



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No.4541/2022

Anshul Sharma

----Petitioner

Versus

1. State of Rajasthan, through Principle Secretary, Medical and Health Department, Govt. Secretariate, Jaipur
2. The Superordinate, SMS Hospital Tonk Road, Jaipur (Rajasthan)
3. The Convenor Medical Board, SMS Hospital, Tonk Road, Jaipur
4. The Director Journal, National Testing Agency First Floor, NSIC-MDBP Building Okala Industrial Estate, New Delhi.
5. The Chairmen, NEET UG Medical and Dental/counseling Board NEET 2021, Govt. Dental College, Subhash Nagar, Behind TB Hospital, Jaipur

----Respondents

For Petitioner(s) : Mr.Aatish Jain, Adv. with Mr.Deepak Kumar Sharma, Adv.

For Respondent(s) : Dr.V.B. Sharma, AAG with Mr.Harshal Tholia, Adv.
Mr.Digivjay Singh, Adv. for
Mr.M.S. Raghav, Adv.

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Order

30/03/2022

REPORTABLE

The instant writ petition has been filed by the petitioner seeking direction to issue permanent disability certificate for the purpose of getting admission in MBBS UG Course, 2021. The petitioner also feels aggrieved against the issuance of certificate dated 27.12.2021 by the Disability Certificate Centre—SMS



Medical College, Jaipur, whereby, the petitioner has not been found eligible for admission in MBBS UG Course.

The petitioner claims his eligibility in the category of Persons with Disability (PwD), as per the result of NEET UG-2021 examination and participation in the counselling, for the purpose of admission.

This Court, at the time of admission of the writ petition, had passed an order on 16.03.2022, whereby, the Competent Authority was required to re-examine the petitioner for the purpose of disability certificate and as such, this Court directed the Superintendent of SMS Medical College, Jaipur to constitute a Board, as required for issuance of certificate of disability and the petitioner was to appear before the Board for his examination for the purpose of issuance of disability certificate. Pursuant to the order of this Court, the petitioner was examined on 22.03.2022.

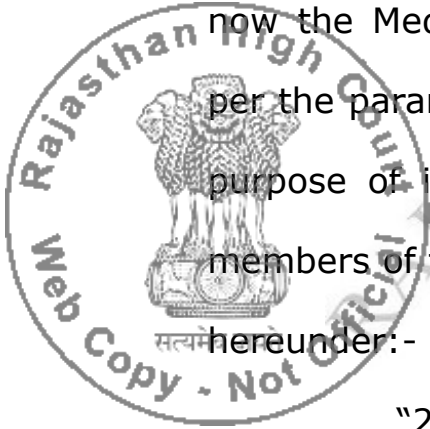
Learned counsel appearing for the respondents-State Mr. Harshal Tholia produced on record the report of the Medical Board which was constituted, as per direction of this Court and on perusal of the said report, this Court on 28.03.2022 found that the certificate which was issued by the members of the Board did not take into account the guidelines, which have been issued by the Competent Authority for issuance of disability certificate.

This Court on 28.03.2022 again directed the members of the Board to examine the petitioner and remain more careful while discharging their duties, as the members of the Board had given earlier report, without considering the guidelines which have been notified in the Official Gazette notifications dated 05.02.19/13.05.2019 for the purpose of admission to Medical Courses in All India Quota.



This Court had directed the petitioner to appear again before the Medical Board on 29.03.2022 and the petitioner accordingly appeared before the Medical Board. The report of the Medical Board dated 29.03.2022, has been produced for perusal of this Court.

This Court, after going through the report, finds that now the Medical Board considered the case of the petitioner, as per the parameters laid down by the Competent Authority, for the purpose of issuance of disability certificate. The findings of the members of the Medical Board and their opinion are reproduced as hereunder:-



"2. As per findings of the medical examination we members of medical board are of opinion that:-

(i) Candidate Shri Anshul Sharma S/o Late Shri Mukesh Kumar Sharma Age, 23 year, is having post traumatic (Head injury) sequel as right sided facial, upper limb and lower limb weakness (right spastic hemiparesis-right lower limb is involved more than upper limb), with normal left side of the limbs".

(ii) Candidate Shri Anshul Sharma having permanent physical impairment of fifty percentages (50 %) and according to the gazette of India notification dated 04.02.2019 and 14.05.2019 "*both hands intact, intact sensation, sufficient strength and Range of motion are essential to be considered eligible for medical course*". Candidate Shri. Anshul Sharma is having intact sensation, minimal weakness in right hand with normal range of motion in both hands. His left upper limb and lower limb is normal.

(iii) Due to this physical impairment he is able to perform activity of daily living without any assistance but is having minimal difficulty to performing precised work, like difficulty in holding pen in right hand and slow speed of the writing.



(iv) We the members of medical board are enclosing the report of medical examination in detail for perusal and kind consideration of the honorable High Court as per the law and the Gazette of India notification."

The perusal of aforesaid report makes it clear that the petitioner is having intact sensation, minimal weakness in right hand with normal range of motion in both the hands. His left upper limb and lower limb is normal and due to physical impairment i.e. post traumatic (head injury), the petitioner is able to perform activity of daily living without any assistance but is having minimal difficulty in performing precised work, like difficulty in holding pen in right hand and slow speed of the writing.

Learned counsel for the petitioner Mr.Aatish Jain submitted that the Authorities while issuing the initial certificate dated 27.12.2021, were very casual in their job and without thorough examination of the petitioner, only general remarks were given that due to involvement of right upper limb, has gross impairment in hand and therefore, he is not eligible for UG NEET Course.

Learned counsel submitted that the second medical examination of the petitioner by Members of the Board, as per direction of this Court, also met with the same fate and the Authorities only made a remark that the petitioner had post head injury right spastic hemiparesis involving upper limb and lower limb with facial weakness on right side and treacheostomy mark and his permanent disability score was 2 and his permanent physical impairment score was 50% and due to involvement of right upper limb, he was unfit for NEET UG MBBS Course.



Learned counsel for the petitioner submitted that in view of further examination by the members of the board and as per report dated 29.03.2022, the petitioner cannot be deprived from admission in MBBS Course as he is entitled to get the benefit of reservation, provided to the Person with Disability (PwD).

Learned counsel submitted that the certificate which was issued by the State Government earlier had specifically mentioned the disability which the petitioner suffered and in spite of suffering disability only in right leg, the Authorities who issued the certificate for the purpose of granting reservation did not apply their mind and have rendered the petitioner ineligible.

Learned counsel further submitted that the petitioner has participated in NEET UG/PG Examination and he has secured 2006th rank and he is entitled to be considered, accordingly as per his merit and reservation provided to the candidate having disability.

Learned counsel for the respondents-State Mr. Harshal Tholia submitted that as far as issuance of earlier certificate by the State Government is concerned, the same is of no relevance for the purpose of getting benefit as Persons with Disability (PwD) and only Disability Certificate Centre, as notified, is competent to give certificate to such candidates, who want to claim benefit of reservation.

Learned counsel submitted that initially the examination by the Board Members, did not give the complete details, however, on direction given by this Court, now proper medical examination of petitioner has taken place and new finding has been recorded and opinion has also been given.



Learned counsel for the respondents submitted that in view of subsequent development, this Court is required to consider independently as whether the petitioner is entitled for reservation or not.

Learned counsel submitted that the parameters, which have been prescribed in the Gazette notification, have now been kept in mind and accordingly, detailed medical examination report has been produced for perusal of this Court.

I have heard learned counsel for the parties.

This Court finds that the certificate dated 27.12.2021, filed as Annexure-7 with the writ petition, was issued by the Authorities in very casual manner without thorough examination of the petitioner. The Authorities have been negligent in issuing certificate dated 27.12.2021.

This Court finds that there is a list of Disability Certificate Centre for the purpose of issuance of disability certificate for PwD candidates, in support of their claim, who want to avail 5% reservation in the UG. The Authorities have to keep in mind the guidelines which have been issued by the Competent Authority. The issuance or non-issuance of certificate has very important bearing in career of student who apply for these certificates. The casual approach of the Authorities, can result into ruining the career of a student who is desirous to pursue the MBBS Course.

This Court finds that the present case is a classic example of non application of mind by the Authorities, who deal with such an important issue of granting disability certificate. The belief of the Court is forfeited from the fact that direction which was given by this Court for medical examination of the petitioner



for the second time also, resulted into issuing the certificate without adhering to the norms, which have been prescribed for considering the eligibility of a candidate.

This Court was again constrained to issue direction to the Authorities to adhere to the Gazette Notification to consider the case of the candidate/petitioner in proper manner, as per requirement of law.

The report of the Medical Board dated 29.03.2022 now deals with the specific requirement to consider the eligibility of the petitioner and the requirement of having intact sensation, sufficient strength, range of motion and both hands intact have now been fully considered and the Medical Board has opined accordingly.

This Court, on perusal of the Appendix-H-1 of the Gazette Notification dated 13.05.2019, finds that 'physical disability' has been defined and different types of disabilities include the Locomotor disability.

The specified disabilities of Locomotor are from Sr. Nos. (a) to (e) and those disabilities, which are not specified, are covered under specified disability No.(f) like Amputation and Poliomyelitis, etc. and for claiming the benefit of such locomotor disability, the candidate has to satisfy i.e. both hands are intact with intact sensation, sufficient strength and range of motion.

The Authorities who are to examine a candidate for the purpose of locomotor disability, are essentially required to keep in mind the parameters which have been laid down. The Authorities cannot simply say that person is not eligible to get admission as he is suffering from locomotor disability.



This Court finds that the Authorities who issued the certificate to the petitioner dated 27.12.2021 did not act properly and in most casual manner, they issued the certificate.

This Court, now considering the opinion of the Medical Board vide report dated 29.03.2022, finds that the petitioner is entitled for admission on the basis of reservation provided to the person who has suffered disability and if the petitioner has proper rank and merit for the purpose of admission, he will be permitted to participate in the counselling and he will be granted admission if he fulfills the requisite conditions and merit.

This Court, as an interim measure, had directed on 16.03.2022 to permit the petitioner to participate in next round of counselling i.e. Mop-up round of counselling in General EWS with PwD Category and his participation was subject to outcome of the writ petition and his admission was not to be final without prior permission of the Court.

Since, this Court intends to allow the writ petition, the petitioner will now be entitled to participate in the Mop-up round of counselling or any subsequent counselling, to be conducted by the respondents and his result will be accordingly declared by the Authorities and will be granted admission if falls in merit.

This Court before parting with the judgment, deems it proper to observe that the Authorities—Disability Certificate Centre, which have been entrusted with the job of considering eligibility of the candidates, who appear before them, are required to act in proper manner and they are required to adhere to the Gazette Notification, which has been issued and candidature of the candidates should be examined on the same parameters, as enumerated in the Gazette or guidelines issued from time to time.



This Court, in normal course, would have taken action against the Officers who have been found negligent in performing their duties, however, this Court directs the Authorities to perform their duties in proper manner, in future, with due application of mind.

A copy of this order be sent by Registrar (Judicial) to the Principal and the Controller, SMS Medical College, Jaipur who in turn will direct/advise the members of the Board to remain careful and vigilant while dealing with the sensitive matters of admission of students/candidates more particularly in Medical/Dental Courses.

Accordingly, the present writ petition stands allowed.

(ASHOK KUMAR GAUR), J

Himanshu Soni/93



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