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

Date of Decision:- 03.12.2021

+ **W.P.(C) 11809/2021 & CM APPL. 36538/2021 (Direction)**

SHUBHAM AGARWAL

..... Petitioner

Through: Mr. Tanmay Mehta, Mr. H.S. Nanda,
Mr. Hemant Shah & Ms. Shreya
Gupta, Advocates

versus

UNION OF INDIA

..... Respondent

Through: Mr. Vikrant N. Goyal, Advocate

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner, a physically disabled candidate, having cleared the Civil Services Examination, 2020 by securing a rank of 755, has approached this Court seeking a direction to the respondent to constitute an independent Appellate Medical Disability Board which does not comprise of doctors either from All India Institute of Medical Sciences (AIIMS) or Safdarjung Hospital, to conduct his medical examination in order to determine the percentage of disability from which he claims to be suffering.
2. The grievance of the petitioner is that once the Medical Board comprising of doctors at Safdarjung Hospital had declared his disability to be less than 40% in its initial medical examination report dated 05.08.2021, which report was subsequently certified by the doctors of AIIMS on 10.08.2021, he apprehends that he may not be treated fairly if his Appellate

Medical Examination was conducted by doctors associated with any of these two hospitals.

3. On the last date, learned counsel for the petitioner had drawn my attention on clause 2.1 of the Regulations relating to the physical examination of candidates (“Regulations”), as contained in Appendix III of the Civil Services Examination Rules, 2020 (“Rules”) which are applicable to the present case, to contend that the medical examination of the petitioner by the Appellate Board could be easily conducted at any of the other hospitals referred to in the said clause.

4. Upon notice being issued, counter affidavit has been filed by the respondent wherein, besides reiterating that they have decided to get the petitioner’s Appellate Medical Examination conducted at AIIMS, no explanation whatsoever has been given as to why the said examination cannot be conducted by a body comprising of doctors who are not associated with either AIIMS or Safdarjung Hospital.

5. In support of his plea that he is entitled to claim that his Appellate Medical Examination should be conducted by a Medical Board comprised of doctors from a designated hospital other than the ones in which his initial medical examination was conducted on 05.08.2021, learned counsel for the petitioner has relied on para 7(a)(xiii) of the Regulations, containing general guidelines to be followed by Medical Boards, which reads as under:

“7. General Guidelines for Medical Boards:-

(a) The following intimation is made for the guidance of the Medical Examination :—

xxx

xxx

xxx

xiii. Such Candidates going into Appeal may be referred to the Appellate Medical/Specialized Disability Medical Board of a

designated Hospital other than the one in which previous Medical Examination was conducted.”

6. In the light of the aforesaid, especially since the respondents have not been able to point out anything in the applicable Rules of 2020, which would mandate that the Appellate Medical Examination to determine the disability of a physically disabled candidate must be carried out at AIIMS, I am of the view that there is no reason as to why the petitioner should be compelled to undergo the appellate medical examination at AIIMS and that too when there are various other designated hospitals referred to in para 2.1 of the Regulations forming part of the Rules as contained in Appendix III thereof. In this manner the petitioner’s apprehension of not being treated fairly can be easily put to rest. The said clause which gives a list of designated hospitals includes various other hospitals, besides Safdurjung Hospital and AIIMS and the same reads as under:

“2.1. Designated Hospitals to conduct Medical Test would be conducted in viz. Safdarjung Hospital, Dr. Ram Manohar Lohia Hospital, Lok Nayak Jai Prakash Narayan Hospital, Sucheta Kriplani Hospital, Guru Teg Bahadur Hospital, Deen Dayal Upadhyay Hospital, B.R. Ambedkar Hospital, AIIMS, New Delhi, etc. The decision of the Government regarding the date, venue and suitability of the Candidate for appointment to a service shall be final.”

7. The writ petition is therefore allowed by directing the respondent to get the petitioner medically examined by an Appellate Medical Board at any of the four hospitals referred to in clause 2.1 of the said Regulations, other than Safdarjung Hospital and AIIMS.

8. In the light of the admitted position that the training of the selected

candidates is commencing on 05.12.2021, the respondent is directed to ensure that the petitioner's Appellate Medical Examination for determining the percentage of his physical disability is conducted tomorrow itself i.e. on 04.12.2021. However, in case, for any unavoidable reason, if the Appellate Medical Examination of the petitioner cannot be conducted tomorrow, the same will be conducted as expeditiously as possible and in case he is found eligible to be appointed, he will be allowed to join the training forthwith.

9. The writ petition along with the pending applications is, accordingly, disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

DECEMBER 03, 2021
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