

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 197/2019 (D.B.)**

Dhananjay S/o Ashokrao Sarnaik,  
Aged about 30 years, Occ. Service,  
Presently R/o C/o Assistant Commissioner,  
Municipal Corporation, Chandrapur, permanent  
R/o near Sitaram Talkies, Shivram Nagar,  
Parbhani, District Parbhani.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary, General Administrative Department,  
Mantralaya, Mumbai-32.
- 2) Municipal Corporation, Chandrapur  
through its Commissioner, Chandrapur.

**Respondents.**

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**Shri D.T. Shinde, Advocate for the applicant.**

**Shri V.A. Kulkarni, P.O. for respondent no.1.**

**Shri M.I. Dhatrak, Advocate for respondent no.2.**

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**Coram :- Shri Shree Bhagwan,  
Vice-Chairman and  
Shri Anand Karanjkar, Member (J).**

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**Date of Reserving for Judgment : 11<sup>th</sup> December, 2019.**

**Date of Pronouncement of Judgment : 17<sup>th</sup> December, 2019.**

**JUDGMENT**

**Per : Anand Karanjkar : Member (J).**

**(Delivered on this 17<sup>th</sup> day of December,2019)**

Heard Shri D.T. Shinde, learned counsel for the applicant, Shri V.A. Kulkarni, learned P.O. for respondent no.1 and Shri M.I. Dhattrak, learned counsel for respondent no.2.

2. The applicant is challenging order of termination dated 13/3/2019. The facts in brief are as under –

3. In pursuance of the advertisement published by the MPSC, the applicant applied for the post of Chief Executive Officer (CEO), Group-B, Municipal Council Services in the State of Maharashtra. The applicant had applied as low vision disabled candidate for the post reserved in that category. The applicant passed the examinations, he was selected and he was recommended for the appointment.

4. The applicant was appointed in service subject to medical proof of his disability and his fitness to discharge the duties. It is case of the applicant that before applying to the post, he was examined by the Medical Board, Parbhani on 18/1/2014 and Certificate was issued to him that he was visually impaired, the disability was in both the eyes and percentage of the disability was 40%. The nature of the disability was progressive and there was no possibility to improve. After appointment of the applicant, he was again examined by the President, Medical Board, Medical College, Nagpur on 20/10/2016.

The Medical Board Nagpur came to the conclusion that the applicant's blindness was 40%, it was myopic, but he was fit for duty in handicapped category. It is contention of the applicant that all of a sudden, he was directed by the respondent no.1 to appear before the Medical Board J.J. Hospital, Mumbai, he was examined there and Medical Board J.J. Hospital, Mumbai came to the conclusion that the percentage of the blindness was 30% and the applicant was not suitable and fit under the handicapped category, consequently vide impugned order dated 13/3/2019 his appointment was cancelled and services came to be terminated.

5. It is contention of the applicant that he was examined thrice by the two Medical Boards recognised by the Government of Maharashtra and three the Medical Boards (Parbhani, Aurangabad and Nagpur) have issued Certificates to the effect that the applicant was handicapped and percentage of the blindness was 40% and he was entitled to apply under the handicapped category, but disregarding this fact the applicant was referred for medical examination and the Medical Board J.J. Hospital, Mumbai came to the conclusion that the applicant was unfit to apply under the handicapped category. It is submitted that this approach was illegal. It is submission of the applicant that there was no complaint that the Certificates issued by the Medical Boards Parbhani, Aurangabad and

Nagpur were fraudulent or fake or were obtained by fraud and therefore there was no propriety to refer the applicant for medical examination to the Medical Board J.J. Hospital, Mumbai.

6. It is submission of the applicant that even after receiving the report from the Medical Board J.J. Hospital, Mumbai, opportunity of hearing was not given to the applicant and straight way his services are terminated, this is illegality and therefore the impugned order of termination is liable to be quashed.

7. The respondent no.1 has submitted reply which is at page no.29 of the P.B. and justified their action. It is contention of the respondent no.1 that the applicant was appointed subject to verification of his blindness or low vision disability because the applicant was appointed on a post reserved for vision affected person. It is submitted that complaint was received by the Government that on the basis of fake Medical Certificates some persons have secured entry in the Government service under the quota reserved for handicapped candidates, therefore, decision was taken by the Government to verify the fact and all candidates were referred for the medical examination to the J.J. Hospital, Mumbai Medical Board. It is submitted that after examination of the applicant, the Medical Board of referee J.J. Hospital, Mumbai issued Certificate that the applicant was not eligible to apply for the post reserved for vision affected person in

handicapped category. It is submitted that as in the appointment order specific understanding was given to the applicant that in the event if it is found that any Certificate produced by him is false, then he would be terminated at any time. Thus it is submitted that the action of the respondent no.1 is perfectly legal and there was no flaw in it.

8. We have heard the submissions and perused the various documents which are produced by the applicant and the respondent no.1. The Annexure No.1 is the Certificate of disability issued by the Medical Board Parbhani on 18/1/2014. In this Certificate it is specifically mentioned that there was visual impairment in both the eyes and percentage of the impairment disability was 40. It was specifically mentioned that the nature of disability was permanent progressive and no possibility of improvement. There is note in the service book of the applicant that the applicant was examined by the President, Medical Board, Government Medical College & Hospital, Nagpur and in the Certificate dated 17/11/2016 it was mentioned that the applicant was in capacity to discharge the official duty.

9. The Medical Certificate issued by the Medical Board, Government Medical College & Hospital, Nagpur is at Annex-A-3. In this Certificate after examining the applicant on 20/10/2016 the Medical Board came to the conclusion that the percentage of blindness was 40% and the applicant was fit for duty in handicapped

category. In this regard, we would like to point out that though it is alleged by the respondent no.1 that complaint was received that some candidates obtained appointment on the post reserved for handicapped quota on the basis of fake medical certificates, but in this regard it must be taken into account that names of the candidates who adopted such means are not mentioned. It is not contention of the respondent no.1 that the false or erroneous Medical Certificates were issued by the Medical Board, Nagpur and medical Board Aurangabad. On perusal of the medical certificate issued by the Medical Board J.J. Hospital, Mumbai, it seems that no specific reasons are recorded as to how the Certificate issued by the Medical Board, Nagpur was erroneous or wrong. Under this situation, as there were contradictory opinions given by the two Medical Boards then it was duty of the respondent no.1 to give opportunity of hearing to the applicant. It is contention of the respondent no.1 that the Medical Board J.J. Hospital, Mumbai acted as Referee, but in this regard, we would like to point out that there was no need to refer the matter to Referee, because it was not the case of the respondent no.1 that there were two contradictory Certificates issued by two distinct Medical Boards. It is pertinent to note that the percentage of the disability determined by the Medical Board, Parbhani and the Medical Board, Medical College & Hospital, Nagpur was the same, there was no contradiction between the

conclusions drawn by the two Medical Boards, therefore, there was no propriety to refer the matter to the Referee. It seems that the decision was taken by the Government to re-examine the cases of all the candidates in view of the office memorandum dated 15/1/2018 issued by the Government of India. It is contention of the learned counsel for the applicant that this Notification is not binding on the Government of Maharashtra and secondly this Notification is issued on 15/1/2018 after the appointment of the applicant.

10. The learned counsel for the applicant has invited our attention to the Judgment in case of **Patel Suleman Gaibi Vs. State of Maharashtra & Ors., (2015) 2 ALL MR, 867.** In this case also there was termination of service, it was challenged and the Petitioner was Peon in the Irrigation Department with 100% visual disability and three Certificates were to the effect that he was able to perform duty satisfactorily, but one Certificate states that he was temporarily fit to discharge duties, his services were terminated, it was held that such termination was in violation of law.

11. The observations made by the Hon'ble High Court in para nos.20&21 are material which are reproduced as under –

*“(20) In our Judgment, considering the peculiar facts and circumstances of the present case, as also the test to be applied in the interpretation of beneficial legislations, like the said Act, the answer to the*

*posed question, has to necessarily be in the negative. At the stage of identification and reservation of the post of peon for person with disabilities, it is reasonable to expect that some thought process has gone into the question, as to whether the duties assigned to such posts can be discharged with some reasonable degree of proficiency, by persons with disabilities. The petitioner, in the present case, had not suppressed any facts with regard to his disability. The Board of Medical Referees, which examined the petitioner in August, 2012 just before he was issued his appointment orders, certified that the petitioner was "Temporary fit" to discharge the duties as a peon in the Irrigation Department. The Board, however, made an endorsement that there should be 'review after one year'. This procedure and more particularly, the endorsement with regard to review after one year is sought to be justified by reference to the 1981 Rules. In matters of identification and reservation of posts, for persons with disabilities and the appointments thereto, there is no question of adverting to the 1981 Rules. The said Act is a special legislation dealing with persons with disabilities so as to protect their rights, provide them with equal opportunities and promote their full participation in the mainstream. It being a special enactment, the doctrine of 'generalia specialibus non derogant' would apply any provisions in the 1981 Rules, to the extent they conflict with the provisions of the said Act would stand over-riden. In the context of the Central Civil Services (Pension) Rules, 1972, the Supreme Court, by invoking the doctrine of generalia specialibus non derogant has ruled that the provisions of the said Act will over-ride the provisions of the Pension Rules 1972. (AIR 2003 SC 1623: (2003 (2) ALL MR 369 (S.C.) ) Kunal Singh V. Union of India).*

(21) *Besides, the 1981 Rules concern, inter-alia procedure to be adopted in respect of medical examinations of appointees to civil posts, in general. At the stage when the 1981 Rules were enacted, the said Act was not on the statute books and possibly no reservations were contemplated in favour of persons with disabilities. Obviously therefore, the 1981 Rules did*



*not provide for any separate parameters for medical examinations of person appointed against posts reserved for persons with disabilities. There is obviously some difference between medical examination of persons appointed against posts reserved for persons with disabilities and others. The Board of Medical Referees, when they examine appointees to posts reserved for person with disabilities, are required to exhibit consciousness with regard to such difference. In fact the decisions of all concerned in this regard, are required to be informed, not with sympathy but with empathy. The decisions, are required to be consistent with the social purpose and the objective behind the enactment of the said Act, Thus, viewed, there was no statutory requirement of a second medical examination, after the petitioner had satisfactorily discharged services as a peon for a period of over one year. In any case, the results of such second medical examination, could not have been made the basis for termination of the petitioner's services."*

12. In the present case it appears that three Medical Boards have given Certificates in favour of the applicant and the forth Medical Board i.e. the Medical Board at the J.J. College & Hospital, Mumbai gave the contrary opinion. In these circumstances, in our opinion it was incumbent on the respondent no.1 to give at least opportunity of hearing to the applicant, before passing termination order and as it is not done, therefore, in our opinion the action of the respondent no.1 terminating the services of the applicant are contrary to law. Had opportunity of hearing was given to the applicant before terminating his services, he could have satisfied the respondent no.1 how opinion formed by the Medical Board, J.J. Hospital & College, Mumbai was

wrong or erroneous. In view of this, we are of the firm opinion that the O.A. is required to be allowed. Hence, the following order-

**ORDER**

- (i) The O.A. is partly allowed.
- (ii) The impugned order dated 13/3/2019 is hereby quashed and set aside. The respondent no.1 to give opportunity of hearing to the applicant and to pass suitable order after hearing the applicant.
- (iii) No order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Vice-Chairman.**

**Dated** :- 17/12/2019.

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 17/12/2019.

Uploaded on : 17/12/2019.