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RIMA TAIPODIA

v.

ARUNACHAL PRADESH PUBLIC SERVICE COMMISSION &
ORS.

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(Civil Appeal No. 12856 of 2017)

SEPTEMBER 14, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

C *Service law – Appointment – Appellant-disabled candidate seeking appointment to the Group B post – Requirement of minimum 40% disability – Certificate on basis of which appellant appointed not issued by the State Medical Board – Issuance of direction by the High Court to the appellant to appear before the State Medical Board for assessment of his disability – On examination, appellant found to have total disability of only 33.9% - Held: Under the Rules, it is required to be certified that either a person is suffering from permanent disability where there are no chances of variation in the degree of disability and if there is any chance of variation in the degree of disability, it should be indicated in the Certificate that the Certificate is for a particular period of validity – Certificate relied on by the appellant not time bound, thus, no chances of variation in the degree of disability – It was meant to be a permanent disability – State Medical Board has assessed the disability to be below 40%, which meant that the appellant did not have 40% disability, as required under law – Thus, the State to take appropriate action, to appoint the next person – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996.*

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 12856 of 2017.

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From the final Judgment and Order dated 02.04.2013 passed by the High Court of Gauhati, Itanagar Permanent Bench in Writ Appeal No.06 (AP) 2012.

Sanjay Parikh, Pukhrambam Ramesh Kumar, Uday Manaktala, Rajan Mani, Advs. for the Appellant.

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Ginnyu J. Raotray, Ms.Kanchan Kaur Dhodi, Ms. Bhawna Pal, A
Ms. Meenakshi Lekhi, Harish Pandey, Anil Shrivastav, Advs. for the
Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted. B

2. The appellant is before this Court, aggrieved by the order dated
02.04.2013 passed by the High Court of Gauhati in Writ Appeal No. 06
of 2012. The appellant has been directed by the High Court to appear
before the State Medical Board to have an assessment of his disability,
for the Group-B post, in which he sought appointment. C

3. The requirement was minimum 40% disability. That disability is
to be verified under the Persons with Disabilities (Equal Opportunities,
Protection of Rights and Full Participation) Rules, 1996. Rules 4 and 5
read as follows:-

“4. Authorities to give Disability Certificate:- (1) A Disability
Certificate shall be issued by a Medical Board duly constituted by
the Central and the State Government. D

(2) The State Government may constitute a Medical Board
consisting of at least three members out of which at least one
shall be a specialist in the particular field for assessing locomotor/
Visual including low vision/hearing and speech disability, mental
retardation and leprosy cured, as the case may be. E

5. (1) The Medical Board shall, after due examination, give a
permanent Disability Certificate in cases of such permanent
disabilities where there are no chances of variation in the degree
of disability. F

(2) The Medical Board shall indicate the period of validity in the
certificate, in cases where there is any chance of variation in the
degree of disability.

(3) No refusal of Disability Certificate shall be made unless an
opportunity is given to the applicant of being heard. G

(4) On representation by the applicant, the Medical Board may
review its decision having regard to all the facts and circumstances
of the case and pass such order in the matter as it thinks fit.” H

A 4. It is not in dispute that the appellant has never been examined by the State Medical Board. The certificates, based on which the appellant was appointed, were admittedly not issued by the State Medical Board. Apparently, it is in this regard that the High Court directed the appellant to appear before the State Medical Board.

B 5. On 26.04.2017, having regard to the submission that he would appear before the State Medical Board, without prejudice to his contentions, this Court passed the following order :-

C “The petitioner has volunteered to appear before the State Medical Board in order to clear all the doubts. We direct the Arunachal Pradesh State Disability Board to examine the petitioner.

Needless to say that the Board should have a qualified Orthopedician. We direct the petitioner to appear before the Board in the last week of June, 2017. The exact date on which he has to appear will be intimated to him by the Board.

D It is made clear that this is without prejudice to the contentions raised by the petitioner in this Special Leave Petition.

List on 21.07.2017.

E The Board will send its report to this Court before the next date of hearing.”

6. Accordingly, the State Medical Board has subjected the appellant to the required examination and the disability has been assessed and the appellant is found to have a total disability of only 33.9%. The assessment made by the State Medical Board reads as follows :-

F “Medical Board in respect of Mr.Rima Taipodia

G In reference to Supreme Court, Dated 26.04.2017 and in compliance with Chief Medical Superintendent, Tomo Riba State Hospital, Naharlagun order No. ASH/MLC-1383/ 2011/pt-I-838-44, dated Naharlagun the 18th May, 2017 to ascertain the degree of Disability of Mr. Rima Taipodia on 30.05.2017 at 10.00 AM in the State Standing Medical Board Room of Tomo Riba State Hospital, Naharlagun.

On examination Shri Rima Taipodia has got within normal range of vital status but has suffered from Volksman Ischemic

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Contractured of Left Hand following fractured of Both Bone Forearm during childhood. So, the disability components of Cpper extremely read as :

1.	ARM COMPONENT	1. Range of movement (Elbow & Wrist)	5.9%
		2. Muscle Strength (Elbow & Wrist)	
		3. Co-ordinated Activities	9%
2.	HAND COMPONENT	1. Prehension	4%
		2. Sensation	3%
		3. Strength	7%
3.	Additional Weightage	1. Deformity	1%
		2. Constructures	1%
		3. Cosmetics appearance	1%
		4. Abnormal Mobility	2%
TOTAL DISABILITY %			33.9%

Therefore, the Standing Medical board certify that Mr. Rima Taipodia has got Disability of 33.9% (Thirty Three Point Nine) his left upper Extremely (Hand)."

7. Mr. Sanjay Parikh, learned counsel, has vehemently contended that at the time of the appellatnt securing the employment based on certificate issued in 2009, the disability was found to be 50% and according to the learned counsel, going by the nature of disability, the situation today has improved and thus, the disability is presently below 40%. We find it difficult to appreciate this contention.

8. Under the Rules, it is required to be certified that either a person is suffering from permanent disability where there are no chances of variation in the degree of disability and if there is any chance of variation in the degree of disability, it should be indicated in the Certificate that the

A Certificate is for a particular period of validity. In the case of the appellant, the certificate relied on by him is not time bound and so, there are no chances of variation in the degree of disability, meaning thereby, it is meant to be a permanent disability. If the State Medical Board has assessed the disability to be below 40%, that only means that the appellant did not have 40% disability, as required under law. Thus, we do not find any merit in this appeal, which is, accordingly, dismissed.

9. Now that the appellant has been subjected to examination by the State Medical Board, it is not necessary to subject him to examination by another medical board unless the appellant seeks a review thereof.

C 10. Now that the appellant has been found to be of disability below the required percentage, it is for the respondent-State to take appropriate action. Ms. Meenakshi Lekhi, learned counsel appearing for Respondent No.3, submits that Respondent No. 3, whose certificate shows to be having 75% permanent disability, is the person next to be appointed. The State is directed to take immediate action, in accordance with law.

D 11. We make it clear that in case Respondent No. 3 is the one who is to replace the appellant in the category of persons of disability, steps will be taken forthwith.

No costs.

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Nidhi Jain

Appeal dismissed.