2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE SRI JUSTICE M.GANGA RAO

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1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
  2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
  3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

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SANJAY KUMAR, J

\_\_\_\_\_  
M. GANGA RAO, J

\* THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
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< Gist:

> Head Note:

! Counsel for petitioners

: Sri K.Lakshman,  
Assistant Solicitor General

^ Counsel for respondent

: Sri K.Sudhakar Reddy

? CASES REFERRED: --



THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.23647 OF 2018

ORDER  
(Per Sri Justice Sanjay Kumar)

O.A/020/0056/2018 was filed by Rizwan Basha Shaik, the respondent herein, before the Central Administrative Tribunal, Hyderabad Bench (*for brevity*, 'the Tribunal'), assailing the order dated 07.11.2017 of the Under Secretary, Department of Personnel and Training, Government of India, and seeking a consequential direction to allocate him to any of the Central Civil Services, under physically handicapped category, as per the Rank No.48 secured by him in the Civil Services Examination, 2016. By order dated 23.03.2018, the Tribunal allowed the O.A., setting aside the impugned order dated 07.11.2017 and directing his appointment to a suitable post in the civil services based on his rank. Aggrieved thereby, the Union of India, represented by the Secretary, Department of Personnel and Training (AIS Division), Government of India, New Delhi, filed this writ petition.

The respondent appeared for the Civil Services Examination, 2016, under the visually impaired category with 40% blindness. He secured All India Rank No.48. The Union Public Service Commission recommended his name for appointment to the civil services under physically handicapped category. According to him, he has no vision in the right eye and high myopia nystagmus in his left eye, with visual acuity of 6/24, coming under visually impaired category with 40% disability.

Rule 3 of the Rules formulated by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India, *vide* Notification F.No.13018/3/2016-AIS(I) dated

27.04.2016 (*for brevity*, 'the Rules of 2016'), provides reservation for candidates belonging to physically disabled categories in the Central Civil Services and Rule 22 thereof provides that the eligibility for availing such reservation shall be the same as prescribed in The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (*for brevity*, 'the Act of 1995'). Section 2(t) of the Act of 1995 defines 'person with disability' to mean a person suffering from not less than 40% of any disability as certified by a medical authority. Section 2(i) of the Act of 1995 defines 'disability' to mean both, 'blindness' as well as 'low vision', amongst others. It is therefore clear that to avail the benefit of such reservation in the Central Civil Services, a person with visual disability must suffer from not less than 40%, as certified by a medical authority. Appendix-III to the Rules of 2016 is titled 'Regulations Relating to the Physical Examination of Candidates'. Regulation 3 therein provides that candidates would be intimated to present themselves before the Central Standing Medical Board constituted for the purpose of conducting medical examination to determine their mental and physical status. Regulation 3.1.4 provides that in case of dissatisfaction/disagreement with the report of the medical examination/medical test and its recommendations, the candidate may prefer an appeal to the Department of Personnel and Training. Thereupon, medical examination of such candidate by the Appellate Medical Board would be arranged at Delhi. Regulation 3.1.5 is relevant for the purposes of this case and it reads as under:

'3.1.5. Candidate filing an appeal will be assigned an Appellate Medical Board by the DoPT and he/she will have to present him/her before this Board on the date and time indicated in the notice for the same which will be uploaded in the website on the dedicated page for the candidate concerned. No separate notice by post would be sent. Failure to appear before the Appellate Medical Board on the appointed day would amount to forfeiture of the opportunity of appeal for the

candidate and as a consequence the recommendation of CSMB would be final. The recommendation of this Appellate Medical Board would be final and no appeal would lie against the opinion of this Appellate Medical Board.'

In terms of the aforesaid Rules of 2016, the respondent was subjected to medical examination by the Central Standing Medical Board at Sucheta Kriplani Hospital, New Delhi, on 20.04.2017. By a report bearing the same date, the Chairman and two Members of the Board opined that the respondent was unfit for all services under physically handicapped category as his visual disability was 30% and not 40%, as claimed by him. Aggrieved by this finding, the respondent preferred an appeal under Regulation 3.1.4 and was referred to the Appellate Medical Board at Guru Nanak Eye Centre, New Delhi. The Appellate Medical Board examined him on 14.07.2017 and opined, *vide* a certificate bearing the same date, that his degree of visual handicap was 40% and that he may be considered under the physically handicapped quota.

According to the authorities, they had received complaint dated 01.07.2017 in the interregnum alleging that the respondent was relying on a fake disability certificate. Further, as the findings of the Medical Board and the Appellate Medical Board were at variance with a difference of 10%, they referred the matter to the Directorate General of Health Services, Government of India. Thereafter, by letter dated 14.08.2017, the Additional Deputy Director General (AS) of the Directorate General of Health Services informed the Under Secretary, Department of Personnel and Training, Government of India, that the case of the respondent had been referred to a Committee of Experts and that a copy of the Minutes of the meeting dated 08.08.2017 held by the experts in that regard was forwarded therewith. The said Minutes are of particular relevance and are extracted hereunder:



'Minutes of the meeting

A meeting was held under the Chairmanship of Dr. B.D.Athani, Spl. DGHS on 08.08.2017 at 10:30 AM regarding a complaint against Shri Rizwanbasha Shaik (Rank 48, Roll No.355764) CSE 2016 candidate of Visual Impairment (VI) subcategory of Physically Handicapped (PH) category who was medically examined by CSMB, Sucheta Kriplani Hospital on 20.04.2017 and subsequently by Appellate Medical Board at Guru Nanak Eye Centre on 14.07.2017.

After examination of the documents available in the case record the committee observed that Shri Rizwanbasha Shaik was initially examined at Smt.Sucheta Kriplani Hospital New Delhi where he was examined and vision was recorded to be 6/12 in the better eye. This was done by a chart where the distance could be varied without patient's knowledge. In the normal Snellen's chart he refused to read more than 6/24. All the other tests like PAM, ERG & VEP was done to try to prove objectively that his vision was 6/12 in the normal eye. He used every means to try and get his above reports i.e. ERG & VEP subnormal by not fixating and opening his eyes completely when the test was in progress. Hence the Disability of 30% was given.

At the Appellate stage this candidate was examined in Guru Nanak Eye Centre where his vision was PL -ve Rt. Eye and 6/24 with glasses (-4.0 DS/-0.5D Cyl. @ 180) and was not further improving with pinhole. His ocular examination revealed Rt. Phthisis Bulbi with artificial eye & Lt. refractive error. There was no obvious cause for low vision in Lt. eye. His VEP was attached which was sub-normal with a comment from R P Centre for Ophthalmic Sciences, New Delhi that he was not fixating and opening his eyes completely when the test was in progress. He also did not co-operate well on objective test of Laser interferometry. There is no further objective test to prove that the candidate has better vision than what he was reading in front of the Medical Board. Therefore Disability of 40% was given.

In view of the above this committee feels that the medical opinion given at Sucheta Kriplani Hospital New Delhi is correct and the Appellate authorities from Guru Nanak Eye Centre also agree with it.

Sd/- 8/8/17  
Dr.Ritu Arora  
Dir. Prof. Ophthalmology  
Guru Nanak Eye Centre New Delhi

Sd/- 8/8/17  
Dr.Sarita Beri  
Dir. Prof. Ophthalmology  
LHMC, New Delhi

Sd/- 8/8/17  
Dr.Rita Aggarwal  
Consultant, Ophthalmology  
Safdarjung Hospital, New Delhi

Sd/- 8/8/17  
Dr.Manoj Kumar Yadav  
Eye Spl. Gr III, CGHS Wing  
Dr. RML Hospital, New Delhi

Sd/-  
Dr. Anil Manaktala  
DDG (P), Dte. GHS  
Nirman Bhawan, New Delhi

Sd/- 8/8  
Dr. B.D. Athani  
Spl. DGHS, Dte. GHS  
Nirman Bhawan, New Delhi

Basing on the finding of this Expert Committee that the opinion given by the Central Standing Medical Board, Sucheta Kriplani Hospital, New Delhi, was correct and not the opinion given by the Appellate Medical Board at Guru Nanak Eye Centre, New Delhi, the candidature of the respondent was cancelled and he was informed of the same, *vide* order dated 07.11.2017. It was this order which was subjected to challenge by the respondent before the Tribunal.

Thereupon, the Tribunal found that the case of the respondent had been referred to the Expert Committee which opined that his disability stood at 30%, without even clinically examining him, and that the respondent was not even aware that his case had been referred to an Expert Committee or the contents of its opinion. Having considered the scheme obtaining under the Rules of 2016, the Tribunal opined that there was no provision enabling the authorities to refer the decision of the Appellate Medical Board to further scrutiny. The Tribunal also noted that the respondent had earlier appeared for selection to the Indian Information Services in 2015; the Indian Corporate Law Services in 2016; the Indian Railway Accounts Services in 2017; the IFS in 2017 and was selected for all the said services. He opted for the Indian Railway Accounts Services and was working as such, but before his appointment to this service, he was subjected to medical examination and his visual impairment was assessed at 40%. As the respondent had not even been subjected to actual physical examination by the Expert Committee, which expressed its opinion based only on the record available before it, the Tribunal held to the effect that the opinion of the Appellate Medical Board which attained finality in terms of Regulation 3.1.5 of the

Rules of 2016 could not be disturbed. The Tribunal accordingly set aside the order dated 07.11.2017 and granted relief to the respondent.

Sri K.Lakshman, learned Assistant Solicitor General for India, appearing for the Union of India, would contend that the Rules of 2016 make it clear, in terms of Rule 20, that success in the examination would not confer the right of appointment unless the Government is satisfied after such enquiry as may be considered necessary that the candidate, having regard to his character and antecedents is suitable in all respects for appointment to the service. He would also rely on Rule 21 of the Rules of 2016 which reads as under:

'21. A candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties as an officer of the service. A candidate who after such medical examination as Government or the appointing authority, as the case may be, may prescribe, is found not to satisfy these requirements will not be appointed. Any candidate called for the Personality Test by the Commission may be required to undergo medical examination. No fee shall be payable to the Medical Board by the candidate for the medical examination including the case of appeal.

Provided, further that Government may constitute a special Medical Board with experts in the area for conducting the medical examination of physically disabled candidates.'

On the strength of the aforestated *proviso*, the learned Assistant Solicitor General would assert that the Government was fully entitled to constitute a Special Medical Board with experts for conducting the medical examination of the respondent in the light of the complaint received against him and the variance in the findings of the two Boards. He would further point out that one of the members of the Appellate Medical Board was part of the Expert Committee and her change of view clearly demonstrated that the opinion expressed by the Appellate Medical Board could not be accepted.



Sri K.Sudhakar Reddy, learned counsel for the respondent, would contest these arguments by pointing out that the scheme obtaining under the Rules of 2016 attaches finality to the findings of the Appellate Medical Board and contend that the authorities were not justified in practically sitting in appeal over the same. He would further state that the person who allegedly made the complaint against the respondent informed the Department of Personnel and Training, *vide* letter dated 05.01.2018, that a false complaint had been made against the respondent misusing his name. Learned counsel would therefore assert that the order passed by the Tribunal does not warrant interference on merits and pray for dismissal of the writ petition.

Basically, the Union of India presses into service two grounds to justify the cancellation of the respondent's candidature.

Firstly, the complaint allegedly made by one S.Narasimha Reddy, claiming that the respondent was using a fake disability certificate, weighed upon them. However, the letter dated 05.01.2018 addressed by the said S.Narasimha Reddy to the Department of Personnel and Training bears out that he never made such a complaint and that his name was misused for that purpose. Therefore, on the strength of this pseudonymous complaint, no action was warranted. The complaint therefore cannot form a justifiable basis for the action taken by the authorities.

The second ground is that the *proviso* to Rule 21 of the Rules of 2016 empowers the Government to form an expert committee. It may however be noted that Appendix-III to the Rules of 2016, relating to physical examination of candidates, actually implements and gives effect to Rule 21. Regulation 1 in Appendix-III refers to Rule 21 which provides that a candidate must be in good mental and bodily health free from any physical

defect likely to interfere with the discharge of his duties and a candidate, who after medical examination, is found not to satisfy these requirements would not be appointed. It is therefore clear that Rule 21 is given effect to by Appendix-III and the Regulations contained therein. Examination by Medical Boards constituted at seven designated hospitals in Delhi, *vide* Regulation 2.1, and appeals that may be preferred by candidates from the findings of such Medical Boards, in terms of Regulations 3.1.4 and 3.1.5, are therefore relatable to Rule 21 of the Rules of 2016. The argument advanced by the learned Assistant Solicitor General that Rule 21 operates independently of the Regulations in Appendix-III and that an Expert Committee can be constituted to sit in appeal over the opinion expressed by the Appellate Medical Board therefore proceeds on a complete misconception and lack of understanding of the scheme obtaining under the Rules of 2016.

Further, when a pointed query was put to the learned Assistant Solicitor General as to what would distinguish the case on hand from any other case where the Appellate Medical Board disagrees with the findings of the Central Standing Medical Board, his answer was that the case of the respondent stood out owing to two grounds – (1) the complaint received against him, and (2) the fact that there was a variation of 10% in the findings of the two Boards. However, as already pointed out *supra*, the argument relating to the complaint no longer survives as the so-called complainant himself stated that his name had been misused to make a false complaint. As regards the other ground, in every case that the Appellate Medical Board disturbs the findings of the Central Standing Medical Board, there is bound to be a variation in the extent of the disability determined by both the Boards. In the absence of a Regulation in Appendix-III to the Rules of 2016 which permits further examination in the event the degree of

variation is found to be above a particular percentage, it is not open to the authorities to seek an appellate remedy over the opinion expressed by the Appellate Medical Board. Regulation 3.1.5 in Appendix-III of the Rules of 2016 puts it beyond doubt that the recommendation of the Appellate Medical Board would be final and no appeal would lie against the opinion of the Appellate Medical Board. Such finality would cut both ways and it would be as binding on the authorities as it would be on the candidate.

Further, as already stated *supra*, the very understanding of the scheme by the authorities as reflected in the argument of the learned Assistant Solicitor General goes against the structure and intendment of Rule 21 and Appendix-III to the Rules of 2016. As the very constitution of an Expert Committee to sit in appeal over the Appellate Medical Board lacks legal basis, participation of one of the members of the Appellate Medical Board in the said Expert Committee is of no consequence. That apart, there is no getting over the fact that the respondent was not even physically examined by the said Expert Committee, which seems to have gone by the record, but made adverse remarks against the respondent not only touching upon the extent of his disability but also upon his character and *bonafides*. Such findings, in any event, could not have been rendered behind his back in utter violation of the principles of natural justice. No value whatsoever can therefore be attached to the Minutes dated 08.08.2017 of the Expert Committee.

Given the binding and final finding of the Appellate Medical Board that the visual disability of the respondent is 40%, his candidature could not have been rejected on the ground that he fell short of the required percentage of disability. The order of the Tribunal holding to this effect and granting him relief therefore does not brook interference, be it on facts or in law.

The writ petition is utterly devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

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M.GANGA RAO,J

31<sup>st</sup> AUGUST, 2018

Note: L.R. copy to be marked.  
(B/o) PGS

