

\$~33

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

Date of Decision: 13.12.2019

+ **W.P.(C) 13200/2019**

ANKIT KUMAR SHUKLA

..... Petitioner

Through: Ms. Alpana Pandey, Advocate
with Mohd. Amair Khan,
Advocate.

versus

UNION PUBLIC SERVICE COMMISSION & OTHERS

..... Respondents

Through: Mr. Manoj Joshi, Advocate for
respondent No.1.
Mr. Jagjit Singh, Senior
Standing Counsel with Mr.
Preet Singh, Advocate and Mr.
Vipin Chaudhary, Advocate for
respondent Nos.2 and 3.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

C.M. No. 53708/2019 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) No.13200/2019

1. Petitioner is aggrieved by the directions contained in order dated 16.10.2019 passed by the Central Administrative Tribunal ('Tribunal').

2. The petitioner herein had appeared for Engineering Services Examination, 2016 pursuant to an examination notice dated 27.02.2016 issued by the Union Public Service Commission (UPSC). Provisions were made in the service for reservation in favour of physically disabled persons of various categories. The petitioner applied in the said category, claiming to be suffering from permanent hearing loss. The disability certificate relied upon by the petitioner was issued by the District Medical Board, Rewa showing 40% permanent hearing loss. The petitioner was however referred to the Medical Board of Railways at Jabalpur; whereupon in the certificate issued on 04.11.2017, it was observed that the disability of the applicant, though 40%, does not fulfil the eligibility criteria for being extended the benefit of reservation in the physically handicapped category. Accordingly, the petitioner was required to appear before an Appellate Medical Board. By an order of 30.01.2017, the petitioner was informed that the Appellate Medical Board has declared him 'unfit' for all services in the physically disabled persons category on account of not fulfilling the disability criteria for hearing-handicapped persons, inasmuch as the petitioner's hearing disability was correctable.

3. In this backdrop, the Tribunal granted prayer (III) of the O.A. and passed the following directions:-

“ 8. A perusal of the letter dated 17.04.2017, issued by the Railway Board, reads as under :-

"Please refer to this Ministry's letter of even number dated 09.02.2017 wherein you were directed to

present yourself before the Appellate Medical Board at Dr. Baba Saheb Ambedkar Railway Hospital, Byculla, Central Railway, Mumbai on 15.02.2017 at 9.00 A.M.

2. The appellate Medical Board has declared you unfit for all services on account of correctable hearing loss.

3. In terms of Para 14 of Engineering Services Examination Rules-2016 appeal fee of Rs.100/- deposited by you in the form of DD No. 0306041 dated 04.02.2017 drawn on Punjab National Bank, Theonthar (Rewa), is hereby forfeited.

4. Please note that in terms of Para 15 of Engineering Services Examination Rules- 2016, the decision of Appellate Medical Board is final and no appeal lies against the same. No further correspondence will be entertained in this regard.”

“9. The benefit of reservation can be denied to a candidate, if only a clear finding is recorded to the effect that he does not satisfy the norms. The percentage of disability, stipulated under the notification, is 40%. The Medical Board at Rewa as well as the one at Jabalpur found the applicant to be having the disability to the extent of 40%. The notification did not add any clauses to such disability, such as whether it is correctable or otherwise. The final certification is required to be made in absolute terms, but not with conditionalities.

“10. We are of the view that the applicant needs to be sent to an Appellate Medical Board, which, in turn, will record a clear finding as to the percentage of disability for hearing suffered by the applicant. If it is 40% or above, he shall be extended the benefit of reservation and if it is below, then he would not be entitled for the same.

“11. The OA is allowed, setting aside the impugned order and directing the respondents to cause the examination of the applicant through the Appellate Medical Board at Delhi, within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs.”

4. Counsel for the petitioner submits that once the petitioner had filed a disability certificate from the Medical Board at Rewa, there was no occasion for the respondents to direct the petitioner to appear again for medical examination before the Medical Board of the Railways at Jabalpur. She further submits that even in the counter-affidavit, the respondents have admitted that the disability of the petitioner herein was found to be 40% but since it was found to be correctable, he was denied the benefit of reservation.

5. We have heard learned counsel for the parties and have considered their rival submissions.

6. In view of the somewhat contradictory or ambiguous opinions of the Medical Boards, in our view, the Tribunal has correctly allowed prayer (III) of the O.A. The petitioner shall accordingly appear before the Appellate Medical Board at Delhi, who would record a finding as to the percentage of the hearing disability of the applicant; and additionally also give its opinion as to whether the disability is permanent or correctable.

7. We accordingly modify order dated 16.10.2019 made by the Tribunal to the above extent, directing that the Appellate Medical

Board at Delhi would, in addition to the percentage of hearing disability, also give its opinion as to whether the hearing disability suffered by the petitioner is permanent or correctable, within two months of the date this order; and thereafter, the respondents would take a fresh view in relation to the petitioner's candidature.

8. Subject to the foregoing, we find no other ground to interfere with the order of the Tribunal.

9. The writ petition is disposed of in the above terms.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 13, 2019

Ne