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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1049/2003

New Delhi this the ^{13th}

day of October, 2003.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Uldanathan P.,
S/o Perumal G.
R/o F-4, New Hostel, IIMC,
Aruna Asaf Ali Marg,
New Delhi-110 067.

- Applicant

(By Advocate Mrs. Neeru Vaid)

-Versus-

1. Union of India, through
Secretary to the
Govt. of India,
Ministry of Personnel, Public
Grievances and Pension,
Department of Personnel and Training,
New Delhi.
2. Union Public Service Commission,
through its Secretary,
Dhaulpur House,
Shahjahan Road,
New Delhi.

- Respondents

(By Advocate Shri Madhav Panikar).

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant imputes respondents' communication allocating Indian Information Service to applicant on the basis of Civil Services Examination (CSE) 2001 as well as order rejecting the request of applicant for re-allocation to other services.

2. Before we proceed to consider the facts of the case, a brief background leading to the filing of this OA is relevant to be highlighted.

3. CSE is a combined examination held annually by the Union Public Service Commission (UPSC) for recruitment to 26 services/posts, which, inter alia,

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include Indian Administrative Service, Indian Foreign Service, Indian Police Service and other Central Group "A" and Group "B" Services. Cadre Controlling Authorities for these services are various Ministries/Departments under the Government of India. It is the prerogative of the concerned cadre controlling authorities to determine number of vacancies to be filled in the respective services/posts. These vacancies are intimated to the UPSC directly, which in turn intimates the same to the DoPT.

4. Examinations are conducted in accordance with CSE Rules duly notified in Extraordinary Gazette notification every year prior to the commencement of the respective examination. Rules for each examination are notified separately.

5. Rules for CSE, 2001 were notified on 16.12.2000 and as per Rule 3 the number of vacancies to be filled on the result of the examination will be specified in the Notice by the Commission. Reservation will be made for candidates belonging to the SC/ST/OBC and Physically disabled categories in respect of vacancies as may be fixed by the Government.

6. Rule 17 of the CSE Rules, 2001, provides as under:

"17. The prescribed qualifying standards will be relaxable at the discretion of the Commission at all stages of examination in favour of physically handicapped candidates in order to fill up the vacancies reserved for them. In case, however, the physically handicapped candidates in order to fill up the vacancies reserved for them. In case, however, the physically handicapped get selected on their own merit in the requisite number at the qualifying standards fixed by the Commission for General, SC, ST and BC

category candidates, extra physically handicapped candidates, i.e., more than the number of vacancies reserved for them, will not be recommended by the Commission on the relaxed standards."

7. Applicant, as per the admitted position, as conveyed by the UPSC to the DoPT vide letter dated 17.7.2003 availed benefit of physically handicapped candidate at initial stage of qualifying in the Civil Services (Preliminary) Examination, 2001, having more than 40% disability. Applicant being an OBC is an Orthopaedically handicapped.

8. Applicant applied for writing the CSE, 2001 and as per the options the priority for service were as under:

1. Indian Administrative Service (IAS)
2. Indian Foreign Service (IFS)
3. Indian Revenue Service (IRS)
4. Indian Customs and Central Excise Service (IC&CES)
5. Indian Railway Traffic Service (IRTS)
6. Indian Auditing and Account Service (IAAS)
7. Indian Postal Service (IPOS)
8. Indian Railway Accounts Service (IRAS)
9. Indian Railway Personnel Service (IRPS)
10. Indian Defence Accounts Service (IDAS)
11. Indian P&T Accounts and Finance Service (P&TFAS)
12. Indian Defence Estate Service (IDES)
13. Indian Information Service (IIS).

9. Applicant was informed vide letter dated 20.5.2002 that he has been recommended for appointment on the basis of Civil Services (Main) Examination, 2001 and the allocation would depend upon the rank in the merit list.

10. Undisputedly applicant obtained 1050 marks which were at least 50 marks more than the general cut off.

11. It has been informed to applicant that he has been succeeded in the CSE, 2001 with 261st rank and has been allocated Indian Information Service, which was his 13th priority. Applicant vide letter dated 21.11.2002 was appointed in the Ministry of Information and Broadcasting and was required to join training/duty by 23.12.2002.

12. On being aware that the candidates having lesser marks had been allocated Indian Revenue Service or other high ranking Services viz. rank 271 (OBC) Indian Customs and Central Excise Service, rank 273 (OBC) Indian Audit and Accounts Service, rank 401 (General PH) Indian Information Service and rank 408 (General PH) Post and Telegraph Finance and Accounts Service. Applicant preferred representations. Vide one of the communications his request has been rejected on the ground that as there is no vacancy to be filled up under OBC category for physically handicapped category in P&TFAS, which was his 11th preference he was considered for 13th preference in IIS, giving rise to the present OA.

13. Learned counsel for applicant Ms. Neeru Vaid alleges discrimination against respondent by stating that whereas applicant though availed the benefit of

physically handicapped in the Preliminary Examination but in the Main Examination for CSE, 2001 as per his merit which is above the cut off marks applicant should have been treated as a general candidate in physically handicapped category as persons at rank No.401 and 408 have been allocated higher services. whereas applicant who ranks higher to them in the merit list has been, without any reasonable basis meted out a differential treatment.

14. Learned counsel for applicant, placing reliance on a decision of the Apex Court in **National Federation of Blind v. UPSC.** (1993) 2 SCC 411, contends that directions have been issued to the Government to decide question of providing preferences/reservations to the visually handicapped persons in Group "A" and "B" posts in Government. Relying upon the objects of Persons with Disabilities (Equal Opportunities etc.) Act, 1995, it is contended that it was with a view that India being a signatory to the proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. One of the main objects is to create barrier free environment for persons with disabilities and to remove any discrimination against persons with disabilities in the sharing of development benefits and also to improve upon opportunity of employment the above act has been enacted. In this backdrop it is stated that nowhere in the memorandum of DoPT dated 16.9.2000 it has been mentioned that physically handicapped candidates were not eligible for other services.

15. Ms. Vaid contends that as per the identification of course in the gazette dated 31.5.2001 of Ministry of Social Justice services in Audit & Accounts

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Department and Post and Telegraph are identified. As the physically handicapped reservation is permissible only in three services, had this been notified earlier applicant could have made his option before attempting for the examination.

16. It is contended that the stand of the respondents that as applicant had availed the physically handicapped reservation being OBC for want of vacancies the desired service cannot be allocated, had put applicant to a disadvantageous position. Referring to Rules 17 and 22 of the CSE, 2001 it is contended that the physically handicapped candidates were selected on their own merit in the requisite number at the qualifying standards fixed by the Commission for general candidates will not be recommended by relaxed standards. It is in this backdrop stated that applicant has never been given relaxed standards and has qualified in the CSE, 2001 on the criteria laid down for general candidates.

17. Referring to Rule 22 of the Rules it is stated that physically disabled persons should have disability of 40% or more. As applicant fulfils the same his allocation was to be done in accordance with law. He is not incapable of performance in any of the service in the higher order of preference.

18. One of the alternate arguments of applicant is that by referring to Sections 36 and 38 of the Disability Act that vacancies not filled up are to be carried forward.

19. On the other hand, respondents' counsel Sh. Madhav Panikar vehemently opposed the contentions and contested the OA. By producing DoPT letter dated 18.7.2003 it is contended that applicant, a physically handicapped OBC candidate cannot compare his case with non-physically handicapped OBC candidates. As applicant has availed the benefit of physically handicapped in the preliminary examination he could not have qualified in the main examination. As such relaxed standards have been adopted in his case.

20. Further placing reliance on DoPT letter dated 28.2.2003, it is stated that as per the CSE, Rules 2001 before declaration of results for written examination in the notice for preliminary examination in Employment News it is not possible to give details of the vacancy position.

21. As regards reservation for physically handicapped category is concerned, for Group 'A' and 'B' posts a separate register is maintained where point N.1, 34 and 67 are reserved for physically handicapped. Keeping in view the number of vacancies in identified posts one in every 100 vacancies is required to be reserved for each kind of disability. Accordingly, vacancies meant for physically handicapped though ought to have been notified each year is not possible.

22. Shri Madhav Panikar states that applicant who is a physically handicapped candidate from OBC category was recommended on relaxed standards below the general cut off marks approved by UPSC and in view of notified for physically handicapped candidates. As applicant has

availed reservation for physically handicapped and OBC for qualifying in the examination he could be considered only for those posts/services earmarked for PH/OBC candidates. Applicant who belongs to OBC category has no claim for consideration against the vacancies earmarked for SC/ST categories and accordingly he cannot be considered for physically handicapped and non-physically handicapped SC and ST category.

23. Sh. Panikar states by referring to the chart for vacancies that total six vacancies were notified for the physically handicapped candidates in three services, viz. P&T Accounts and Finance Services, Indian Information Service and Group 'B' Armed Forces HQ Civil Service. Applicant preferred for P&T Accounts Service at 11th and 13th for IIS. None of the vacancies notified for Accounts Service was for OBC. Hence, applicant who was recommended for physically handicapped OBC could not be considered for P&T Accounts and was allocated IIS.

24. By referring to the decision of the Apex Court in **Shankarsan Dass v. Union of India**, 1991 SCC (L&S) 800, it is contended that notification for selection does not vest any right to a candidate to a post.

25. Sh. Panikar states that a person who belongs to OBC category qualifies the examination with relaxed standards cannot be considered against the vacancies earmarked for non-physically handicapped OBC. Minimum physical requirement as required from non-physically handicapped candidate cannot be compared and as applicant does not fulfil the same as per Rule 22 of CSE, 2001 he cannot compare his case with rank 401 and 408

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where general physically handicapped candidates are accommodated against vacancies earmarked for general category candidates.

26. In the rejoinder, pleas taken by applicant have been re-iterated. It is further stated that applicant by virtue of scoring more marks than what has been prescribed as a general cut off no relaxation in the main examination had been accorded. Accordingly, on his own merit he was allocated to 16st rank and being physically handicapped he should have been considered against general physically handicapped category.

27. Person at rank No.408 of the merit list who had been considered for P&T Accounts Service a clear cut case of discrimination has been made out.

28. We have carefully considered the rival contentions of the parties and perused the material on-record.

29. In view of the decision of the Apex Court in National Federation of Blind (supra) handicapped persons have been provided reservation to Group 'A' and 'B' posts even in vacancies meant for CSE. 2001.

30. As per Disability Act ibid which is an adoption of the proclamation for betterment of service prospects to the disabled and to rehabilitate them in the 100 point roster the vacancies earmarked for physically handicapped which include orthopadically handicapped

persons. Applicant who has one leg amputated comes within the category of orthopaedically handicapped for which at least one post is reserved.

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31. The stand of respondents that applicant has been accorded relaxed standards both as physically handicapped and OBC is not borne out from the record. On a query to the UPSC vide letter dated 17.7.2003 it has been informed that in the preliminary examination for CSE, 2001 applicant has availed the benefit of physically handicapped only. In CSE, 2001 examination as per the merit applicant undisputedly scored 105 marks which are beyond general cut off. The contention put forth by respondents that applicant has qualified the examination not in general merit but as OBC candidate cannot be countenanced. It is a general proposition of law settled by the Apex Court that even if an OBC candidate who scores more marks than general category candidate is to be treated as a general candidate as reservation^{form} OBC is restricted only^{to} appointment, an OBC candidate though declared in the application form if as qualified the examination on general merits is to be treated as general candidate. The contention that the applicant has availed the benefit of OBC in the preliminary examination as well as physical handicapped, he is precluded from being treated as a general candidate subsequently cannot be countenanced and^{is an} anti thesis to Articles 14 and 16 of the Constitution of India.

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32. As regards allocation of service is concerned, though one has no right for allocation, it depends upon the cadre controlling authority on reporting the vacancies by the Ministry/Department concerned to the UPSC. However, the allocation depends on merits as well as

preferences given by the candidates concerned. Applicant's option for P&T Accounts and Finance Service was 11st whereas to IIS was 13th. As no physically handicapped OBC vacancy was in P&T Accounts and Finance Service which was filled up at by person at serial No.408 of the merit list. happened to be a general candidate and a physically handicapped as well was adjusted therein. Applicant who has not availed of the benefit of OBC in the main examination of CSE 2001 and has secured more marks than the general cut off should have been treated as a general candidate and had not availed the benefit of OBC category. The only reservation sought by the applicant is as a physically handicapped.

33. While allocating the services, the applicant being at serial No.261 of the merit list should have been considered for his preference to the accounts services which were identified for the physically handicapped candidate.

34. In so far as posts are concerned, allocating them to a general physically handicapped candidate at serial no.408 is certainly a hostile discrimination without any reasonable nexus with the objects sought to be achieved. Such an irrational classification offends Articles 14 and 16 of the Constitution of India. No valid explanation has come forth from the respondents to justify their action. Nothing on record has also been brought to establish that applicant has availed all the benefits at a relaxed standard of OBC.

35. Having regard to the above, as the allocation of the applicant was not in accordance with law, the same requires re-consideration.

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36. In the result, for the foregoing reasons, the matter is remanded back to the respondents for re-consideration of allocation of service to applicant in accordance with observations made above, within a period of three months from the date of receipt of a copy of this order.

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37. With the aforesaid directions, the present OA is disposed of.

S. Raju

(SHANKER RAJU)
MEMBER (JUDICIAL)

V.K. Majotra

(V.K. MAJOTRA)
MEMBER (ADMNV)

/sns/