

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Judgment reserved on : 26.07.2022
Judgment delivered on : 22.08.2022
+ W.P.(C) 572/2020 and CM APPL. 1576/2020 & CM APPL.
33526/2020

VISHV MOHAN Petitioner

versus

DEPARTMENT OF PERSONNEL AND
TRAINING AND ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vineet Tayal and Ms. Jubli Momalia,
Advocates.

For the Respondents : Mr. Ripu Daman Bhardwaj, CGSC with
Mr. Kushagra Kumar, Advocate for UOI.
Mr. Naresh Kaushik, Advocate for R-2
Mr. V.S.R. Krishna and Mr. V. Shashank
Kumar, Advocates for R-4/AIIMS.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. In the present case, the petitioner assails the report dated 21.02.2019 of the Appellate Medical Board of Dr. Ram Manohar Lohia Hospital, New Delhi (Department of Ophthalmology),

communicated to the Petitioner vide covering letter dated 08.03.2019, conducted in compliance of order dated 22.11.2018 of this Court whereby the Medical Board consisting of three senior doctors had concluded that the Petitioner was having visual disability of 20% only.

2. This is the second round of litigation for the Petitioner who had earlier assailed the order dated 27.09.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. 985/2016.

3. The Petitioner was a candidate for recruitment of All India Service for the year 2015. He made his application claiming reservation under the Visually Handicapped category. He was successful in the written examination and also participated in the interview on 05.05.2015. He states that he was sent for his medical examination by the Medical Board of the Lok Nayak Jai Prakash Hospital (LNJP). The facility in that behalf existed at Guru Nanak Eye Centre which is a part of the same establishment.

4. His medical examination was conducted on 03.07.2015 and the doctor certified the extent of his handicap as 20%. The minimum handicap required for a candidate to qualify as a handicapped category is 40% and, consequently, he was examined by the Appellate Board which too found his disability to be only to the extent of 20%. Consequently, the petitioner's candidature was cancelled by the DOP&T on 29.09.2015 and he, therefore,

approached the Tribunal challenging the two medical reports dated 03.07.2015 and 21.07.2015 and the resultant order passed by the DOP&T dated 29.09.2015.

5. The Petitioner relied upon a certificate dated 26.02.2016 obtained by him upon his medical examination at All India Institute of Medical Sciences (AIIMS), according to which his handicap was assessed at 75%. The Tribunal by judgment dated 27.09.2018 held that since the petitioner had been found to be disabled to the extent of 20% by the Medical Board and the Appellate Board, reliance could not be placed by the petitioner on a privately obtained medical report from the AIIMS. Consequently, the Original Application was dismissed. Petitioner assailed the judgment of the Tribunal dated 27.09.2018 by W.P.(C) 12481/2018.

6. In the earlier WP (C) No.12481/2018, this Court by order dated 22.11.2018 has in paras 6, 7 and 8 passed the following directions :-

“6. The notice issued by the DOP&T dated 12.02.2018 in respect of Civil Services examination 2017 deals with the procedure to be followed for the purpose of medical examination of the candidates. Though strictly speaking, this procedure may not be attracted in case of the examination in question which is the CSE 2014, considering the nature of controversy raised - which relates to the extent of the petitioner's disability, we are of the view that the procedure prescribed in Rule 17 of the aforesaid procedure in relation to CSE 2017 could be invoked to resolve the controversy fairly so that, in case, the petitioner is indeed suffering from visual impairment in

excess of 40 per cent, he is not unduly denied appointment despite his being found to be meritorious otherwise, as a disabled candidate. Rule 17 provides that when the dispute relates to the extent of disability, the matter would be assessed by AIMS, Delhi by a team of doctors consisting of different specialists / doctors other than those involved in the initial assessment as far as possible. The findings of the AIMS team are then communicated to the Appellate Medical Board concerned. On the basis of the said findings, the Appellate Medical Board would form its final opinion. The said Rule reads as follows:

“In case of PH candidates, after filing of appeal by any PH candidate within the stipulated period as per CSE Rules, the appellate medical examination of the candidate would be scheduled in any hospital other than Safdarjung Hospital. In the cases where appeal is filed by PH candidates, in respect of the percentage of disability provided by the CSMB; the Appellate Medical Board (AMB) would further refer the candidates to AIIMS, Delhi for test(s) related to assessment of the disability and would provide its opinion on the basis of the test (s) report provided by AIIMS, Delhi. AIIMS, Delhi will set up a team of doctors consisting of different specialist / doctors other than those involved in initial assessment as far as possible. The findings of this team of AIIMS regarding disability assessment will be communicated to the Appellate Medical Board (AMB) concerned. The AMB's findings would be treated as final. No application for re-appeal would be considered.”

7. Considering the aforesaid, we dispose of this petition with the direction that the petitioner's case be re-examined by a Board of doctors at AIMS,

Delhi in accordance with Rule 17 aforesaid. The examination should take place de hors the report prepared by AIMS at the instance of the petitioner earlier. The said report shall not be looked at by the Board and the petitioner's case should be examined by a different set of doctors and technicians as far as possible. The report prepared by the AIMS, Delhi should then be communicated to the Appellate Medical Board of the respondent in a sealed cover who shall then proceed to take the final call in the matter.

8. This order be communicated to the Medical Superintendent, AIIMS for compliance. The Board shall be constituted by the Medical Superintendent, AIIMS and the examination shall be got conducted within next 3 weeks.”

7. On passing of the above directions, this Court disposed of the writ petition vide the above order. It is pertinent to note that the aforesaid order was not challenged by the Respondents.

8. In pursuance to the order dated 22.11.2018 passed by this Court in WP (C) No. 12481/2018, Respondent No.4 re-conducted the medical examination of the petitioner on 05.12.2018, 07.12.2018 and 13.12.2018 by freshly constituted Medical Board members. By the covering letter dated 03.01.2019, Respondent No. 4 submitted the medical report dated 17.12.2018 in respect of the present petitioner to this Court. A copy whereof was also sent to the Respondent No. 3 – the Appellate Medical Board of Dr. Ram Manohar Lohia Hospital. On receipt of the medical report dated 17.12.2018 of Respondent No.

4, the Appellate Medical Board rendered its opinion dated 21.02.2019, which is impugned in the present writ petition.

9. There is no dispute about the fact that the Petitioner suffers from visual impairment namely 'high myopia with Isometric Amblyopia'. The present issue, is relatable to finding out, whether the Petitioner in the present case was suffering from a visual impairment which would be greater than 40%. If it is 40% or more, the Petitioner would be entitled to be treated as a visually disabled category candidate. In the present case, Petitioner submits that he is a meritorious candidate who had secured a total of 828 marks in the examination of the Civil Services Examination 2014 with All India Rank of 1173 and 5th rank holder in the disabled category.

10. The learned counsel Shri Vineet Tayal, appearing for the Petitioner, submits that looking at the merit of the Petitioner and his standing at 5th rank in the disability category in the CSE 2014, the rejection of the candidature of the Petitioner on the ground of the Appellate Medical Report dated 21.07.2015 declaring the impairment to the extent of 20% only, despite a number of medical reports and disability certificates issued by the Competent Authorities under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter, referred to as 'PWD Act') is absolutely arbitrary, unjust, unconstitutional and unwarranted and thus, the Appellate Medical Board Report impugned herein as well as the rejection of the candidature of the Petitioner ought to be quashed and set aside.

11. Learned counsel submits that there is overwhelming medical evidence in respect of the visual impairment of the Petitioner establishing his visual impairment to the extent of 60% and more. It is his submission that these medical reports and disability certificates were issued by even the All India Institute of Medical Sciences, New Delhi.

12. The learned counsel submits that the impugned Appellate Medical Board Report dated 21.02.2019 was passed without considering the medical documents including disability certificates placed on record and solely on the basis of the report dated 17.12.2018 of Dr. Rajendra Prasad Centre for Ophthalmic Sciences, AIIMS, New Delhi (hereinafter, referred to as 'Dr. R.P. Centre') whereby a team constituting five senior doctors of Ophthalmology of AIIMS opined as under :-

“Based on detailed examination and investigations by the team of doctors (ophthalmologists) the patient was diagnosed to have refractive error (Myopia). No organic lesion was detected to explain the distance visual acuity of 6/60 with refractive correction. The normal near visual acuity, normal visual fields, normal pattern VEP and normal mfERG all are within the normal range. The finding indicates that the vision, as told by the patient that he is not able to see beyond 6/60 on the distance vision acuity chart, is not reliable enough to certify disability.”

13. Learned counsel submits that as seen from the above, though the medical Board of AIIMS did conclude that the Petitioner was suffering from visual impairment of 6/60 in both eyes yet, coming to

the conclusion that this was not a case where they could certify the disability only in view of the absence of any organic lesion, is absolutely unfair, unjust and contrary to the earlier and subsequent disability certificates issued by the very same Dr. R.P. Centre. Learned counsel has taken us through various medical certificates as well as disability certificates issued by Competent Medical Authorities as well as the Government Medical Hospitals like Post Graduate Institute of Medical Education and Research, Chandigarh (hereinafter, referred to as 'PGIMER'), Regional Hospital, Hamirpur (H.P. Government Hospital) and AIIMS, Delhi as also the Medical Disability Certificates issued by these Competent Authorities under the PWD Act.

14. Per contra, learned counsel appearing for AIIMS, defended the medical report dated 17.12.2018 of AIIMS, stating that the Medical Board comprised of five very senior doctors of Ophthalmology of a premier institution like AIIMS and the report generated by such highly qualified experts cannot be questioned by the Petitioner. He further submits that the conclusion reached by the Medical Board after examination and finding that there is no lesion in the eye, and therefore, it is unable to give a disability certificate, cannot be interfered with by this Court, as it is trite that Courts cannot and ought not to substitute their view in place of technical or medical experts. He sums up his arguments by submitting that the impugned Appellate Medical Board Report of Dr. RML Hospital

certifying the visual impairment to the extent of 20% based on the medical report dated 17.12.2018 of AIIMS should not be disturbed.

15. Mr. Bhardwaj, learned CGSC appearing for Respondent No.1/UOI submits that the decision taken of cancellation of the candidature of the Petitioner based on the Medical Board Report certifying that the visual impairment of the Petitioner is to the extent of 20% only whereas the qualifying percentage of visual impairment as per Rules is 40% and above, is therefore justified and does not call for any interference by this Court.

16. It is clear from the record that the Petitioner has been suffering from Myopia from early years and which has been, over the years, increasing and there is no treatment under the present Medical Technology.

17. We find from the record that the Petitioner had enclosed his medical reports right from the years 2012, 2014, 2015, 2016, 2018 and 2019, which were issued by either the Government Hospitals or Medical Institutes like AIIMS. It is pertinent to note that first two medical report dated 01.04.2012 and 08.04.2012, issued by the Health and Family Department, CHC, Markand, Bilaspur (H.P.) had observed the following findings :-

- “i. DoV in BE since childhood.*
- ii. Visual acuity (VA) of 6/60 with glasses.*
- iii. Blurred far vision (Myopia)*
- iv. No improvement with glasses (10 years)*

v. Myopia with poor vision.

vi. No improvement further.”

18. The next report of the Regional Hospital, Hamirpur dated 07.07.2014 observes the visual acuity of 3/60 in both eyes which indicates further deterioration in the vision. The said report also observes that the Petitioner was suffering from Myopia of ‘Amblyopic’ nature and gave the disability certificate showing visual impairment to the extent of 75% (the counsel for the Petitioner submits that this was as per the policy of assessment of disability then existing). The definition of ‘Amblyopia’ is as follows :

“Amblyopia, by definition, refers to a partial irreversible loss of vision in one or both eyes, for which no cause can be found by physical examination of the eye, i.e., there is absence of any organic disease of ocular media, retina and visual pathway.”

19. The said Hospital had also issued a Medical Examination Report dated 31.07.2014 categorically indicating the various physical requirements for the discharge of duties as stipulated under the PWD Act. It further certified the visual impairment to the extent of 75% (Amblyopia B/E).

20. The Medical Reports of the subsequent years i.e. 2015 and 2016 were issued by Government Medical College-cum-Regional Hospital, Hamirpur (HP), PGIMER Chandigarh and AIIMS, which contained more or less the same observations, contained in the

reports referred to hereinabove. It is interesting to note that Dr. R.P. Centre, AIIMS had issued a disability certificate dated 26.02.2016 to the Petitioner certifying the visual impairment to the extent of 75% by a team of three senior doctors of the said Centre. This certificate, was ostensibly, issued under the PWD Act, 1995. The blindness category was indicated as 'II' and the visual acuity of 6/60 and 5/60 and further observed that the condition is not likely to improve and is of a permanent nature. A perusal of the OPD Report dated 02.02.2016 of the said Centre shows the diagnosis as 'B/E Myopia with Isometropic Amblyopia' and other observations and report on the basis whereof the disability certificate dated 26.02.2016 was issued.

21. As referred to above, during this period the cancellation of the candidature of the Petitioner was challenged by him vide the above referred O.A., which was dismissed. The challenge thereto before this Court in W.P.(C) 12481/2018 culminated into the order dated 22.11.2018 followed by the impugned Appellate Medical Board Report dated 21.02.2019. This report, as observed above, assessed the visual impairment of the Petitioner to the extent of 20% only. It is also not disputed that the Appellate Medical Board Report was primarily based on the medical report issued by the AIIMS.

22. It is interesting to note that the very same Centre, which issued the report dated 17.12.2018, issued a disability certificate dated 21.01.2019 ostensibly, under the provisions of the PWD Act, certifying the visual disability category of the Petitioner as 'III', B/E

high Myopia with L/E Amblyopia' with visual acuity of 6/60 in right eye and 1/60 in the left eye and finally, declared the percentage of disability at 60%. A further report dated 11.02.2019 was again issued by the said Centre declaring the percentage of disability as 60%. This certificate too, was issued by a team of three senior Ophthalmic doctors of the Centre. From the records enclosed, it appears that a detailed study was carried out before issuing the said disability certificate. What is more intriguing is that the very same Centre issued a disability certificate dated 20.06.2019 declaring the percentage of disability of the Petitioner as 60%. This conclusion also appears to have been reached after a detailed medical examination of the Petitioner. Needless to say that the Certificate was issued by a team of three senior Ophthalmic doctors of the Centre.

23. It is interesting to note that two members, namely, Dr. Rohan Chawla and Dr. Swati Phuljhele, comprising the Medical Board of Respondent No. 4, which rendered the report dated 17.12.2018, were also signatories to the Disability Certificates dated 21.01.2019 and 11.02.2019 issued by Respondent No. 4, which certified the disability percentage of the petitioner at 60% respectively. Dr. Swati Phuljhele was also a member of the clinical diagnosis report dated 12.01.2019, ostensibly based whereof, the disability certificate dated 21.01.2019 was issued to the petitioner. It is intriguing, and at the same time confounding as to on what basis the two aforementioned members of the medical team could render contrary medical opinions in respect of the petitioner.

24. The Petitioner has placed on record the Matrix Table containing 'Best Corrected Visual Acuity' (hereinafter referred to in short as 'BCVA), which is part of Gazette Notification dated 05.01.2018 issued by Ministry of Social Justice according to which BCVA of 6/60 in both eyes would be assessed at 40% disability percentage.

25. That apart, as per the guidelines, under the heading 'Visual Impairment Certification Criteria and Gradation', the disability percentage of persons suffering visual impairment between 6/24 to 6/60 in both eyes would be assessed at 40% and categorized in IIIa (Low Vision) Category.

26. Section 2(b)(ii) of the PWD Act, 1995 reads as under :-

"Blindness" refers to a condition where a person suffers from any of the following conditions, namely :-

(ii). Visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses;"

Considering the overwhelming medical reports as referred to above, we have no doubt that the Petitioner does fall within the definition as contained in Section 2(b)(ii) of the PWD Act. As per the criteria set by Respondent No.2 in its advertisement dated 31.05.2014, for the purposes of entitlement to appear in the CSE, 2014 under the visually disabled category, the candidate should have more than 40% disability.

27. We have also perused the medical literature filed by the Petitioner on record, as per which 'Amblyopia' is one of the common causes of childhood and adult visual impairment, which is usually underestimated, often because of lack of awareness. According to the medical literature, the upper limit of the critical time when children are most vulnerable to this is around 8 years in human beings and the vision loss could be permanent if corrective measures are not taken in time. From the perusal of the medical literature, it appears that not all cases suffering from 'Amblyopia' necessarily must have any 'organic lesion' for the onset of the disease. Thus, it cannot be ruled out that the Petitioner's visual impairment due to 'Amblyopia' could be caused without any organic lesion and on the basis of pre-disposed genetic condition.

28. Considering all the above facts, detailed medical examinations, consequent diagnosis and the overwhelming medical reports as well as disability certificates and the medical literature, as placed on record by the Petitioner, it is clear that the report of the Medical Board dated 17.12.2018 of Dr. R.P. Centre, appears to be an inconclusive opinion rendered and as such was not binding on the Appellate Medical Board of Dr. RML Hospital, which issued the impugned medical report certifying the percentage of the disability of the Petitioner at 20%. We cannot, possibly, ignore or overlook the medical reports and the disability certificates issued by Government Hospitals and Competent Authorities right from the years 2012 onwards till 2016-2017. We cannot also overlook the disability

certificates dated 21.01.2019, 11.02.2019 and 20.06.2019 issued by the R.P. Centre declaring the percentage of disability of the Petitioner at 60% in the visual impairment category as per the PWD Act. It is surprising to note that the Dr. R.P. Centre, which issued the disability certificates prior to 2018 as well as those immediately after the medical report dated 17.12.2018 certifying that the disability percentage of the Petitioner was ranging between 60-75%, could suddenly opine in its medical report dated 17.12.2018, that the Board could not certify the disability of the Petitioner.

29. We are of the opinion that the report dated 17.12.2018 of Dr. R.P. Centre is inconclusive and not binding either on the Petitioner or on the Respondents for that matter, for the reason that its own earlier reports coupled with those of the Government Hospital in Himachal Pradesh as well as PGIMER, Chandigarh consistently assessed the disability percentage of the Petitioner at 60% or above. We cannot ignore or overlook such consistent medical reports and the consequential disability certificates issued by the aforesaid Competent Authorities over a period commencing from the year 2012 and through till June, 2019.

30. In view of the above, we are of the considered opinion that the medical report dated 17.12.2018 ought to be ignored by the Respondents and the percentage of visual disability of the Petitioner can be fairly and justifiably assessed at 60% on the basis of the aforesaid medical reports and the disability certificates issued by the Competent Authorities.

31. Under the provisions of the PWD Act, the State is enjoined to create conditions and opportunities for the welfare and betterment of the citizens with disabilities and those who are differently abled. The Central Government had enacted the said Act to ensure that the citizens falling in this category are not deprived of their rightful means of livelihood in respect of public employment. It is with a view to give impetus to the beneficial provisions of the said Act, that the Central Government and the State Governments created various avenues for public employment of such differently abled citizens. The welfare State is expected to create conditions which are conducive to such citizens by providing avenues for public employment.

32. In the present case, the Petitioner admittedly is not only a person with visual impairment to the extent of 60% but also a brilliant candidate, in that, he secured 5th rank in his own category and was also positioned at All India Rank No.1173. In such circumstances, depriving the Petitioner of public employment, that too, at the level of Indian Administrative Services, on such inconclusive medical report dated 17.12.2018, is not only unfair, unjust but also whimsical and arbitrary. We hold so.

33. We do not think it will serve any purpose nor would be appropriate to ask the petitioner to undertake yet another medical check-up in as much as more than 6 years have passed since the petitioner cleared the CSE 2014 and in view of the definite findings recorded and the medical opinion rendered by Govt. Hospitals and

Competent Authorities, both pre and post the impugned Appellate Medical Board Report, nothing survives to be reinvestigated.

34. In view of the above, the impugned Appellate Medical Board Report dated 21.02.2019 based completely on the medical report dated 17.12.2018 of Dr. R.P. Centre, AIIMS is set aside and the Respondents are directed to take the assessment of the percentage of disability of the Petitioner at 60% and consider him qualified so far as the medical criteria is concerned. As a consequence, Respondent No.1/DoPT is directed to allot the cadre and appoint the Petitioner in Indian Administrative Service (2015 Batch) considering him eligible in so far as the Central Civil Examination, 2014 is concerned with all consequential benefits in respect of seniority and promotion on notional basis. Since the Petitioner did not discharge any duties, we refrain from granting any back wages.

35. Writ petition stands disposed of accordingly. Pending applications also stands disposed of.

TUSHAR RAO GEDELA, J

SANJEEV SACHDEVA, J

AUGUST 22, 2022

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