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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 7th January, 2020
Pronounced on: 20th January, 2020

W.P.(C) 1904/2018

DILEEP KUMAR SHUKLA ..... Petitioner
Through: Petitioner-in-person.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor and Mr. Rohan Anand, Advocates for UOI.
Mr. Naresh Kaushik, Ms. Shriambra and Ms. Vibhuti, Advocates for R-3.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

J U D G M E N T

Dr. S. Muralidhar, J.:

1. The challenge in this petition is to an order dated 17th May, 2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') dismissing the Petitioner's O.A. No. 2958/2013.

2. By the impugned order, the CAT declined the reliefs sought by the Petitioner, which include, *inter alia*, allocating the Petitioner either to the Indian Revenue Service (Income Tax), Group 'A' ['IRS (IT)'] or to the Indian Revenue Service (Customs & Central Excise), Group 'A' ['IRS (C&CE)'] by considering the aforesaid services to be his 2nd and 3rd preferences respectively, after determining the quota for the Physically

Handicapped ('PH') category in the vacancies for which the Civil Services Examination ('CSE'), 2011 was conducted by the Union Public Service Commission ('UPSC').

Background facts

3. The Petitioner participated in the CSE, 2011 and secured the rank of 780. He is a person suffering from low vision ('LV'). In his application, the Petitioner indicated the Indian Administrative Service ('IAS') as his 1st preference, the Indian Audit & Accounts Service, Group 'A' ('IAAS') as his 2nd preference, the Indian Civil Accounts Service, Group 'A' ('ICAS') as his 3rd preference, and so forth. He put down the Indian Information Service (Junior Grade) Group A ['IIS (JG)'] as his 12th preference, and the IRS (IT) and IRS (C & CE) as his 17th and 18th preferences respectively. Based generally on his overall merit position, and more particularly in terms of his merit position in the Blind/Low Vision ('B/LV') category, the Petitioner was allotted the IIS (JG).

Case of the Petitioner

4. The case of the Petitioner is that since no reservation was indicated in the IRS (IT) and the IRS (C & CE) for candidates belonging to the B/LV category, the Petitioner gave lower preferences to these two services. The case of the Petitioner before the CAT was based on Sections 32 and 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('PWD Act'), which required the appropriate governments to identify posts in establishments which could be reserved for persons with disabilities and further to appoint "in every establishment such

percentage of vacancies not less than 3% for persons or class of persons with disability of which 1% each shall be reserved for persons suffering from-

(i) Blindness or low vision ('B/LV');

(ii) Hearing Impairment ('HI');

(iii) Locomotor disability or cerebral palsy ('LDCP'), in the posts identified for each disability."

5. In terms of the proviso to Section 33, it was open to the appropriate government to exempt establishments from the provisions of Section 33 of the PWD Act by issuing a notification, "having regard to the type of work carried on in any department or establishment."

6. The case of the Petitioner is that the Cadre Controlling Authority ('CCA') of the IRS (IT) and the IRS (C & CE) has not taken any such exemption from reserving posts in the B/LV category, as required by the aforesaid Section 33 of the PWD Act, from the Central Government. In other words, it was contended that as against the vacancies for which the CSE, 2011 was conducted, it was obligatory for the Department of Revenue, Ministry of Finance to provide reservations for the B/LV category in the posts under the IRS (IT) and the IRS (C & CE) as well.

7. At the time when the Petitioner filed the O.A. before the CAT in 2013, the decision of the Supreme Court in ***Government of India v. Ravi Prakash Gupta (2010) 2 SCC (L&S) 448*** had already been rendered.

8. According to the Petitioner, in terms of the said judgment, if, at the time of the allotment of services to successful candidates, seats in the disabled category remain vacant, then such 'backlog' seats must preferably be allotted to candidates in the same category. He contended that from the date of the coming into force of the PWD Act till the date of the allotment of the service to him, 12 vacancies of IRS (IT) and IRS (C & CE) had occurred and, that therefore, one vacancy in either service could easily have been allotted to him.

9. Before the CAT, the Petitioner also relied on the reply received by him on 17th May, 2013 from the Central Board of Direct Taxes ('CBDT') stating that persons with B/LV were not eligible to serve in the IRS (IT). Enclosed with the said reply was a copy of the minutes of the meeting held on 23rd November, 2007 at the Ministry of Social Justice and Empowerment which noted that while discussing, *inter alia*, the issue of the allotment of services to persons belonging to persons with disabilities, it has been decided that:

> "(a) All the 19 Civil Service should provide reservation to persons with locomotor, hearing impaired and visual disabilities as provided in Persons with Disabilities Act. Considering the nature of jobs performed in IRS (IT) and IRS (C&CE), these services were not considered suitable for persons with visual disabilities. The services should however allocate 1½ % of vacancies each to persons with locomotor and hearing disabilities. Considering the specific requirement of IAAS, persons with both legs affected (BL) may not be suitable for the service due to extensive touring involved in the jobs assigned to the officers in the service. Further, blind may also not be presently suitable for the service since accounts maintenance in most of the field offices is not yet computerized. CCA of IAAS however, should provide reservation to persons with disabilities

> to all other sub-category of locomotor disability and to persons with low vision (LV).
>
> (b)All the services should provide reservation to persons with hearing impairment (HH) with the condition that these persons should be able to communicate with the help of hearing aids and other assistive devices.
>
> (c) All the services except IRS (IT) and IRS, (C&CE) should provide reservation to persons with visual disabilities on the condition that these persons should be able to perform with the help of appropriate assistive devices including computer and software."

10. The fact, however, remains that there was no notification issued by the Central Government, in terms of the proviso to Section 33 of the PWD Act, exempting the CCA of the IRS (IT) and IRS (C & CE) from providing reservations to the PH category, in particular to persons in the B/LV category.

Stand of the Respondents before the CAT

11. The stand of the Ministry of Personnel, Public Grievances and Pension, Government of India, Respondent No. 1 before the CAT, was that in terms of Note 1 below Rule 2, Rule 3, and Rule 22 of the Civil Services Examination Rules, 2011 ('CSE Rules'), the number of vacancies in each service are calculated and reported directly by the concerned ('CCA') to the UPSC for filling up through the CSE. After the results of the CSE are declared, the UPSC forwards to the Respondent No. 1 a list of successful candidates as well as the category to which each candidate belongs, equal to the total number of vacancies to be filled up in the relevant CSE, for

allocation to various services in accordance with the vacancies reported by the CCA to the UPSC, taking into account the candidates' preferences for various services as expressed by them, their medical status and vacancies in particular categories, i.e. SC/ST/OBC/PH and General. According to Respondent No. 1, its role was confined to allocation of service to the candidates declared successful, whose dossiers had been sent to it by the UPSC.

12. It was stated by the Respondents that given the preferences expressed by the Petitioner, he was found eligible for the IAAS as per his rank, and was accordingly allotted to that service. The stand taken was that "there is no vacancy in IRS (IT) and IRS (C & CE)", and also that he had assigned a lower preference to the aforesaid services vis-à-vis the IAAS and that therefore he could not be allocated to either of these services. In a tabular column, the manner of allocation of services to the partial blindness ('PB') category candidates was given as under:

Name S/Sh & category	Rank	Functional Classification	Service allocated
Gagandeep Singh (Gen)	25	PB	IAS
Ashish Bhargava (Gen)	397	PB	IAS
Amit Goyal (Gen)	778	PB	IRAS
Dileep Kumar Shukla (Gen)	780	PB	IIS
Senthil R (OBC)	792	PB	IOFS

13. It was pointed out that IRS (IT) and IRS (C & CE) were not specified as providing reservation for visually impaired persons.

Impugned order of the CAT

14. The CAT, in the impugned order, proceeded on the basis that the Department of Revenue, which is the CCA for IRS (IT) and IRS (C & CE) "has enjoyed exemption from allocating any vacancy for the B/LV sub-category and accordingly a Gazette Notification had been issued. The Revenue Department has made such an assertion in its reply to the applicant's RTI query, vide Annexure A-4 letter dated 17.05.2013."

15. At the same time, the CAT noted that from the letter dated 18th November, 2016 of the Ministry of Social Justice and Empowerment, it appeared that no exemption had been granted to any Department from the purview of Section 33 of the PWD Act. It was conceded that after the decision in ***Ravi Prakash Gupta*** *(supra)* and the subsequent decision of the Supreme Court in ***Union of India v. National Federation of the Blind (2013) 10 SCC 772***, the Department of Revenue had started providing reservation for the B/LV category from 2014 onwards. The CAT also accepted that the carrying-forward of vacancies reserved for persons in the PH category for a period of up to two years and the inter-changeability of the reserved seats amongst the three categories of disabilities i.e. B/LV, HI and LDCP was also now being allowed.

16. The CAT in the impugned order accepted the plea of the Petitioner that had reservations been indicated for the B/LV category in the IRS (IT) and

the IRS (C & CE) in the notification for CSE, 2011, he would have placed the said two services higher in his order of preference. However, the CAT proceeded to hold that since all candidates selected by CSE, 2011 had been allocated the various services, completed their professional training, and confirmed at the respective services it merits serious consideration, "any judicial intervention, at this stage, in the matter of allocation of Services of the selected candidates in CSE - 2011, would trigger tremendous amount of de-stability and upheaval."

17. The contention of the Respondents that the persons likely to be affected by such intervention had not been made party to the proceedings, and thus such intervention would be against the principles of natural justice was also accepted by the CAT as "prudent and worthy of consideration." As a result, the Petitioner's O.A. was dismissed by the CAT.

Submissions of the Petitioner

18. The Petitioner, who appears in person submitted that the necessity for him to approach the CAT arose only because of the reply received from the Ministry of Social Justice and Empowerment on 18th November, 2016 that no exemption had been granted by the Department of Empowerment of Persons with Disabilities to any All India Services/other central services recruited through UPSC from the purview of Section 33 of the PWD Act. He submitted that the Respondents as well as the CAT were bound by the decision of this Court in ***Ravi Prakash Gupta*** (supra) and merely because the vacancies meant to be filled up by candidates from the PH category had

been diverted to other categories, the same could not be an excuse for denying relief to those persons from the PH category who approached the CAT for relief.

19. The Petitioner pointed out that an argument similar to the one advanced by the Respondents in the present case, viz., that since all selected candidates had been allocated various services judicial intervention was not warranted, had been negatived by this Court in its judgment dated 29th May, 2009 in W.P.(C) 5429/2008 (***Ravi Prakash Gupta v. Union Public Service Commission***). This judgment was affirmed by the Supreme Court in ***Ravi Prakash Gupta*** *(supra)*.

20. The precise grievance of the Petitioner is about the failure of the Respondents to make reservations for visually-impaired candidates in the IRS (IT) and the IRS (C & CE). He states that there is no justification to his not being allocated to the said services despite the availability of vacancies. In the notification for CSE, 2011, a total of 100 vacancies in the IRS (IT) and 88 in the IRS (C & CE) had been notified. There were 12 backlog vacancies in IRS (IT) and 10 in IRS (C & CE). In fact, from 1996 onwards till 2010, there had been a failure to provide for reservations to candidates in the PH category, and therefore, there was a backlog even on that ground. Mr. Shukla submitted that the CAT had erred gravely in not following the binding decision of this Court as well as Supreme Court in ***Ravi Prakash Gupta*** *(supra)*. In this context, reliance was placed on the decision in ***South Central Railway Employees Cooperative Credit Society Employees Union v. B. Yashodabai (2015) 2 SCC 727***.

21. Mr. Shukla also referred to the latest reply received by him on 26th November, 2019 from the Department of Revenue, Ministry of Finance pursuant to an application made under the Right to Information Act, 2005 ('RTI'), wherein the requisite information has been provided in a tabular form as under:

Sl. No.	Requisite Information	Reply
1.	How many total sanction posts in IRS (IT) till 31st October 2019	4920
2.	How many posts are filled in IRS (IT) till 31st October 2019.	4377
3.	How many posts are unfilled/vacant in IRS (IT) till 31st October 2019	543

22. Similarly, Directorate General of Human Resources Development in the Central Board of Indirect Taxes and Customs has on 5th December, 2019 confirmed that in the IRS (C & CE), the position as on 31st October, 2019 was as under:

"1: Total Sanctioned strength 5757

2: Total working strength 3555

3: Post vacant 2202"

Submissions of the Respondents

23. Mr. Kirtiman Singh, learned Central Government Standing Counsel, was hard pressed to explain the anomalies emerging from the replies received by the Petitioner pursuant to his RTI applications to various departments of the Government. He placed before the Court a compilation of the notifications

issued for the CSEs held in 2010, 2012, 2017 and 2018 to indicate how reservation in the PH category has been provided for. He reiterated the submissions that found favour with the CAT.

Analysis and reasons

24. To begin with, the Court notes that Appendix-IV of the CSE Rules notified on 22nd February, 2017, lists out the services identified suitable for the PH category along with the relevant physical requirements and functional classifications. In the said table, at column 3, while the IRS (C & CE) identifies only Locomotor Disability and Hearing Impairment as the two disabilities for which there can be reservation, the IRS (IT) includes the B/LV category in the posts identified.

25. Even in the CSE Rules notified on 7th February, 2018, both the IRS (C & CE) as well as the IRS (IT), apart from recognising the B/LV category, also provide reservation for the 'Multiple Disabilities' category.

26. As regards vacancies, the Respondents have been unable to dispute the fact of existing vacancies, including a huge backlog of vacancies in the PH category that remain to be filled.

27. The Court is unable to find in the pleadings any justification by the Respondents for the failure to provide for reservations to the PH category from 1996 onwards. This position was squarely dealt with in the ***Ravi Prakash Gupta*** *(supra)* by the Supreme Court. In that case, the Supreme Court observed as under:

"15. Although, the Delhi High Court has dealt with the aforesaid questions, we wish to add a few observations of our own in regard to the objects which the legislature intended to achieve by enacting the aforesaid Act. The submission made on behalf of the Union of India regarding the implementation of the provisions of Section 33 of the Disabilities Act, 1995, only after identification of posts suitable for such appointment, under Section 32 thereof, runs counter to the legislative intent with which the Act was enacted. To accept such a submission would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction. Such a stand taken by the petitioners before the High Court was rightly rejected. Accordingly, the submission made on behalf of the Union of India that identification of Grade 'A' and 'B' posts in the I.A.S. was undertaken after the year 2005 is not of much substance. As has been pointed out by the High Court, neither Section 32 nor Section 33 of the aforesaid Act makes any distinction with regard to Grade 'A', 'B', 'C' and 'D' posts. They only speak of identification and reservation of posts for people with disabilities, though the proviso to Section 33 does empower the appropriate Government to exempt any establishment from the provisions of the said Section, having regard to the type of work carried on in any department or establishment. No such exemption has been pleaded or brought to our notice on behalf of the petitioners."

28. This decision of the Supreme Court was taken note of in ***Union of India v. National Federation of the Blind*** *(supra)*, wherein it was observed as under:

"36. Admittedly, the Act is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfill its objective. Besides, it is a settled rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the said statutory provision. In the present case, the plain and unambiguous meaning of Section 33 is that every appropriate Government has to appoint a minimum of 3% vacancies in an establishment out of which 1% each shall be reserved for persons suffering from blindness and low vision, persons suffering from hearing impairment and persons suffering from locomotor or cerebral palsy.

37. To illustrate, if there are 100 vacancies of 100 posts in an establishment, the concerned establishment will have to reserve a minimum of 3% for persons with disabilities out of which at least 1% has to be reserved separately for each of the following disabilities: persons suffering from blindness or low vision, persons suffering from hearing impairment and the persons suffering from locomotor disability or cerebral palsy. Appointment of 1 blind person against 1 vacancy reserved for him/her will be made against a vacancy in an identified post for instance, the post of peon, which is identified for him in group D. Similarly, one hearing impaired will be appointed against one reserved vacancy for that category in the post of store attendant in group D post. Likewise, one person suffering from locomotor disability or cerebral palsy will be appointed against the post of "Farash" group D post identified for that category of disability. It was argued on behalf of Union of India with reference to the post of driver that since the said post is not suitable to be manned by a person suffering from blindness, the above interpretation of the Section would be against the administrative exigencies. Such an argument is wholly misconceived. A given post may not be identified as suitable for one category of disability, the same could be identified as suitable for another category or categories of disability entitled to the benefit of reservation. In fact, the second part of the Section has clarified this situation by providing that the number of vacancies equivalent to 1% for each of the aforementioned three categories will be filled up by the respective category by using vacancies in identified posts for each of them for the purposes of appointment."

29. The Court finds from the replies given to the Petitioner from time to time under the RTI, that there were indeed unfilled vacancies in the PH quota in both the IRS (IT) and the IRS (C&CE), and that these ought to have been carried forward for at least two years. The second fact that emerges is that the CAT proceeded on the erroneous premise that the Department of Revenue had been granted exemption from the applicability of Section 33 of the PWD Act in terms of the proviso thereto. Although the minutes of the meeting held at the Ministry of Social Justice and Empowerment on 23rd November 2007 noted that "considering the nature of jobs performed in IRS (IT) and IRS (C&CE), these services were not considered suitable for persons with visual disabilities", the fact remains that there was no notification issued granting exemption to the Ministry of Revenue from the applicability of Section 33 of the PWD Act. At this juncture, it requires to be noted that Section 34 of the Rights of Persons with Disabilities Act, 2016 which has replaced the PWD Act is *in pari materia* Section 33 of the PWD Act.

30. Added to this is the undisputed legal position explained by the Supreme Court in ***Ravi Prakash Gupta*** *(supra)* that the implementation of the statutory mandate under Section 33 of the PWD Act cannot await identification of posts suitable for appointment under Section 32 thereof. The Supreme Court held that such a stand "runs counter to the legislative intent" of the PWD Act and if accepted, "would amount to accepting a situation where the provisions of Section 33 of the aforesaid Act could be kept deferred indefinitely by bureaucratic inaction." In other words, the

Court would not in the context of failure by the Government to provide reservations for the PH category, be presented with a *fait accompli*.

Directions

31. In that view of the matter, while setting aside the impugned order of the CAT, the Court directs the Respondents as under:

i) The Respondents will within a period of eight weeks from the date of receipt of a certified copy of this order, ascertain which posts in the IRS (IT) and IRS (C & CE) earmarked for PH category can be allocated for those with B/LV;

ii) Within a further period of eight weeks the Respondents will examine whether the Petitioner can be accommodated in either the IRS (IT) or the IRS (C & CE) in any such earmarked PH vacancies for B/LV and issue appropriate orders appointing him to such vacancy;

iii) The Petitioner if so appointed will not get any arrears of pay but for the purposes of notional fixation of pay, for seniority and further promotions his appointment will relate back to the date he was appointed in the IIS (JG) pursuant to qualifying in the CSE, 2011.

32. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 20, 2020/dn/mw