

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00859/2017

Tuesday, this the 20th day of February, 2018.

CORAM

HON'BLE Mr.U.Sarathchandran, Judicial Member

HON'BLE Mr.E.K.Bharat Bhushan, Administrative member

Surjith P., aged 26 years

S/o P.Somasundaran

NOBLE, Edavalath Paramba

Edakkad P.O.

Kozhikode – 673 005

Applicant

(By Advocate: Mr. P.K.Muhammed rep by Mr.K.M.George)

Versus

1. Department of Personnel & Training
represented by its Secretary
Ministry of Personnel, Public Grievances and Pensions
North Block, New Delhi-110 001.
2. Union Public Commission
represented by its Chairman
Dholpur House, Shahjahan Road
New Delhi-110 069.
3. Ministry of Environment, Forest and Climate Change
represented by its Secretary
Indira Paryavaran Bhawan, 6th Floor,
Prithvi Block, Jor Bagh Road, Ali Ganj
New Delhi-110 003.

Respondents

(By Advocate: Mr. Thomas Mathew Nellimoottil, Sr.PCGC)

This OA having been heard on 25th January, 2018, the Tribunal delivered the following order on 20.02.2018:

ORDER

By U.Sarathchandran, Judicial, Judicial Member

The applicant is a candidate who was ranked 80 in the Indian Forest Service (hereafter mentioned as IFS, for short) Examination, 2016. He had

qualified the preliminary and main examinations, attended interview and successfully passed 25 kilometers walking test within the stipulated time and also was found medically fit but he failed to find a place in the final merit list as he did not meet the height requirement i.e., 163 centimeters. He states that although he was subjected to examination by the Medical Board, he was found to have a shortfall in the height and on the basis of Annexure A7 representation, a re-test was conducted and finally he was informed vide Annexure A8 impugned order :

“With reference to the above subject, this is to inform you that the Central Standing Medical Board of RML Hospital, Government of India, have reviewed the decision of the Medical Board, Safdarjung Hospital, New Delhi on 9.8.2017 and have declared you 'unfit' on account of 'sub standard height' after your Medical; Examination.”

2. Being aggrieved by Annexure A8, applicant has approached this Tribunal seeking relief as under:

(i) “The impugned Annexure-A8 Order declaring the Applicant as 'unfit' on account of 'sub-standard height' for appointment to the post of IFS officer, being non-speaking, arbitrary, discriminatory, not based upon medico-legal aspects; violative of Articles 14 and 16 of the Constitution, Rule 18 of the IFS Examination Rules, 2016, Regulation 12 of the Regulations Relating to the Physical Examination of Candidates vide Rule 18 of the IFS Examination Rules, 2016 and the Guidance to the Medical Examiner vide Rule 18 of the IFS Examination Rules, 2016 may be quashed.

(ii) And the candidate may be declared as medically fit in all respects to render continuous and effective performance of duties as an IFS officer;

(iii) Grant such other reliefs which this Hon'ble Tribunal deems just and proper to be granted for the ends of justice.”

3. According to the applicant the impugned order does not show that the 'sub standard height' indicated in the impugned communication is likely to interfere in the efficient performance of the duties required by the candidate. Referring to the Regulations Relating to the Physical Examination of the candidates vide Rule 18 of Indian Forest Service IFS Examination Rules, 2016, he contends that the main objective of the medical examination is 'to

secure continuous effective service and to prevent early pension or payments in case of premature death'. He states that he being an able bodied person is in good mental and bodily health and is free from any physical deformity or handicap which is likely to interfere with the discharge of his duties as an officer of the IFS. He alleges that the '*sub standard height*' attributed to him does not take into consideration of the fact that even much lower height of 152.5 cms prescribed for men from certain regional areas of the country and 145 cms for women do not incapacitate, debilitate and disable such men and women from rendering efficient and continuous duties as IFS officers.

4. Respondent No.3, Ministry of Environment, Forest and Climate Change filed reply stating that considering the arduous nature of the job of IFS officers, the prescribed physical standards are quite demanding and that the extant rules do not permit any relaxation except that if the candidate fails in the first chance to clear the test, he is given one more chance for the same. According to respondent No.3, the applicant has failed to pass the medical test in the first chance and did not qualify the standards prescribed in the IFS Examination Rules, 2016. The applicant was found to have a height of 158 cms in the first instance and 157 cms on the second chance i.e., 5 to 6 cms less than the prescribed standard.

5. A rejoinder was filed by the applicant refuting the contentions made in the reply statement of respondent No.3 and reiterating the pleadings in the Original Application.

6. We have heard Dr. K.M.George, advocate representing Sri P.K.Muhammed, for the applicant and Sri Thomas Mathew Nellimoottil, learned Sr.PCGC for the respondents.

7. The short question to be examined is whether the applicant is entitled to a declaration that Annexure A8 order being non-speaking, arbitrary, discriminatory and not based on medico legal aspects, is violative of Articles 14 & 16 of the Constitution read with Rule 18 of the IFS Examination Rules 2016 and the Regulations Relating to the Physical Examination of the candidates? The thrust of the arguments made by Dr.K.M.George was that despite having been found to be short of the prescribed standard of height i.e., 163 cms, the applicant is found to be fit to discharge the functions of the IFS officer by meeting all other standards including the physical and health standards. Dr.George argued that what is important is whether the shortfall in the required height is likely to interfere with the efficient performance of the duties and continuous effective service. In this connection, he relied on a decision of the Delhi High Court in *Union of India v. Ms. Satwinder Kaur* [W.P.(C) No. 1144/2014] upholding the order of the Principal Bench of this Tribunal in OA 2649/2012. He further submitted that the impugned A8 order is not mindful of the fact that even the candidates with lesser height requirements from the North Eastern parts of the country with a lower height requirement of 152.5 cms for men and women for whom the height prescribed is 145 cms do not incapacitate, debilitate and disable such men and women from rendering efficient and continuous performance of duties as IFS officers. He further submitted that 157 cms in such cases for men in the Indian Army

and Navy do not pose any problems for such persons in their activities and performances required for the Army and Navy. Dr.George submitted that such discrimination for male candidates for IFS is violative of Articles 14 of the Constitution of India and hence Annexure A8 order calls for interference by this Tribunal.

8. Sri Thomas Mathew Nellimoottil, Sr.PCGC, *per contra*, relied on the decision of the Apex Court in ***Mohammed Sohrab Khan v. Aligarh Muslim University & Ors., (2009) 4 SCC 455*** wherein it was held that when the advertisement mentions a specific standard, a different standard cannot be applied for selection because there could have been intending candidates who would have applied for becoming candidate as against the advertised posts. Sri Thomas Mathew Nellimoottil further relied on ***K.Manjusree v. State of A.P. and another***; a judgment dated 15.2.2008 of the Supreme Court in Civil Appeal No.1313 of 2008 and connected cases, wherein it was held that introduction of a requirement of minimum marks for interview after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. He relied on yet another decision of the Supreme Court, ***District Collector and Chairman Vizianagaram Social Welfare Residential School Society and another v. M. Tripura Sundari Devi – (1990) 3 SCC 655***, wherein it was held that it amounts to a fraud on public to appoint persons with inferior qualifications especially when there are people who had not applied for posts because they did not possess the qualifications mentioned in the advertisement. Sri Thomas Mathew

Nellimoottil submitted that impermissibility of a change in the prescribed criteria after the selection process starts is based on the principle of fair play.

He referred to *Secretary, A.P. Public Service Commissioner v. B. Swapna and others* (2005) 4 SCC 154 also, wherein it was held by the Apex Court :

“Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criteria e.g., minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage.”

Shri. Thomas Mathew cited *Maharashtra State Road Transport Corporation and others v. Ranendra Bhimrao Mandve and Ors* [(2001) 10 SCC 51], also. In that case the Apex Court observed:

“It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. ...”

In *Dr. Krushna Chandra Sahu and others v. State of Orissa and others*, [(1995) 6 SCC 1] cited by Sri. Thomas Mathew Nellimoottil, the Supreme court held:

The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication.

Shri Thomas Mathew further referred to *P.K.Ramachandra Iyer vs. Union of India* - 1984 (2) SCC 141, *Umesh Chandra Shukla v. Union of India* (1985) 3 SCC 721 and *Durgacharan Misra v. State of Orissa* – (1987) 4 SCC 646 wherein it was held by the apex court that it had no jurisdiction to prescribe the minimum marks which a candidate had to secure and that the selection committee does not possess any inherent power to lay down its own standards in addition to what is prescribed in the rules.

9. On the other hand, Dr. K.M.George referred to a large number of decisions mentioned in his argument notes, wherein the highlight was the question whether the shortfall in the height constitutes a physical disability/handicap which is likely to interfere in the efficient performance of duties. He has referred to *Air India v. Nargez Meerza* [(1981) 4 SCC 335] and a decision of the Andhra Pradesh High Court in *K. Gangadhar v. A.P. State Road Transport Corporation, Hyderabad and another* and some other decisions of this Tribunal. We have gone through the *ratio* of those decisions. We feel that the principle of law laid down by the Supreme court that once the selection notification prescribes a specific requirement as a qualification for the post notified, any variation would work injustice to the other candidates who would have applied for that post but for the short fall in such qualification. This is an elementary principle of fair play to be observed in the recruitment process of all public appointments.

10. Referring to a decision of the Delhi High Court in *Union of India v. Ms. Satwinder Kaur*, in W.P.(C) 1144/2014, decided on 10.7.2014, Dr.K.MGeorge argued that what is required to be examined is the nature of employment, nature of duties and responsibilities and such matters are to be examined before answering the issue whether the candidate is fit or unfit for the job in question. He has also referred to another decision of the Delhi High Court in *Naveet Kumar Tiwari v. Union of India and others* in W.P. (C)No.7053/2009, decided on 12.11.2009. In that case, the Delhi High Court held that based on the medical jurisprudence, the height of a person varies

from time to time i.e., when he gets up early in the morning, on raising out of his slumber at dawn, on comment of normal activity and while standing on the feet due to gravitational pull downward the vertebra and other joints in the body tend to compress.

11. We have carefully considered the argument notes and the decisions cited by Dr.K.M.George and the arguments of the learned Sr.PCGC. We are of the view that since the applicant has been a candidate for one of the prestigious post in the All India Service i.e., Indian Forest Service, wherein the selection of candidates is highly competitive, any departure from the prescribed qualifying standards in the recruitment notification will be prejudicial to those who did not apply for the same as they were not meeting such standards. Annexure A9 notification appeared in the Gazette of India clearly mentions that 163 cms is the required height for a male candidate other than those candidates from the North Eastern parts of India, for whom a lesser height is required. It is the policy of the Government to fix physical and other parameters as qualifying standards for a highly competitive selection process for post like the Indian Forest Service where the selected persons will have to work in arduous and inhospitable environs of the forests. Prescribing a lesser height requirement for candidates from the North Eastern parts of the country and for women candidates also is a matter within the governmental policy. The applicant was not able to establish that the standards prescribed in the Gazette Notification were contravening the IFS Examination Rules, 2016. The contention that having a lesser standard than what is prescribed in Annexure A9 Notification will not affect the efficiency to discharge the duties

of an IFS officer does not have any force because of the sheer need for observance of fair play in public appointments and due to the probability that many who were aspiring for participating in the selection process might not have applied as they fell short of the height norms prescribed in Annexure A9 notification for the same. If the applicant is given a relaxation on account of his having been found otherwise fit to discharge the functions as an IFS officer for a long period, it will amount to an unjust treatment to other persons who would have applied for the post but for the fact that they did not meet the height requirement mentioned in Annexure A9 Notification.

12. For the reasons stated in the foregoing discussion we hold that the Original Application is devoid of merit and is only to be dismissed. We do so. Parties to suffer their costs.

(E.K.Bharat Bhushan)
Administrative Member

(U.Sarathchandran)
Judicial Member

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Annexures filed by the applicant in the OA

Annexure A8: Copy of order dated 7.9.2017 issued by the Ministry of Environment, Forest & Climate Change, Govt. of India.

Annexure A1: Copy of Indian Forest Service Examination (Final) Results, 2016.

Annexure A2: Copy of call letter, file No.17017/01/2017-IFS-II dated 29.3.2017 issued by Secretary to Govt of India, Ministry of Environment.

Annexure A3: Copy of letter No.F.17017/01/2017-IFS-II dated 27.6.2017 issued by Secretary to Govt of India, Ministry of Environment.

Annexure A4: Copy of appeal against the Annexure A3 vide email 6.7.2017 sent by the applicant.

Annexure A5: copy of Medical Certificate issued by Dr.Sathish C., Assistant Insurance Medical officer, ESI Dispensary, Cheruvannur, Calicut dated 31.5.2017..

Annexure A6: Copy of Email dated 8.8.2017 sent to the applicant by Under Secretary (FS-II).

Annexure-A7: Copy of representation dated 14/08/2017 given by applicant before the Hon'ble Minister for Environment, Forest and Climate Change, Government of India.

Annexure-A9: Copy of Rules for the Conduct of Indian Forest Service Examination and Filling up of the Vacancies issued vide Notification No. 17011/02/2016-IFS-II

dated 27.04.2016 of the Ministry.

Annexure-A10: Copy of Certificate issued from Kendriya Vidyalaya East Hill, Kozhikode for getting first prize in 400 M run.

Annexure-A11: Copy of Certificate of Participation in Football, MNIT Sports Tournament 2011.

Annexure-A12: Copy of Certificate issued by NIT, Calicut stating his activities as a leading member of NIT Calicut Football team during his period of study 2008-12.

Annexure-A13: Copy of Notifications for 49th Short Service Commission (October 2017) in the Indian Army.

Annexure-A14: Copy of publication relating to Indian Air Force as Commissioned Officers -Air Force Common Admission Test (AFCAT)-01/2017.

Annexure-A15: Copy of publication relating to Indian Navy (B.Tech) Cadet Entry Scheme (Permanent Commission) -Jan 2018.

Annexure-A16: Copy of Web page states that the Indian Forest Service is part of the nation's management expertise pool and is predominantly administrative and managerial in nature and that the training course for the IFS probationers is designed to address these requirements.

Annexure-A17: Copy of "Physical Activity, Exercise and Physical Fitness: Definitions and Distinctions for Health-Related Research," Public Health Reports, 1985.

Annexure-A18: Copy of "Fitness Measures and Health Outcomes in Youth," 2012.

Annexure A19: Copy of certificate dated 22.9.2017 issued by Dr.O.S.Syamsundar, MBBS, M.D.(Medicine), Consultant in General Medicine, General Hospital, Thiruvananthapuram.

Annexures filed along with rejoinder

Annexure-A20: Copy of Guidelines concerning the Indian Forest Service (Probationers) Final Examination Regulations, 2016.

Annexure-A20(a): Copy of the "Mandate" given to the Indira Gandhi National Forest Academy for training IFS Officers".

Annexure-A20(b): Copy of IFS Probationers' Training Course-Indira Gandhi National Forest Academy, Dehradun.

Annexure-A20(c): Copy of Subject wise weightage for IFS course.

Annexure-A20(d): Copy of Tentative Plan for IFS(P) Training 2016-18 Course.

Annexure-A21: Copy of syllabus of the IPS Training course conducted by Sardar Vallabhai Patel National Police Academy.

Annexure-A22: Copy of Examination Notice No.06/2017-CSP dated 22/02/2017 issued by the UPSC(Relevant pages).

Annexure-A23: Copy of Medical Reports of 2016.