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**(2007) 11 RAJ CK 0013**  
**In the Rajasthan High Court**

Manish Kumar Jain

APPELLANT

Vs

Bharat Sanchar Nigam Ltd. and Others

RESPONDENT

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**Date of Decision :** 19-11-2007

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 14(2)

**Citation :** (2008) 2 RLW 941 : (2009) 3 SLJ 471

**Hon'ble Judges :** Raghvendra S. Chauhan, J; R.M. Lodha, J

**Bench :** Division Bench

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**Judgement**

R.M. Lodha, J.—The petitioner appeared in the competitive examination held on 4th March, 2001 for direct recruitment to the post of Junior Telecom Officer ("JTO", for short).

2. By the communication dated 11th April, 2002, the petitioner was communicated that he has been selected for the post of JTO for Rajasthan Circle. He was intimated that he would be required to undergo initial training of JTO (pre-appointment training) for a period of four weeks in any of the Telecom Training Centre subject to fulfillment of all prescribed conditions such as submission of medical fitness Certificate to be issued by a Medical Board constituted by the Medical Superintendent, S.M.S. Hospital, Jaipur. He was directed to make a security deposit in the sum of Rs. 5,000/- in the form of demand draft and furnish the documents referred to in paragraph 2 of the said communication, namely: (i) Bond Agreement, to be signed by him, one surety and three witnesses and attested by the Notary Public; (ii) Attestation forms - in quadruplicate; (iii) Declaration form; (iv) Identity Certificate; (v) Oath of Allegiance; (vi) Two character certificates signed by two separate Gazetted Officers; (vii) Medical Certificate issued by the Medical Board; (viii) Employer's Certificate of the Surety; and (ix) Undertakings regard PVR and Employer's Certificate.

3. In pursuance of the communication dated 11th April, 2002 the petitioner appeared before the Medical Board.

4. By the communication dated 17th July, 2002, the petitioner was informed that having found unfit for the post of JTO has been cancelled. Upon receipt of the communication dated 17th July, 2002, the petitioner made an application to the respondents No. 1 and 2 for re-medical examination.

5. The respondents No. 1 and 2 by a letter dated 4th February, 2003 intimated to the petitioner that his application for re- medical examination cannot be considered as he has been declared unfit by the Medical Board of S.M.S. Hospital, Jaipur.

6. The petitioner challenged the communication dated 17th July, 2002 and 4th February, 2003 by filing Original Application before the Central Administrative Tribunal, Jaipur Bench, Jaipur.

7. The Tribunal held that no notification u/s 14(2) of the Administrative Tribunals Act, 1985 has been issued by the Central Government specifying the date on or from which the provisions of Sub-section (3) of Section 14 of the Act have been made applicable to Bharat Sanchar Nigam Limited ("BSNL", for short). The Tribunal, thus, in its order dated 6th August, 2003 held that it did not have the jurisdiction to entertain the matters relating to recruitment and appointment to any service and post in connection with the affairs of the BSNL.

8. The petitioner by this writ petition filed on 20th September, 2003 has sought to challenge the correctness of the order dated 6th August, 2003 passed by the Central Administrative Tribunal and also prayed that the communications dated 17th July, 2002 and 4th February, 2003 received from the respondent Nos. 1 and 2 be quashed and set aside.

9. At the out-set Mr. Ashok Gaur, the counsel for the petitioner fairly accepted the legal position that the original application before the Central Administrative Tribunal was not maintainable for want of any notification by the Central Government u/s 14(2) of the Administrative Tribunals Act applicable to the BSNL. He, however, submitted that does not preclude the petitioner from assailing the legality and correctness of the intimation dated 17th July, 2002 and 4th February, 2003 directly before this Court in writ jurisdiction.

10. The whole thrust of the argument of Mr. Ashok Gaur before us is that the health certificate issued by the Medical Board constituted for the purpose does not conclusively establish that the petitioner is medically unfit to hold the post of JTO.

11. On the other hand, the counsel for the respondent Nos. 1 and 2 strenuously urged that the job of JTO requires high perception of principal colours and since the petitioner is unable to distinguish principal colours due to defective colour perception of Red and Green colours, the cancellation of the petitioner's candidature for the post of JTO was proper. He would submit that there was no provision for the re-medical examination and, therefore, the intimation dated 4th February, 2003 sent to the petitioner that his request for re-medical examination

cannot be considered does not suffer from any illegality.

12. We thoughtfully reflected over the rival submissions of the counsel for the parties.

13. That the petitioner was required to pass through physical fitness test is not in dispute. It is also not in dispute that the Post and Telegraph Manual incorporates Rules for recruitment to the cadre of engineering supervisors. Para 5 of the said Rules provides for medical examination. It reads thus:

5. Medical Examination- Candidates selected for training shall be required to undergo a medical examination prescribed in Appendix "C".

Any candidate who does not satisfy the standards laid down in that Appendix shall not be eligible for appointment.

Note-Officials of the Department who are selected in the Direct Recruitment quota and who have already been medically examined while working in the Department are exempt from the provisions of this rule.

14. Appendix "C" referred to in para 5 provides for thus:

Each candidate shall be examined for physical fitness. A good constitution and active habits are essential qualifications for the post for which the person has been selected and, if appointed, his future duties will render him liable to considerable exposure at all seasons of the year anywhere in India. The Medical Officer shall state clearly whether he considers the person examined capable of performing such duties. Inability to distinguish principal colours shall be regarded as a disqualification leading to the rejection of a candidate. The candidate shall be examined in accordance with the standards of visual acuity as laid down from time to time. One-eyed candidates will not be eligible.

15. It would be, thus, seen that the inability to distinguish principal colours is regarded as a disqualification leading to the rejection of a candidate. The rules contemplate the medical officer to state clearly and in un-ambiguous words whether he considers the person examined capable of performing the duties for the post for which he has been selected.

16. In the back-drop of the aforesaid legal position, we now look at the medical certificate issued by the Board. Inter-alia, it reads, "....Shri Manish Kumar Jain has a good constitution and active habits and is capable of discharging his duties efficiently in any part of India at all seasons of the year...partial Red Green Deficiency, cannot identify three primary colour on lantern test...defective colour perception to Red & Green colours on Ishihara test and lantern test. He is unfit if higher grade of colour perception is required and fit if higher grade of colour perception is not required for the post of JTO.

17. The question that falls for our consideration is whether the health certificate issued by the Medical Board renders the petitioner medically unfit for the post of JTO.

18. The counsel for the respondents invited our attention to the responsibilities of a JTO in the Department of Communication that provide for thus:

- (i) To supervise the work of subordinates- TTA, Telephone Mechanics and Sr. TOA.
- (ii) To conduct test, record, analyse, detect and rectify the faults in the telecom equipment and line plant.
- (iii) To maintain telecom installation (premises)
- (iv) To manage material
- (v) To manage staff -
- (vi) To manage relations with the public and to co-ordinate with public and to co-ordinate with other utility services viz. Railways, Municipal Corporation, Defence etc.
- (vii) To prepare periodical returns and report to assist the management.

19. The responsibilities of JTO as specified in the Manual and noticed by us above do not by itself show that the post of JTO requires higher grade colour perception. As a matter of fact, the Medical Board that has been given task to certify whether it considers the person examined capable of performing the duties for the post for which he has been selected also did not seem to have any idea as to whether the post of JTO requires higher grade colour perception or not. If it were so, the Medical Board would have given its definite opinion in this regard. What has been opined by the Medical Board concerning the physical fitness of the petitioner is that he has defective colour perception to Red and Green on Ishihara test and lantern test and that he is unfit if higher grade of perception is required and fit if higher grade of perception is not required for the post of JTO. No document nor any material, except the bald statement in the reply, has been placed on record by the respondents No. 1 and 2 to show that the job of JTO needs higher grade of colour perception.

20. Mr. Ashok Gaur, the counsel for the petitioner referred to an article by McElearney NL, Waddy RS, Rawll CC on "Pre- employment colour vision testing" wherein the author observed that the Ishihara test, whilst being a useful screening test, is not sufficient on its own as a test of suitability for employment. According to these authors, one or more trade tests should be administered before rejecting candidates who fail it.

21. In another article, "The Ishihara Test: on the prevention of job discrimination", by Johnson DD, the author noted that failure to utilize the recommended "pass-fail" criterion and/or to allow clients who fail colour vision screening recourse to additional testing to establish type and degree of colour defective vision may unnecessarily lead to job discrimination and/or interfere in a negative manner with the career selection process.

22. Cole BL, Vingrys AJ, in an article "who fails lantern tests" opined thus:

A battery of clinical colour vision tests was given to a group of 100 observers with abnormal colour vision who were also tested on the Farnsworth lantern and the Holmes-Wright lanterns types A and B. It was found that clinical colour vision tests are imperfect predictors of lantern test performance. However, observers classified as having a "severe" colour vision defect were found to fail the lantern tests but only one half to two-thirds of those who fail the lantern tests can be identified in this way is not possible to identify with certainty any of the people likely to pass the lantern tests: about one-third to two-thirds of observers classified as being mildly affected fail the lantern tests. The Farnsworth D-15 and City University tests were found to be the best predictors of lantern test performance but other tests such as the Nagel anomaloscope, the H-16, L'anthony's desaturated test can also be used. The lack of a strong correlation between clinical tests and the recognition of the small coloured stimuli presented by the lantern tests suggests that clinical tests do not test the same aspect of colour vision that is important to the recognition of signal lights. For this reason lantern tests should be retained for occupational testing of colour vision.

23. It needs no emphasis that career of a candidate cannot be marred by an ambiguous opinion of a Medical Board concerning defective colour perception. Although vision test required for assessing the medical fitness of a candidate may be for multiple purposes, like; the interest of public safety; and the interest of administration and the interest of employee himself but at the same time the medical opinion with regard to the colour perception has to be clear, categorical and unambiguous. The whole idea of examining the selected candidate for medical fitness is to find out whether the person so selected is capable of performing his duties for which he has been selected or not. If he is not medically fit or capable of performing the duties for which he has been selected, his candidature has to be rejected. The standards fixed in the Rules for the performance of physical fitness clearly provide that inability to distinguish principal colours shall be regarded as a disqualification. Defective colour perception to some extent may not render the selected candidate medically unfit since such candidate may still not fall in the category of, "inability to distinguish principal colours."

24. For want of any categorical finding by the Medical Board and for want of any standards in the Rules that the JTO requires higher grade of colour perception, the request of the petitioner for re-medical examination was not unreasonable. As a matter of fairness, it was expected of the respondents No. 1 and 2 to ask the petitioner to reappear before the Medical Board after the Medical Board was informed of the duties and responsibilities of the JTO and a specific opinion was sought as to whether the petitioner was fit or unfit for the post of JTO. After all a selected candidate cannot be deprived of the employment on a vague medical opinion.

In what we have discussed above, we are of the view that the cancellation of the petitioner's candidature for the post of JTO on the ground of his physical

unfitness on the basis of vague medical report was improper and unfair. The denial for re-medical examination despite the request made by the petitioner was also unreasonable.

25. We, accordingly, dispose of this writ petition by the following order:

(i) The respondents No. 1 and 2 shall constitute a Medical Board within one month from today for re-medical examination of the petitioner.

(ii) The Medical Board so constituted shall be informed in advance the duties and responsibilities of the JTO and a categorical opinion from that Board shall be sought as to whether the petitioner was capable of performing such duties and whether he has the ability to distinguish principal colours or not looking to the job profile of JTO.

(iii) The petitioner shall be informed in advance the date and time on which he has to appear before that Medical Board.

(iv) In the light of the fresh medical opinion about the physical fitness of the petitioner, the respondents No. 1 and 2 shall issue an appropriate order afresh.

(v) The communications dated 17th July, 2002 and 4th February, 2003 are rendered ineffective.

(vi) The parties shall bear their own expenses-litis.