

\$~27 (2021)

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

%

Date of decision: 11.10.2021

+ **W.P.(C) 11656/2021**

UNION OF INDIA

..... Petitioner

Through: Mr. Manish Mohan, CGSC with Ms.
Manisha Saroha, Advocate.

versus

AMIT GET

..... Respondent

Through: Mr. A.K. Behera, Senior Advocate
with Mr. A.P. Singh, Advocate.c

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

[PHYSICAL COURT HEARING]

CM Nos. 36069/2021 and 36038/2021

1. Allowed, subject to just exceptions.

W.P.(C) 11656/2021 & CM No. 36039/2021 *[Application filed on behalf of the petitioner seeking stay on the operation of the order dated 14.09.2021]*

2. This writ petition is directed against order dated 14.09.2021, passed by the Central Administrative Tribunal [in short, "the Tribunal"] in M.A No. 2585/2021.

2.1. To be noted, the record shows that, the respondent i.e., Amit Get, had filed an action in the Tribunal, which was numbered as O.A. No.3688/2019.

2.2. The respondent had approached the Tribunal, seeking relief, to the

effect, that, the findings of the Medical Board be set aside, and that, the respondent should be examined afresh *qua* the issue concerning his disability.

2.3. The Tribunal, vide order dated 28.10.2020, had allowed the aforementioned O.A., and directed that a fresh medical examination of the respondent should be undertaken.

2.4. Concededly, the petitioner did not comply with the directions issued qua order date 28.10.2020, which led to a contempt petition being filed by the respondent i.e., Contempt Petition No.192/2021.

2.5. The Tribunal, instead of initiating the contempt proceedings against the petitioner, converted the said proceedings into execution proceedings, vide order dated 06.08.2021, and had the contempt petition numbered as, a miscellaneous application (M.A.).

3. Via the impugned order, the Tribunal has issued the following operative directions:

“5. In the facts and circumstances and in terms of the judgment of the Hon'ble High Court, we direct the DoPT to constitute an Appellate Medical Board, comprising specialised doctors, in respect of the petitioner from any of the hospital (other than AIIMS) as mentioned in Paragraph No.2 of the notification dated 22.01.2018, within a period of five working days from today.”

3.1. The petitioner has approached this Court, on the ground that, the directions issued by the Tribunal, *via* the impugned order, sets a wrong precedent.

3.2. To be noted, it is also the petitioner's grievance, which is articulated by Mr. Manish Mohan as well, who appears on behalf of the petitioner, that, while issuing the operative directions, the Tribunal had taken recourse to an

order of this Court dated 16.04.2019, passed in an application, preferred in W.P.(C.) 3339/2019, titled *Atheeth Sanjeevan vs. All India Institute of Medical Sciences and Ors.*, which was not *pari materia* with the facts obtaining in the instant case.

3.3. According to Mr. Mohan, in *Atheeth Sanjeevan's* case, the learned single judge had excluded the All India Institute of Medical Sciences[in short, "AIIMS"] from the process of medical examination of the concerned petitioner, on the ground that, the doctor who had examined the petitioner initially, was also a member of the Appellate Medical Board.

3.4 Mr. Mohan submits, no such situation arises in the instant case.

4. On the other hand, Mr. A.K. Behera, learned senior counsel, who appears on behalf of the respondent, has, *inter alia*, relied upon Regulation 7(a)(xiii) of the Regulations Relating To Physical Examinations of the Candidates qua Civil Service Examination 2018 [in short "Regulations"], issued by the Department of Personnel & Training (DoPT), vide notification dated 07.02.2018, to contend that, if an appeal is preferred by an aggrieved candidate, then, the appeal is required to be referred to the Appellate Medical/Specialized Disability Medical Board of a designated hospital, other than the one, which previously examined the concerned candidate.

4.1. It is Mr. Behera's contention that, the record would show that the respondent was examined by AIIMS.

4.2. It is in this context that, Mr. Behera has emphasised the fact that, the operative directions contained in the impugned order, should not be disturbed.

5. In the rejoinder, Mr. Mohan has contended that, as long as the doctors in AIIMS, who examined the respondent on the previous occasion(s), are not

the ones, who form part of the Appellate Medical Board, the respondent can have no objection, and that, it would meet the test of fairness.

6. We may note that, the aforementioned notification sets out in Regulation 2.1, the names of the designated hospitals, which can be tasked with the duty to conduct medical test of candidates referred to them. Likewise, Regulation 2.3 of the very same notification provides that, the candidates suffering from benchmark disability would be examined by any one of the hospitals mentioned in Regulation 2.1.

6.1. However, insofar as the candidates suffering from eye condition are concerned, the designated Appellate Specialized Medical Board, as per Regulation 2.4 of notification dated 07.02.2018, is Guru Nanak Eye Centre, New Delhi.

7. Having heard the counsel for the parties and perused the record, while we agree with Mr. Mohan that the facts obtaining in *Atheeth Sanjeevan* case are not *pari materia* with the facts obtaining in the present case, the general thrust of the impugned order is in the right direction.

7.1. The concern of the Tribunal appears to be that, the respondent should be examined by the Medical Board, consisting of doctors who were not part of the hospital, which, in the first instance, carried out the medical examination. This, of course, is not to convey that, doctors in AIIMS would, in any sense, be less proficient in conducting the respondent's medical examination. The purpose appears to be to instil confidence in the respondent, both as regards the neutrality of the process and robustness of the outcome.

7.2. In our view, the Tribunal, having employed its discretion, we are not inclined to interfere with the impugned order given the facts and

circumstances of the case, especially, when the petitioner, we are told, approached the Tribunal and gave the impression that, it will implement the directions contained therein, read with the order dated 28.10.2021.

8. We may, however, note Mr. Mohan submission that, merely because the petitioner sought further time to implement the impugned order, this ought not to be the reason to reject the writ petition.

8.1 While this submission of Mr. Mohan has some weight in the instant case, it has resulted in the medical examination of the respondent, being delayed.

9. Thus, having regard to the overall factual matrix, we decline to interfere with the order of the Tribunal.

10. The writ petition is disposed of, in the aforesaid terms. Consequently, pending application shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

OCTOBER 11, 2021/nk

Click here to check corrigendum, if any