

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-2347/2014

Order Reserved on: 08.04.2016
Order Pronounced on: 07.09.2016

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Ashish Kumar Verma, IDAS Probationer
A/P Faridabad Training Institute,
S/o Shri Shatish Chandra Prasad,
R/o East Ram Krishna Nagar,
P.O. New Jagannpura,
Patna-800027, Bihar.

-Applicant

(By Advocate: Shri Rakesh Kumar Singh)

Versus

1. Union of India
Through Secretary,
Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel
and Training & Anr.

2. Ministry of Finance,
Through Secretary,
Lok Nayak Bhawan,
North Block, New Delhi-110001.

3. Ministry of Social Justice
And Empowerment Through
Secretary Shastri Bhawan,
New Delhi-110001.

-Respondents

(By Advocate: Shri R.V. Sinha with
Shri R.N. Singh)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant has filed the present OA praying for directions upon the respondents for his appointment against the Indian Administrative Service (IAS, in short) against the backlog vacancies or Indian Revenue

Service (IRS, in short), or Customs and Central Excise Service (C&CES, in short), under the reservation provided for disabled category candidates under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Disabilities Act, 1995, in short).

2. The applicant's case is that he had been successful in the Civil Services Examination (CSE, in short), 2011 under the category of Physically Handicapped (PH, in short) candidates, under the sub-category of Locomotor Disabled Persons (BLA-Both Legs and Arms), with sixth position among the PH category candidates, and though the respondents have given him appointment in the Indian Defence Accounts Service (IDAS, in short), but still they have not considered his case against the backlog vacancies of IAS, IRS & C&CES under PH category, to which he was entitled to, by virtue of the order of the Hon'ble Supreme Court in the case of **Govt. of India through Secretary & Anr. Vs. Ravi Prakash Gupta & Anr. (2010) 7 SCC 626.** His case is that since the Disabilities Act, 1995, came into force from the following year in 1996, providing a statutory mandate for reservation of 3% of all posts available for persons suffering from different kinds of disabilities, as enumerated in the Act, the backlog of such reserved posts was not taken into consideration by the respondents when in February 2011, the Respondent No.R-1 issued the detailed Rules for the conduct of the CSE, 2011. The applicant had taken the Examination and was declared

selected at Sl. No.726 in the general list, and has claimed to have had Rank 6 in the list of PH category candidates as per Annexure A-1.

3. The respondents delayed in issuing the applicant's letter of appointment, and ultimately on the basis of the recommendation vide letter dated 30.08.2013 issued by the Respondent No.R-1 (Annexure A-2), he was appointed to the IDAS. However, he has submitted that, in the meanwhile, through its judgment in **Govt. of India, through Secretary & Anr. vs. Ravi Prakash Gupta** (supra), the Hon'ble Supreme Court had held that the respondents should fill up all the backlog vacancies in the PH category, and that it is not necessary that vacancies in the PH category reserved posts could be declared only after first identifying the specific earmarked posts under the Disabilities Act, 1995. He has submitted that though the respondents have been regularly identifying the posts for disabled persons ever since the Disabilities Act came into force, out of 33 total number of vacancies identified for disabled persons, 22 vacancies have fallen into quota for persons with Locomotor Disability/Cerebral Palsy. The applicant who had Locomotor Disability in BLA category (Both Legs and Arms) had given IRS (C&CES) as his 3rd preference, and after his having been placed at Serial No.6 in the list of successful candidates amongst the PH category candidates, since there were sufficient number of vacancies under IRS (C&CES), he could very well have been appointed to that service, but the authorities acted contrary to the provisions of the Act, and he has, instead, been appointed in IDAS.

4. The applicant had, therefore, taken the ground that in terms of the above cited Supreme Court judgment, he was entitled for appointment to the Cadre of IRS (C&CES)/IRS (IT), but the respondents had first declared him to be successful, but not recommended him for any service, and it was only one year after the declaration of the final result, that the Respondent No.R-1 had allotted one seat to him in IDAS, though that service was much below in the order of preferences indicated by him. He has assailed such allotment of service in IDAS to be *per se* discriminatory and illegal. It was submitted that though the applicant is affected and impaired in his usage of BLAs, but he can still perform all his functions aptly with his own hands, and he has written the Main Examination, 2011 himself. He has, therefore, submitted that there was no reason for him to have been denied IRS (C&CES), with rank 726, more so when a much lower merit candidate with rank 735, belonging to another PH disability category, had been allocated IRS (C&CES).

5. The applicant has further taken the ground that though the respondents have formulated certain Guidelines for suitability of disabled persons for the purpose of Disabilities Act, 1995, but that no scientific as well as reasonable basis had been followed in preparing such a list, and in the result, the following reliefs had been prayed for:-

- “i) Direct the respondent to consider the applicant herein for appointment in Indian Revenue Service (Custom and Central Excise/IRS (IT) or Indian Administrative Service against the backlog vacancies under the reservation for disabled categories provided for under Section 33 of the

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; and

ii) To pass such other order/orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case".

6. Interim Relief had also been prayed for by the applicant, but the same never came to be considered for being granted to him.

7. The Respondent No.R-1 filed their short reply affidavit on 02.02.2015. They had admitted that the applicant had been allocated to the IDAS service, which was his 13th preference. However, it was submitted that the break-up of 22 posts under the Locomotor Disability and Cerebral Palsy (LDCP, in short) sub-category of PH category, as forwarded by the UPSC for CSE-2011, was as follows:-

Sl. No.	Service	Number of Vacancies	Functional Classification
1.	IAS	2	OL, MW, BA, BH, OA
2.	IA&AS	1	OL, OAL, OA
3.	IRS (C&CE)	2	OL, OA
4.	IDAS	1	OL, OAL, BL , OA
5.	IRS (IT)	2	OAL, BL , OA, OL
6.	ICAS	1	OAL, BL , OA, OL
7.	IRTS	8	OA, OL
8.	IRPS	1	OA, OL
9.	IDES	1	OL, OA
10.	IIS	1	OAL, BL , OA, OL
11.	AFHQ	2	OL, OA
	Total	22	

8. In Para 4.2 of the reply, they had also given the details of the 22 candidates belonging to LDCP sub-category of PH category whose names

had been recommended by the UPSC, in which the applicant's name did figure at S1. No.6. In Para 4.3 of the reply, the allocation of different services and the reasoning and logic adopted by the respondents for allocating the persons for different services had been provided, in which, in respect of the applicant, the position was explained as follows:-

S. No.	Rank	Name of candidates	Category	Service allocated
1 to 5.	Not reproduced here.			
6.	726	Ashish Kumar Verma	General	He being both legs and both arms affected do not meet the PR & FR for any of the service. He has been allocated to IDAS, after relaxing PR & FC in consultation with M/o Defence.
7 to 22.	Not reproduced here.			

(Emphasis supplied)

9. It was further explained that since the applicant was not meeting the Functional Classification & Physical Requirement (FC & PR) as prescribed in respect of any of the services notified in the CSE-2011, and since IRS (C&CE) does not admit candidates who have BLAs affected, the applicant's case was first taken up with the Ministry of Finance for his allotment to IRS (C&CE), which was his 5th choice, but the Ministry of Finance had, through their OM dated 28.08.2012, informed that as of now only One Leg (OL) and One Arm (OA) affected handicapped persons are permitted to be employed in the service

concerned, and it was indicated that it would not be desirable to allocate BLA affected persons. Thereafter, Ministry of Defence was consulted, which agreed to relax the PR & FC criteria for IDAS, whereupon the applicant was allocated to IDAS, after relaxing the PR & FC for that service.

10. The respondents had thereafter taken preliminary objections to the present OA, and had submitted that the OA itself is bad in law, and not tenable, for the reasons that in case the OA is allowed, it would unsettle the settled administrative actions, which would cause prejudice to the persons who have already been selected and allocated to different services, and who have not been impleaded as party-respondents in the present OA, and in this manner the OA is bad in law for non-joinder of necessary parties. It was further submitted that the OA is also not maintainable in view of the fact that this Tribunal has, in a few of its orders, adjudicated upon this issue, and upheld the stand of the department through its various orders in CP No. 105/2012 in OA No.2717/2011 **Pappu Chauhan v. Union of India**, in CP No.153/2012 in OA No.2717/2010 **Ajit Kumar vs. UPSC**, in CP No.197/2012 in OA No.1538/2009 **Avinas Bansal vs. UPSC** respectively.

11. It was further submitted that the Civil Services Examination is a combined Examination for recruitment of 23 services/posts and the respective Cadre Controlling Authorities of these services, various Ministries and Departments of Govt. of India, calculate and indicate the

vacancy positions directly to the UPSC for the posts to be filled up through the Civil Services Examination. Admitting that Respondent No. R-1 is the Cadre Controlling Authority for IAS, it was submitted that its role is otherwise confined to allocation of services only to those candidates who had been declared successful, and whose dossiers are sent by the UPSC to Respondent No.R-1, which was done by the UPSC based on merit, and preferences expressed by them for various services. It was further explained that the respective Cadre Controlling Authorities have prescribed their own Physical Requirements and Functional Classification for handicapped candidates, in consultation with Ministry of Social Justice and Empowerment, and that the Ministry of Finance, the Cadre Controlling Authority for IRS (C&CES), has prescribed only One Leg (OL) and One Arm (OA) affected persons only to be eligible, and their PR & FC do not allow candidates affected on BLAs, and, therefore, the applicant could not have been allocated to that service.

12. In so far as candidate with Rank No.735 is concerned, it was explained that she was affected only in One Arm, i.e., she was OA category Physically Handicapped, and, therefore, since she met the functional requirement of IRS (C&CES), despite her being lower in rank than the applicant herein, she was allocated to IRS (C&CE) on the basis of CSE 2011. It was further submitted that for the same reasons, the applicant could not have been appointed against backlog vacancies also, and that, in particular, no backlog vacancies of PH category were available either in IAS, or IRS (IT), or IRS(C&CES) of CSE-2011. It was,

therefore, prayed that the OA is devoid of any merit, and is liable to be dismissed.

13. The applicant filed a set of documents on 01.03.2016 which contained copy of his application under the RTI Act, the reply of the CBEC, Department of Revenue, under Respondent No.R-2, and also a copy of the Examination Notice for CSE, 2014 by way of rejoinder.

14. Heard. The learned counsel for both the sides argued on the lines of their pleadings, which we have already been discussed in great detail above, and need not repeat once again.

15. In his arguments learned counsel for the applicant relied heavily upon the copies of Note Sheets of File No. A-12025/1/2011-Ad.II obtained by him under the RTI Act regarding the consideration of his case, and it was pointed out that in Paragraphs 15 & 17 of the Noting dated 01.05.2013, the need for regular review for suitability of the services for blind and other categories of locomotors disability had been recognized even by the Ministry of Social Justice, and it was decided to review the criteria for different categories of locomotor disability in consultation with the Institute of Physically Handicapped, New Delhi. He had further pointed out that in Paragraphs 14 & 15 of the Note File, it had been suggested that the C&CE Service would have no objection for acceptance of the applicant as an IRS (C&CE) Officer. However, it was pointed out by the learned counsel for the respondents that this proposal

had not been agreed to by the Member of the Central Board of Excise & Customs (CBEC, in short), in view of the fact that the applicant's mobility was seriously affected, and he was moved about only on a wheel chair, and, accordingly, replies dated 21.02.2013 and 10.06.2013 had been issued, suggesting that the applicant may be assigned to any other service, where he can be posted to a completely desk job, because it would be very difficult for a person confined to a wheel chair to be able to justify the functions of even an Assistant Commissioner, C&CES.

16. It was further pointed out by the counsel for respondents that the applicant had been shown a special dispensation inasmuch as even in the CSE-2014 Notification, and in the IDAS, to which he had been allotted, only Locomotor Disabilities of One Leg (OL) and One Arm (OA) had been allowed, and persons with BLA category were eligible only for allotment to Indian Information Service, Indian Trade Service and Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Police Service, Group 'B'. It was, therefore, submitted that respondents have gone out of their way to be able to get the applicant accommodated in a service where he could perform desk job functions, without his functioning being affected by his BLA handicap.

17. We have given anxious consideration to the facts of the case, and we do not find that the applicant has been in any manner discriminated against by the respondents. He did not fall under the Functional Classification for any other posts, and even for the post to which he has

been finally allocated, for getting which allocation, special dispensation had been sought from the Ministry of Defence, which was granted. We, therefore, find nothing wrong with the manner in which the respondents have tried to accommodate and adjust the applicant in a service where he can perform desk job functions without his functioning getting affected by his BLA physical handicap.

18. Therefore, there appears to be no merit in the OA, and the OA is, therefore, rejected, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.