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

+ W.P.(C) 12366/2018

UNION OF INDIA AND ORS.

..... Petitioner

Through: Mr. R.V. Sinha with Mr. Amit Sinha,
Advs.

versus

MOHIT

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

22.11.2018

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C.M. No. 48012/2018

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 12366/2018 with C.M. Nos. 48011,48013/2018

1. The petitioner - Union of India has preferred the present writ petition to assail the order dated 09.02.2018 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 1389/2016.
2. The Tribunal has allowed the said original application preferred by the respondent. The petitioner vide Employment Notice dated 30.08.2012 invited applications for various Group D posts. There were some posts reserved for the persons with disabilities (PWD). There were 11 categories of posts and the candidates were required to choose 06 categories out of those and also indicate their priority. Posts at serial Nos. 5 to 11 were reserved for handicapped persons. The posts advertised were the following:

<u>POST</u>	<u>CODE</u>
<i>Carriage Cleaner</i>	01
<i>Gateman (Operating)</i>	02
<i>Pointsman</i>	03
<i>Traffic Porter</i>	04
<i>Trackman</i>	05
<i>Diesel Cleaner/ Khalasi</i>	06
<i>Khalasi/ Helper</i>	07
<i>Khalasi Mech/ Store</i>	08
<i>Hospital Attendent</i>	09
<i>Safaiwala</i>	10

3. No technical education or qualification was required for these posts and the medical standards for the said posts were kept low i.e. B-1, C-1 and C-2.

4. The respondent was suffering from a condition called “Palatal Fistula”. He claimed that he had undertaken the requisite treatment for the same and the same was repaired on 20.06.2015. The medical certificate of fitness from Sir Ganga Ram Hospital and Rao Tulla Ram Memorial Hospital were relied upon by the respondent in support of his said contention. The respondent opted for the following posts out of the aforesaid 11 posts:

- i) Carriage Cleaner
- ii) Diesel Cleaner / Khalasi
- iii) Khalasi/ Helper
- iv) Khalasi Mech/ Store

v) Hospital Attendent

vi) Safaiwala

5. The posts applied by the respondent required medical standard of B-1 & C-1. He participated in the written examination on 27.10.2013 and the Physical Efficiency Test on 24.03.2014. He qualified in both these examinations and was provisionally selected and called for verification/checking of his original documents. The documents were found to be in order and he was required to appear before the Medical Board for his medical examination in Northern Railway, Divisional Hospital, Lucknow.

6. Though he was found fit in all respects other than on the ground that he was suffering from “Palatal Fistula”. He made a representation against his being declared medically unfit and an Appellate Board was constituted at Northern Railway, Central Hospital, Delhi on 14.01.2016. He was again declared medically unfit for the same reason. Consequently, he preferred his Original Application before the Tribunal.

7. The Tribunal has allowed the Original Application on the premise that the posts for which the respondent had applied were also reserved for physically handicapped candidates. Though he was not a physically handicapped candidate since he did not apply in that category as he believed that he was cured of his medical condition, his submission that the lack of medical fitness was not an impediment to meet the functional requirements of the particular posts against which he had applied, was accepted. Consequently, the Tribunal has allowed the Original Application.

8. Before us, Mr. Sinha submits that the Courts cannot sit over the judgments of the Medical Board. In this regard, he places reliance on the decisions of the Supreme Court in *Indian Council of Agricultural Research*

v. Shashi Gupta, 1994 AIR (SC) 1241. He also places reliance on *State Bank of India v. G.K. Deshak*, 1993 AIR (SC) 2447.

9. Mr. Sinha submits that since the respondent did not apply as a physically handicapped candidate, he could not be considered as a candidate falling in that category. The physical disability suffered by the respondent could not fall within one of the physical disabilities categorised under the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

10. Mr. Sinha submits that the respondent had only sought the relief that he be examined by another medical officer at a Government Hospital who should also assess that whether his medical condition, would come in the way of the functional requirements of one of the jobs for which he had applied. However, the Tribunal has proceeded to issue the direction to the petitioner to consider the respondent's candidature for the posts that he had applied.

11. Having heard Mr. Sinha, peruse the impugned order, the record and the decisions relied upon by him; we are of the view that there is no merit in the present petition. There is no denying the fact that the posts against which the respondent had applied are also reserved for physically handicapped category candidates. This only means that the functional requirements of the said posts are not such as to require fully physically fit persons.

12. As noticed hereinabove, the posts are mundane jobs such that of Safaiwala, Carriage Cleaner, Diesel Cleaner/ Khalasi, Khalasi/helper etc. The reason why the respondent did not apply as a physically handicapped candidate was that he got his condition treated and was certified as having

been cured.

13. We are not doubting the reports of the Medical Board and the Appellate Medical Board which found the respondent to be suffering from the condition “Palatal Fistula”. However, the question is whether that condition of the respondent has any bearing on the job requirements of the posts that he applied for. The answer is a plain NO; since the said posts are also reserved for physically handicapped candidates, the decisions relied upon by Mr. Sinha are of no relevance since in those cases the Supreme Court disapproved of the decisions of the Tribunal which interfered with the finding returned by the Medical Board with regard to the medical condition of the candidate.

14. So far as the submission of Mr. Sinha that the Tribunal has granted relief larger than that sought by the respondent is concerned, once again we find no merit in the same. The direction issued by the Tribunal is that the candidature of the respondent should be considered for the post that he had applied and, in case, he is found fit for more than one category of posts, he may be considered against the post of highest preference given by him.

15. In our view, the impugned order, therefore, does not call for interference.

16. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 22, 2018

N.Khanna