



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

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Date of decision: November 17, 2023

+ W.P.(C) 14516/2023 & CM APPL. 57562/2023

(1) UNION OF INDIA & ANR.

..... Petitioners

Through: Ms. Manisha Agrawal Narain, CGSC
with Mr. Sandeep Singh Somaria and
Ms. Shivangi Gumber, Advs.

versus

NIKHIL KUMAR & ANR.

..... Respondents

Through: Mr. Anuj Aggarwal, Ms. Arshya
Singh and Mr. Yash Upadhyay, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to an order dated May 24, 2023, passed by the Central Administrative Tribunal, whereby the Tribunal allowed the O.A. filed by the respondent No.1 herein, by stating in paragraphs 9 and 10 as under:-

“9. In view of what has been discussed above we have no hesitation in allowing the O.A. We would desist from quashing any of the medical reports as we are not professionally qualified to sit over the judgment of the medical opinion of a doctor. Still we reiterate the observations regarding the report of the medical officer



and medical board made in the preceding paragraphs. Considering what has been detailed and argued above, we allow the O.A. with a direction to respondent number 2 to forthwith revive the appointment of the applicant and allow him to assume duty. The appointment shall be effective from the date when other persons assumed the duties in Group C based on the performance in the Combined Graduate Level Examination 2016. The applicant shall be entitled to all the consequential benefits with effect from the said date, however, on notional basis. His pay on joining shall be so fixed as to account for these notional benefits. The said benefits shall not be restricted to financial benefits but also entail promotion, if any, to which he otherwise becomes eligible and subsequent financial upgradations.

10. While allowing the O.A. in the aforesaid terms, it is further ordered that the competent authority amongst the respondents shall ensure that these directions are complied with in letter and spirit within a period of two weeks from the date of receipt of a certified copy of this order.”

2. The submissions of learned counsel for the petitioners is that the Tribunal has erred in directing in the manner, it did, in the impugned order, as according to her, the respondent No.1 had filed the OA prematurely, as the Review Medical Examination was still pending and no result had come, till the outcome of the OA. That apart, Tribunal misconstrued the information dated February 25, 2021, and assumed that the same is a denial of appointment of respondent No.1 by the petitioner No.2. According to her, the information does not in any way be construed, as an outcome, but mere opinion. That apart, she submits that until a decision is taken by Review Medical Board, the decision of



the Medical Board constituted under Ram Manohar Lohia Hospital, New Delhi will be applied.

3. She submits that the Ram Manohar Lohia Hospital, is the competent authority and the decision taken by it must be strictly adhered to. Even thereafter, the petitioners had given opportunity to the respondent No.1, by referring the matter of the respondent No.1 to the Safdarjung Hospital, New Delhi (respondent No.2) for re-assessment of his disability and to inform the outcome to the PCDA(BR) Delhi Cantt. However, respondent No.1 failed to avail the said opportunity completely. In such circumstances, the directions are liable to be set aside.

4. Suffice to state when the matter was last listed on November 07, 2023, we called upon Mr. Anuj Aggarwal, learned counsel appearing on behalf of the respondent No.1, to take instructions, as to whether respondent No.1 shall appear before a new Medical Board to be set up by this Court for assessing his disability, (if any), he states on instructions that the respondent No.1 is agreeable to appear before the Board.

5. It may be stated here that the respondent No.1 had appeared before the medical board constituted under the Chairmanship of the Additional Medical Superintendent of Mahavir Medical College at Safdaijung Hospital initially but later he stopped appearing. The Safdarjung Hospital, vide its letter dated February 24, 2021, addressed to the Additional Deputy Director General of Health Services, Nirman Bhawan, New Delhi, has stated as under:-



File No. 1-3/2019-CSMEB C&D-123

Date: 24/2/2021

To,

Dr. Sunil Kushwaha
Additional Deputy Director General
Dte. G.H.S. Room No. 503 D- wing
Nirman Bhawan (MH-I Section)
New Delhi-110001.

Sub: Appointment to the post of Auditor in Controller of defence accounts by SSC under PH Category- Re- Assessment of Disability Certificate-reg.

Ref: A- 17020/01/2019-MS/MH-I, dated 29.04.2020.

Sir,

With reference to your above mentioned letter on the subject cited above, the Medical Board Examination in respect of Sh. Nikhil Kumar for the post of Auditor in Controller was held on 12-02-2021 under the Chairmanship of Dr. Prem Kumar, Addl. M.S.

The Board is of the opinion: That there is possibility of improvement with surgical intervention therefore patient is advised to get adequate treatment from orthopaedics department.

Submitted for information.

Regards,

 (CMO)
Medical Board (C&D)

Copy to

Shri Nikhil Kumar S/O Jaipal Singh
H No. 269/2, Ashok Mohalla, Village Nangloi,
Delhi-110041.

6. Not making any comment on the above, we are of the view, that appropriate shall be that a fresh Medical Board be constituted under the aegis of All India Institute of Medical Science, New Delhi, as it is the case of respondent No.1 that he is having the locomotor disability. For this purpose, the petitioners herein shall send all the relevant documents



which shall include the report submitted by the Ram Manohar Lohia Hospital, wherein the respondent No.1 has been assessed to have 6% disability, along with the other documents (if any) of the Safdarjung Hospital to the Director AIIMS for him to constitute a Medical Board to assess the disability (if any) of the respondent No.1. On receipt of the information from AIIMS including date and time, the petitioners shall communicate the date and time of appearance of the respondent No.1 before the Medical Board, to enable the Board assess the respondent No.1's disability. The Board through the Director, AIIMS shall submit the report to the petitioner No.1, Director General of Health Services, Nirman Bhawan, New Delhi for it to share the report with the petitioner No.2, for further action, if any.

7. The aforesaid process shall be completed within a period of 12 weeks from today.

8. It is stated that the non-appearance of the respondent No.1 before the Medical Board shall mean that no further assessment of the respondent No.1, shall take place.

9. In view of the above, the order passed by the Tribunal is set aside.

10. The petition is disposed of. No cost.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBER 17, 2023/ds