

Central Administrative Tribunal
Principal Bench:New Delhi

OA No.4033/2014

Reserved on: 02.09.2015.
Pronounced on:09.02.2016

Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)

Keshri Kumar Dubey
S/o Shri N.N.Dubey
R/o 609, Janta Flats,
G.T.B.Enclave, Delhi-110093.

...Applicant.

(By Advocate:Shri Sugriva Dubey)

Versus

Staff Selection Commission
Through its Director,
C.G.O.Complex, Lodhi Road,
New Delhi.

...Respondent

(By Advocate:Shri S.M.Arif)

ORDER

Per Sudhir Kumar, Member (A):

The applicant, who was a candidate at the Combined Graduate Level Examination, 2012 (CGLE, 2012 in short), has submitted that though he was selected in that examination, but without assigning any reason, his candidature for the post of Tax Assistant in the Central Board of Excise & Customs (CBEC in short) has been cancelled. Hence this O.A.

2. After the applicant had qualified in the written examination, a skill test had also been conducted by the respondents, and the applicant had been declared as successful in that examination also, and his name was shown initially in the list of the selected candidates published by the respondents through Annexure P-1.

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3. The applicant thereafter expected that his name would be included for issuance of appointment letter on the basis of the nomination list. However, the respondents thereafter published another list, through Annexure P-2, in which it was indicated that his case was under process, but details of any process being undertaken by the respondents were not disclosed in that list.

4. After a gap of some more time, the respondents published another list, through Annexure P-3, and in that list also, it was shown that his candidature was under process. However, when he did not receive any appointment letter from the respondents, the applicant sought to probe the matter.

5. The applicant has admitted that his fingers are slightly disfigured from birth itself, but, in spite of that, he has been very much competent in his studies, and has successfully completed his MBA Examination also. He has also passed the skill test and has claimed that he could work either as a Computer Operator, or as a Software Mechanic in respect of the Computers, or in respect of the connected accessories of Computers, and he is fully conversant with Computers and the software work, in spite of his slightly disfigured fingers since birth.

6. The applicant had approached a Board of Doctors for issuance of Disability Certificate, which was issued to him on 19.11.2011, through Annexure P-4, in which it was certified that the applicant has an impaired reach, and weakness of grip in both hands, and one of his legs (right foot) is affected, because of which, he was certified to be suffering from

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impaired reach, weakness of grip, and Ataxic, which amounts to a disorder relating to inability to coordinate voluntary movements. It was further mentioned in that Disability Certificate that his condition is non-progressive, and is not likely to improve or worsen in future, and a reassessment of the case was not recommended. The percentage of his disability was held to be 69%, with the disability being mentioned "locomotor impairment in relation to his both upper limbs and right lower limb". However, the same Medical Board which issued the Disability Certificate had also certified that he otherwise meets the physical requirements for discharge of his normal duties.

7. The respondents, however, ultimately did not forward the name of the applicant to the authority concerned for issuance of letter of appointment, forcing him to approach the Regional Director of Northern Region of the Respondent-DSSSB to request for appointment/nomination for the post of Tax Assistant, through a representation submitted on 04.06.2014 (Annexure P-5). The respondents, however, did not consider his representation. Thereafter, a letter dated 02.09.2014 (Annexure P-6) was issued to him, stating that his candidature for the post of Tax Assistant in the CBEC had been cancelled. The applicant has submitted that he was neither issued any Show Cause Notice, nor any opportunity was given to him to explain his case, regarding any proposed action of cancellation, nor any inquiry was conducted regarding his ability to perform various functions.

8. Since the applicant possessed a certificate issued by the Board of Doctors stating that he could perform normal functions, he approached the

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Chief Commissioner for Persons with Disabilities through his representation dated 15.09.2014 (Annexure P-7), in the nature of a complaint against the respondents. He has, however, submitted that he had received no response from the Chief Commissioner for Persons with Disabilities, till the date of filing of the present OA.

9. The applicant has claimed he is covered under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and has submitted that even though he is partially disabled, he is fully competent to perform his duties, as expected in the work involved in the post concerned, and that his candidature ought not to have been rejected. He has, therefore, taken the following grounds:

i) Even though he had succeeded in the written examination twice, as well as in the skill test thereafter, his candidature has been rejected for the post of Tax Assistant in the CBEC, without assigning any reason, or without issuing him any Show Cause Notice, or without giving him any opportunity to explain his case, which is in violation of Section 38 and 40 of the above Act, 1995 (supra).

ii) He has further taken the ground that the respondent is duty bound to ensure 5% of the work force being from the Physically Handicapped Category, & since in the present case he is fully competent to do all the work, without any default, his case could not have been rejected.

10. In the result, the applicant had prayed for the following reliefs:

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- “(a) to issue directions, orders or appropriate orders to the respondents to appoint the petitioner in view of the submissions made above.
- (b) to pass an order or orders in terms of prayer A and B above.
- (c) to pass an ad-interim ex-parte in terms of prayer A and B above.
- (d) To pass such other orders and directions and writs in the matter as to this Hon’ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

11. The applicant had also prayed for interim reliefs, but those prayers were not considered and granted at any stage of the proceedings.

12. The respondent filed his counter reply on 07.07.2015. In the counter reply, the respondent had admitted that the applicant had been considered as an Orthopaedically Handicapped (OH) category candidate in the CGLE 2012, and that he was initially selected for the non-Interview post, i.e. Tax Assistant in the Office of the CBEC, against the said O.H. Category. However, it was submitted that since the applicant has got the disability in both arms, as per the Notice of the Examination, he was not eligible at all for consideration for appointment for the post of Tax Assistant in the Office of the CBEC. They had submitted that the applicant had been inadvertently allowed to appear in the skill test conducted on computer, and had even been declared as selected for the post of Tax Assistant in the Office of the CBEC, in the OH Category. However, his result was revised by the Commission, and since he was technically not

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eligible for appointment to the post of Tax Assistant in the Office of the CBEC, his candidature was cancelled.

13. The applicant did not file any rejoinder before the case was argued on merits.

14. Heard. The case was argued more or less in accordance with the pleadings, as already discussed above. In the written submissions, it was submitted by the applicant that the respondent has wrongly mentioned that both of his arms are affected, and he is not eligible for appointment. It was submitted that though his fingers are a little bit defaced, but the applicant has successfully completed both the written test and the skill test, and, therefore, it cannot be concluded that he would not be able to perform his routine duties, if he is appointed to the said post.

15. The case of the applicant is that once he was competent to having taken both the written and the skill tests, and having passed the same, his candidature could not have been rejected. However, the case of the respondents before us is that in the Notification of CGLE, 2012, itself, the nature of Physical Disabilities permissible for the concerned posts had been mentioned and notified as follows:

"I. Posts for which Interview cum Personally Test is prescribed: Pay Band-II Rs.9300-34800

Code	Post	Ministries/ Department/O fficers/ Cadres	Classi- fication	Grade Pay/ (GP)	Nature Of Physical Disabilities permissible for the post
A to H	Not reproduced				

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I	Inspector of Income Tax	CBDT	Group C''	4600	OA, OL, OAL, HH
J	Inspector (Central Excise)	CBEC	Group B''	4600	One Leg/one arm affected/one arm & one leg affected, Partially hearing impaired with assistive devices.
K	Inspector (Preventive Office)				
L	Inspector (Examiner)				
M to Q	Not reproduced				

II. Posts for which Interview cum Personality Test is NOT prescribed: Pay Band-I: Rs.5200-20200

Code	Post	Ministries/ Department/ Officers/ Cadres	Classification	Grade Pay/ (GP)	Nature Of Physical Disabilities permissible for the post
R	Auditor	Offices under C&AG	Group C''	2800	One Arm (OA), One Leg (OL)
S	Auditor	Offices under CGDA	Group C''	2800	One Arm (OA), One Leg (OL)
T	Auditor	Offices under CGA & Others	Group C''	2800	One Arm (OA), One Leg (OL)
U	Accountant/ Junior Accountant	Offices under C& AG	Group C''	2800	One Leg (OL) partially deaf (PD), Deaf (D)
V	Accountant/ Junior Accountant	Offices under CAG & Others	Group C''	2800	One Leg (OL) partially deaf (PD), Deaf (D)
W	Upper Division Clerk	Central Govt. Offices/ Ministries other than CSCS cadres	Group C''	2400	Both legs (BL)/One Leg (OL)/ partially deaf (PD), Deaf (D)/Partially Blind (PB), Blind (B)/One Arm (OA)
X	Tax Assistant	CBDT	Group C''	2400	Both legs (BL)/One Leg (OL)/

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					partially deaf (PD), Deaf (D)/Partially Blind (PB), Blind (B)/One Arm (OA)
Y	Tax Assistant	CBEC	Group C''	2400	
Z	Compiler	Registrar General of India	Group C''	2400	One Leg (OL), One Arm (OA), Partially Deaf (PD)

16. The respondents have submitted that for the posts of Tax Assistants in the Office of the CBEC, the only permissible physical disability having been notified as above, they cannot now go beyond that. The only permissible disability in respect of a candidate's arms is one arm disability, while the present applicant suffers from both arms disability and one leg disability. Therefore, he cannot be stated to have qualified with the permissible disability. It was also submitted that many other applicants, not qualifying under the notified disabilities, may not even have applied for the concerned posts, and the applicant cannot, therefore, be allowed to usurp an appointment, behind their backs, when persons similarly situated as him may have not even applied.

17. On the other hand, the case of the applicant is that in the Ministry of Social Justice and Empowerment, Notification No.16-70/2004 D.D.No.III dated 15.03.2007, the nature of physical disability for the post of Tax Assistants has not been mentioned at any place, and it has been further mentioned that the list of posts being notified is not an exhaustive list. The applicant has submitted that even though his fingers are not fully developed, but both of his hands are capable of working in every respect, and that his fingers having minor defects has never restricted his working

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capacity. He has further relied upon a letter dated 08.12.2014 issued by the Under Secretary to the Govt. of India, Department of Disability, Ministry of Social Justice & Empowerment of the Govt. of India, to the Office of the Chief Commissioner of Persons with Disabilities, in which Para-2 of that letter had stated as follows:

"2. It may be noted that complainant has, inter-alia, submitted that he had completed/passed the skill test i.e. typing test in spite of his being both arms affected which justified his statement that he fulfils the physical requirements attached to the post."

18. It was further submitted that even though the respondents stated that the applicant may be entitled to appear for the examination for any other posts later, but the Notifications for the similar examination for the year 2014-15, annexed at Annexure-E to the written arguments, also had rendered him ineligible. The applicant's submission was that when 1% of the posts are reserved for PH, 1% for Blind Persons, and 1% for Mentally Retarded persons, the applicant's case ought not to have been rejected by the respondents, in the manner in which they have done, and that too after his having successfully completed the skill test i.e. Typing Test, in spite of both of his arms being affected. The contention of the applicant, therefore, is that he fulfils the necessary physical requirements attached to the post. He also relied upon a judgment of the Punjab & Haryana High Court in CWP No.3087/2011 in **Ritesh Sinha vs. State of Haryana & Others**, in which a Writ had been issued even in the case of a person where the nature of disability of the person was such that he could not

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even write with his own hands, and had to be provided with a writer during the exercise of selection, subject to post being available.

19. We have given our anxious consideration to the facts of the present case. It is clear that the nature of the physical disabilities which were permissible for the relevant Post Codes, and the posts indicated in the CGLE 2012, from the Advertisement as reproduced above, were in respect of one arm (OA), one leg (OL), both legs (BL), which physical disabilities were included in the Post Codes Categories of A to Q, and R to Z, including the Post Code category of X: Tax Assistant in the CBDT and Y: Tax Assistant in the CBEC. But for none of these post codes or posts, the physical disability of both arms affected had been mentioned, as being permissible for the posts included in the CGLE 2012.

20. While we are able to see the logic behind the arguments of the applicant that if he could write the examination, and has qualified at the written examination conducted by the respondent, and also passed the skill test/Typing Test conducted by the respondents, he could not have been held to be incapable of performing his duties. However, this Tribunal cannot go beyond the bounds of law, Rules and Regulations, as laid down, and has to determine the rights of the parties concerned within the stipulations of laws, Rules, and regulations. When none of the posts included in the CGLE, 2012, provided for both arms (BA) affected as a permissible disability, we find that this Tribunal, in its scope for judicial review, cannot order that a person with both arms affected disability should be given appointment against any of the categories included in the CGLE, 2012.

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21. The applicant has also relied upon the Disability Certificate enclosed by him, as Annexure P-4 of the OA, in which the category of his disability has been mentioned as absence of fingers on both hands, and the nature of his locomotor disability has been mentioned as BA affected, apart from OL one leg (right foot) affected.

22. In the absence there being any provisions for the BA affected category disability to be one of the permissible disabilities for the posts, which were included in the CGLE, 2012, this Tribunal cannot, in the purview of its judicial review, order for the applicant to be necessarily given appointment as a BA Category candidate or against the OL category included in the CGLE, 2012, in which the applicant had competed. It may be mentioned here that in a parallel case, i.e, **Ira Singhal vs. Union of India and Others**, decided on 25.02.2014, in OA No.2543/2012, a Coordinate Bench of this Tribunal, including one of us, had held that in an examination where BA category was an admissible category for appointment in the IRS (CBEC), it was ordered for appointment being provided to the applicant therein, because in the relevant vacancy Notification published by the UPSC in that case, BA was one of the permissible disability categories for the said post of IRS (Central Board of Excise & Customs).

23. However, the present applicant has never challenged the categorization of his physical disability as BA affected, but has rather relied upon the Disability Certificate through which his disability had been classified as BA (Annexure P-4). Therefore, when in the facts and

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circumstances of the case, BA affected was not one of the permissible disabilities, this Tribunal cannot, in the course of judicial review, issue any directions or orders to the respondents to appoint the applicant for any of the posts included in the CGLE, 2012. Therefore, the OA is dismissed.

24. However, it is made clear that the respondent-SCC shall not bar the applicant from appearing at any subsequent examinations of theirs for any posts advertised by them, in which BA affected may be one of the permissible physical disabilities for the posts concerned, and that the dismissal of the present OA will not in any manner operate against the interests of the applicant of this OA for any future attempts/applications filed by him for employment with the Government where his disability is one of the permissible disabilities.

25. In the circumstances, there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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