

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 4569 OF 2022
(Arising out of SLP(Civil) No(s). 2956 of 2022)**

UNION OF INDIA

....APPELLANT(S)

VERSUS

K. RAJASHEKHARA REDDY AND ANOTHER

....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The instant appeal is directed against the judgment and order dated 6th April, 2021 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh while setting aside the order of the Central Administrative Tribunal dated 5th September, 2017 directing the present appellant to conduct re-medical examination of the

respondent-applicant and take consequential steps thereafter within a period of four weeks.

3. Briefly stated, facts relevant for the purpose are that the Civil Services Examination, 2014 (hereinafter being referred to as the “CSE 2014”) was notified by the Union Public Service Commission (hereinafter being referred to as the “UPSC”) on 31st May, 2014 holding recruitment to 24 participating services including IAS, IFS, IPS, Central Civil Services Group ‘A’ and Group ‘B’ posts.

4. In response to the notification dated 31st May 2014, the respondent-applicant had also participated in the selection process and on being successful in the preliminary examination, appeared in the main examination held in December, 2014 and after qualifying the same, was called for an interview scheduled on 2nd June 2015. On 3rd June 2015, the respondent-applicant attended the medical examination at B.R. Ambedkar Hospital, New Delhi and the medical report of the respondent was uploaded on the website of the Department on 17th June 2015. However, in the said medical report, it was opined that the required Body Mass Index (in short “BMI”) should be not more than 30 but since the BMI of the respondent-applicant was 32, he was declared ‘temporarily unfit’.

5. The result of the Civil Services (Main) Examinations, 2014 was declared on 4th July, 2015 recommending 1236 candidates in their order of merit for appointment to various All India Services for Group 'A' and 'B' posts. However, the name of the respondent-applicant was not shown in the main list. The consolidated reserve list was later published on 19th January, 2016 in accordance with Rule 16(4) and 16(6) of the Civil Services Examination Rules in the order of merit the name of the respondent-applicant was shown at Sl. No. 16. Immediately thereafter, in terms of the order of their merit in the reserve list, candidates were considered for allotment to various Group 'A' and Group 'B' services on 9th March 2016. The respondent-applicant at this stage made a representation on 10th March, 2016 with the request that he is now medically fit and willing to take a re-medical examination (which admittedly was beyond the period of six months), that request was not acceded to by the competent authority, that became the cause of grievance for filing an application before the Central Administrative Tribunal by the respondent-applicant.

6. The learned Tribunal, in the first instance, by an interim order dated 17th August, 2016 directed the appellant to send him for re-medical examination. Because of non-compliance, a contempt petition was also filed by the respondent-applicant but the fact is neither the re-medical

examination was conducted nor any action was further taken by the applicant in compliance of the interim order of the learned Tribunal.

7. However, the OA was finally heard and dismissed by the Tribunal by an order dated 5th September, 2017 on the premise that the medical report of the respondent-applicant was uploaded declaring him to be 'temporarily unfit' on 17th June, 2015 and since no efforts were made for making an application for re-medical examination within the stipulated period of six months and for the first time, application was filed by him on 10th March, 2016 which was beyond the period of six months in terms of Rule 7(a)(vi) of Appendix-III of the CSE Rules, 2014 and his BMI was more than 30 and that being the factual matrix, the Tribunal was of the view that it may not be possible to come to the rescue of the respondent-applicant and dismissed the application.

8. The order of the Tribunal dated 5th September, 2017 became the subject matter of challenge at the instance of respondent-applicant by filing of a writ petition before the High Court under Articles 226 and 227 of the Constitution of India. However, there was no dispute on facts but the High Court, on re-appreciation of the material on record and taking into consideration the scheme of the CSE Rules 2014 and Rule 7(a)(vii) of Appendix-III of the CSE Rules 2014, in particular, took note of the fact that

though the medical examination report was uploaded on 17th June, 2015 and the respondent-applicant approached for re-medical examination for the first time on 10th March, 2016 after a period of six months from 17th June, 2015 and arrived at the conclusion that the name of the respondent-applicant appeared for the first time in the consolidated reserve list on 19th January, 2016 at Sl. No. 16 and within the stipulated period of six months, he made a representation on 10th March, 2016 for re-medical examination and took note of the word 'ordinarily' as referred to under Rule 7(a)(vii) of Appendix-III of the CSE Rules, 2014 and held that the word 'ordinarily' indicates that in such special cases, discretion can be exercised for relaxation and granted benefit of extension to the respondent-applicant. Accordingly, while setting aside the order of the Tribunal dated 5th September 2017, the High Court directed the appellant to conduct re-medical examination of the respondent-applicant and take further consequential steps thereafter within a period of four weeks under the judgment dated 6th April, 2021 that became a subject matter of challenge at the instance of Union of India by filing appeal before this Court.

9. The submission of Mr. Balbir Singh, learned ASG appearing for the appellant is that the medical report of the respondent-applicant was uploaded on 17th June, 2015 in terms of Rule 7(a)(vii) of Appendix-III of the

CSE Rules, 2014 which clearly indicates that such of the candidates who are declared 'temporarily unfit', the period specified for re-medical examination should not ordinarily exceed six months at the maximum and according to him, the representation for the first time, was submitted by the respondent-applicant on 10th March, 2016 which was admittedly beyond the period of six months. In the given circumstances, re-medical examination at the later stage was not permissible and the manner in which discretion has been exercised by the High Court under the impugned judgment, if made permissible, will always be abused and submits that the outer limit has been fixed for six months and the word 'ordinarily' has to be read conjointly with the word 'maximum' to be exercised only in exceptional cases such as in the case of the pregnant female candidate who is unable to complete a medical examination within a period of six months. In the given facts and circumstances, the interference made by the High Court under the order of the Tribunal is not legally sustainable and deserves to be interfered with by this Court.

10. Shri Nikhil Swami, learned counsel for the respondents, on the other hand, while supporting the finding recorded by the High Court submits that it was the last attempt of the respondent-applicant which he had availed while participating in the selection process initiated in the year 2014 and

prior thereto, upto the year 2013, there was a stipulation that the medical report was being sent to the candidate individually and it was for the first time in the selection process of the year 2014, it was dispensed with. Although the facts in reference to publication of list being uploaded of his medical examination on 17th June, 2015 is not disputed by him.

11. Learned counsel further submits that his name was not included in the main list published on 4th July 2015, as such, he could not take any steps and it was only in the consolidated reserve list published on 19th January 2016, that his name was placed at Sl. No. 16 and the allotment was made to Group 'A' and Group 'B' services in allocation list on 9th March, 2016 and without any loss of time, representation was made by him on 10th March, 2016 to the Secretary, DoPT along with the medical fitness certificate dated 24th February, 2016 with a request to the authorities to consider his case for re-medical examination at the earliest but that was not acceded to by the department.

12. Learned counsel further submits that even the Tribunal, at one stage, came to his rescue and passed an interim order directing the authorities to send him for re-medical examination by an order dated 17th August 2016. In the given circumstances, the word 'ordinarily' which has been interpreted by the High Court under the impugned judgment dated 6th April, 2021 being

a special case of the respondent-applicant and the discretion has been exercised by the High Court is to do justice with the respondent-applicant particularly, in the peculiar facts and circumstances where he has been declared to be medically fit, not only at the stage when the representation was submitted by him on 10th March, 2016 but also thereafter and being his last attempt, discretion has been judiciously exercised by the High Court under the impugned judgment and needs no interference.

13. We have heard learned counsel for the parties and with their assistance perused the material available on record.

14. The facts are not in dispute. The respondent-applicant had participated in the CSE, 2014 pursuant to notification dated 31st May, 2014 which was his fifth and the final attempt. After qualifying preliminary examination followed with the main examination, he appeared for interview held on 2nd June, 2015 and awaiting the final select list of the candidates, who had participated in the selection process where each one has to get himself medically examined. So far as the present respondent-applicant is concerned, he was sent for medical examination on 3rd June, 2015 at B.R. Ambedkar Hospital, New Delhi and his medical report was uploaded by the Department on its website on 17th June 2015. In the medical report, it was

opined that the required BMI should not be more than 30 but the BMI of the respondent-applicant was 32 as such he was declared 'temporarily unfit'.

15. Thereafter, on 4th July 2015, the final list of the CSE, 2014 was declared recommending 1236 candidates in the order of their merit for appointment to various services of Group 'A' and Group 'B' but the name of the respondent-applicant was not included in the final list. However, later when the consolidated reserve list came to be published on 19th January, 2016 in terms of Rules 16(4) and (5) of the CSE Rules in the order of merit, the name of the respondent-applicant figured at Sl. No. 16. Thereafter, the competent authority allotted Group 'A' and Group 'B' services to various candidates on 9th March, 2016 including those who were lower in the order of merit in consolidated reserve list. At this stage, the respondent-applicant made representation on 10th March, 2016 with his medical fitness report showing his willingness to take re-medical examination and requested the authorities to consider his case for re-medical examination admittedly which was beyond the stipulated period of six months from 17th June 2015. Since it was declined by the authorities, that was the grievance which made him to approach the Tribunal.

16. This Court, by an Order dated 6th April 2021 directed the appellant to conduct the re-medical examination and submit a report to this Court in a

sealed cover. In compliance of the order of this Court, the re-medical examination of the respondent-applicant has been conducted by the medical Board of Dr. Baba Saheb Ambedkar Hospital, Delhi on 12th May, 2022 and the medical report along with the enclosure dated 12th May, 2022 has been furnished to this Court where he has been found to be medically fit for all services.

17. The provision manifests that in case of a candidate who is declared 'temporarily unfit', the re-medical fitness certificate in terms of the provision has to be furnished within six months from the date on which the candidate was declared to be 'temporarily unfit'.

18. In this regard, it is relevant to refer Rule 7(a)(vii) of Appendix-III of the CSE Rules 2014, which states as under:-

“In case of candidate who is to be declared “Temporary Unfit”, the period specified for re-examination should not ordinarily exceed six months at the maximum. On re-examination after the specified period these candidates should not be declared temporarily unfit for a further period but a final decision in regard to their fitness for appointment or otherwise should be given.”

19. Rule 7(a)(vii) of Appendix-III of the CSE Rules 2014 clearly indicates that such of the candidates who are declared 'temporarily unfit', the period specified for re-medical examination is ordinarily six months at the maximum from the date of uploading of the medical examination report on the website of the Department. No communication by the Department

regarding findings of the Department is communicated individually and uploading takes place only by the Medical Board.

20. Indisputedly, in the present case, the medical examination report was published on 17th June, 2015 indicating the respondent-applicant to be 'temporarily unfit' and this is an admitted fact that the respondent-applicant approached for re-medical examination for the first time on 10th March, 2016, i.e., after six months of the medical examination report uploaded on 17th June 2015. The details regarding the number of such candidates for CSE-2014 to CSE-2020 who are declared medically unfit has also been provided to this Court. It may be noticed that in CSE-2014, there were 10 candidates including the respondent-applicant, declared temporarily unfit and in overall table for CSE-2014 to CSE-2020 indicates that there are 25 candidates who are declared temporarily unfit failed to submit an application within a stipulated time of six months after being declared as 'temporarily unfit' and have not been allocated to any services in terms of the scheme of Rules of which a reference is made. The details regarding number of such candidates for CSE-2014 to CSE-2020 are as under:-

Sl. No.	CSE Year	Number of candidates who were not allocated to any Service as they failed to submit medical fitness against temporarily unfit status within the prescribed limit
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1.	CSE-2014	10
2.	CSE-2015	01
3.	CSE-2016	07
4.	CSE-2017	00
5.	CSE-2018	01
6.	CSE-2019	02
7.	CSE-2020	04

21. We are also of the view that the period of six months which has been stipulated under Rule 7(a)(vii) of Appendix III of CSE Rules, 2014 of which reference has been made, the word 'ordinarily' has to be conjointly read with the word 'maximum' during which the candidate has to approach for re-medical examination from the date of uploading of the medical examination report on the website of the Department which indicates an outer limit of six months during which it is open to the candidate to approach for re-medical examination after being declared 'temporarily unfit' from the date of the uploading of the medical examination report on the website of the Department and the fate of medical fitness is not dependent upon the result of the selection process held by the Commission.

22. At the same time, there may be a situation as being projected by the appellant to this Court that in special cases where a pregnant lady may not be in a position and is unable to complete her medical examination within a period of six months, in the peculiar circumstances, the word 'ordinarily' may be considered for relaxation to a limited extent but the kind of excuse

which has been projected by the respondent-applicant that though he was found to be temporarily unfit but the consolidated reserve list was published on 19th January, 2016 where his name was placed at Sl. No. 16 and allotment to Group 'A' services was published on 9th March, 2016, he immediately filed an application on 10th March, 2016, without loss of time, which was within the prescribed period of six months from the date of publication of the reserve list, in our considered view, is neither a valid justification nor is in conformity with the scheme of Rules of which a reference has been made.

23. In our considered view, the word 'ordinarily' in isolation as interpreted by the High Court without taking recourse to the word 'maximum' as referred, is not sustainable in law.

24. It is true that the case of the respondent-applicant on legal foundation is not sustainable but we are constrained to observe that it was the fifth and last attempt of the respondent-applicant during which he appeared in CSE, 2014 and it is not disputed that before the year 2014, examinations which were conducted by the appellant, medical report was always made available to the individual candidate and it is only for the first time in the year 2014, this clause was inserted where the medical reports are being uploaded on the website of the Department which was considered to be the

notice to all the candidates who had participated in the selection process which might have created some confusion with the respondent-applicant and once his name found place in the consolidated reserve list in January 2016, he made a representation on 10th March, 2016 along with his medical fitness certificate, and after the orders of this Court, the respondent-applicant has again been sent for re-medical examination and has been found “medically fit for all services” as it reveals from the medical report dated 12th May, 2022.

25. In the given circumstances, this Court, while exercising its plenary power under Article 142 of the Constitution, to do complete justice, consider it appropriate to direct that based on the re-medical fitness report, the appellant may consider the case of the respondent-applicant for appointment as per his placement in the consolidated reserve list originally published of CSE, 2014 on 19th January, 2016, subject to police verification, with all notional benefits including seniority, pay scale and other consequential benefits but not the actual salary for the period for which he has not worked, within a period of four weeks from today.

26. Consequently, the appeal succeeds and is allowed. The judgment of the High Court impugned dated 6th April, 2021 is accordingly quashed and set aside with the observations made above. No costs.

27. Pending application(s), if any, shall stand disposed of.

.....J.
(AJAY RASTOGI)

.....J.
(VIKRAM NATH)

NEW DELHI;
JUNE 14, 2022