
(2005) 08 RAJ CK 0088
In the Rajasthan High Court

Union of India (UOI) and Others

APPELLANT

Vs

Devendra Kumar Mittal and Another

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 107 FLR 490

Hon'ble Judges : Y.R. Meena, J; Prem Shanker Asopa, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Y.R. Meena, A.C.J. and Prem Shanker Asopa, J.—The above referred writ petition has been filed against the judgment of Central Administrative Tribunal dated 1.6.2001 whereby the original application filed by the respondent No. 1 has been allowed partly with a direction to the respondents to hold a joint meeting of all the respondents and decide the post on which the applicant is entitled to be appointed on the basis of the report of the second medical board, thereafter, issue an appointment order to the applicant specifying the post within three months.

Briefly stated the relevant facts are that the respondent No. 1 filed an Original Application No. 175/1994 in the Central Administrative Tribunal, Jaipur Bench, Jaipur challenging the order dated 24.11.1993 and Anr. order dated 24.12.1993 of the cancellation of the candidature of the applicant for appointment to the post of Deputy Superintending Surveyor Group-"A". The applicant has also prayed for a direction to the respondents for giving appointment as per offer of appointment dated 10.12.1992 with all consequential benefits.

2. The contention of the respondent No. 1 before the Central Administrative Tribunal (for short C.A.T.) was that there was no justification for cancellation of his candidature and different stands have been taken by the respondent before the Tribunal, which clearly reveal the lack of coordination which has resulted in

denial of the appointment to him. The C.A.T. accepted the said submission and partly allowed the original application as detailed out herein above.

3. Learned Counsel for petitioner has contended before this Court that the Tribunal has acted without jurisdiction in issuing direction for appointment and they have also opposed the joint meeting, although all of them have filed the joint writ petition.

4. The Counsel for the respondent No. 1 applicant submitted that after initial recommendation of unfit for all the VII categories, as per term of the appointment and the procedure, he has filed appeal within 20 days and by the second medical he was declared fit on 9.9.1992 for category (vii). The offer of appointment was also issued on 10.12.1992 for the post of Deputy Superintending Surveyor which was accepted by him but the same was later on cancelled vide impugned order dated 24.11.1993 and 24.12.1993, although he has cleared the stereoscopic fusion test in the year 1993. There was no further requirement of any medical test, still the appointment has been cancelled on medical ground, retaining the person lower in merit on the said post, on the ground of physical defect.

5. Heard learned Counsel for parties. Perused the contents of writ petition, reply etc. and documents annexed therein. We have also carefully examined the rival submissions of both the parties.

6. The learned Counsel for the petitioners has neither before this Court nor before Central Administrative Tribunal substantiated the arguments of medical unfitness and before the Central Administrative Tribunal shifted their burden upon each other although not disputed second medical board report. The relevant portion of the Central Administrative Tribunal's judgment is reproduced hereunder:

From this stand taken by the official respondents it is clear that one official respondent is throwing the burden on the other respondent for considering the case of the applicant for appointment. The respondents do not say in their reply the statement that the applicant was not entitled for which the applicant was found fit by the second medical board. On the basis of the admitted fact that the applicant has been recommended by the UPSC for his appointment on one of the posts for which the applicant had undergone and examination in Engineering Services Examination, 1993, the respondents have not examined the issue on which post of applicant can be appointed on the basis of his medical fitness. There are: number of services in category (vii) for which the second medical board has found the applicant medically fit. If that is so, the applicant is" entitled for appointment on any of the posts in category (vii), which cannot be denied to him. Denial of appointment to the applicant regarding the post for which he is found fit would be definitely violative of Articles 14 and 16 of the Constitution. The things would have been different if the applicant was found unfit for all the posts, but the fact remains that the applicant has been found fit for the post in

category (vii). In these circumstances, we find that there is merit in this "application and this application is entitled to succeed. Though we may not quash Anns. A/1 and A/2, as prayed for by the applicant. But appropriate suitable direction can be issued having regard to the situation of this case. It is stated that the Ministry of Railway is acting as nodal department for the purpose of appointments in pursuance of the notification pertaining to the examination conducted in the instant case in which the applicant was recommended for appointment by the UPSC. Accordingly, we pass the order as under:

The application is partly allowed and the respondents are directed to have a joint meeting of all the respondents and decide the post on which the applicant is entitled to be appointed on the basis of medical report of the second medical board. Thereafter, the respondents shall issue an appointment order of the applicant, specifying the post, and if the applicant accepts such order, they shall issue further posting order to the applicant on the post. Three months time is granted for compliance. No order as to costs.

7. No material is available on record produced by the petitioner, which renders the respondent No. 1 medically unfit, moreover he has been in merit in category (vii) in the department SIS, therefore, the Central Administrative Tribunal has not committed any error apparent on the face of the record so as to warrant interference by this Court while exercising extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. Furthermore, the present case is not of simple appointment, the same is of cancellation of appointment, therefore, the direction of appointment is fully justified.

8. In view of the above, no interference is called for, therefore, the writ petition stands dismissed with no order as to costs.