
(2019) 01 CAT CK 0013

In the Central Administrative Tribunal

Case No : Original Application No. 330, 167 Of 2017

Bhanwar Singh Sirohi

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 — Section 2(t)
Entitlement Rules For Casualty Pensioner Awards, 1982 — Rule 7(2)
Constitution of India, 1950 — Article 315, 316, 317, 318, 319, 320, 321, 322, 323

Citation : (2019) 01 CAT CK 0013

Hon'ble Judges : Bharat Bhushan, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : Udai Chandani, Dharmendra Tiwari

Final Decision : Dismissed

Judgement

Mohd. Jamshed, J

1. The present Original Application (OA) has been filed by the applicant seeking primarily the following reliefs:-

"(a) To issue a direction in the nature certiorari quashing the order dated 21.06.2016 passed by respondent no. 4.

(b) To issue a direction in the nature of mandamus directing the respondent authorities to include the applicant in the Physically Handicapped-I Category of Civil Services (Main) Examination Result of 2012.

(c) To issue an order or direction may deem fit and proper in the facts and circumstances of the case."

2. The facts of the case as enumerated in the OA are that the applicant appeared and qualified the Civil Services Preliminary as well as the Main Examination held in 2012 under General Category. He obtained a total of 876 marks in the

examination but he was not selected in the final result despite the fact that other candidates under Physically Handicapped - (1) category were declared successful in the examination having obtained a total of 858 marks.

3. Facts of the case as stated in the O.A. are that the applicant was initially selected in the Indian Army & during his training in NDA, Khadakwasla, he was injured and declared unfit for the armed forces. A certificate was issued by the Military Hospital, Meerut on 17.08.2012 in which the applicant was declared 20% disabled. Despite the applicant's best efforts, this disability/physically handicapped certificate was not issued by the competent military medical authorities at the time of submission of his form for Civil Services (Preliminary) Examination held in 2012 and thereafter while submitting the form for Civil Services (Main) Examination. Due to this the candidate was not permitted to change his category, and could not apply in the physically handicapped category. The applicant has also drawn the attention to the Entitlement Rules For Casualty Pensioner Awards, 1982 & paragraph 100 (b) of the Defence Account Department Office Manual Part IV, mentioning that the extent of disability or function incapacity shall be determined in a certain manner for the purpose of computing disability element. According to these, the percentage of disability between 1 to 49% shall be reckoned as 50% for computing of disability element.

4. The applicant, after having been declared not successful in the Civil Services (Main) Examination, 2012 found that other candidates in Physically Handicapped-(1) category who had obtained 858 marks which were less than the marks obtained by the applicant were declared successful. He sent a letter dated 21.05.2013 requesting the Union Public Service Commission (UPSC) to consider his candidature under Physically Handicapped -(1) category. The UPSC vide letter date 13.06.2013 rejected the claim of the applicant. The applicant again sent a detailed representation dated 29.10.2015 to UPSC indicating that his disability of 20% has to be treated as 50% as per the Rule 7.2 of the Entitlement Rules For Casualty Pensioner Awards, 1982. In response, to the aforesaid letter, the applicant received letter dated 03.12.2015 from UPSC, whereby it was intimated that his grievance has been sent to DoPT and comments have been sought in the matter. Thereafter, the applicant filed Civil Misc. Writ Petition No. 22168 of 2016 before the Hon'ble Allahabad High Court. The Hon'ble High Court vide order dated 13.05.2016 directed the concerned authority to decide the representation of the applicant within six weeks. In compliance of the Hon'ble High Court's Order, the UPSC vide letter dated 21.06.2016 (Impugned Order) rejected the representation of the applicant. The applicant again approached the Hon'ble High Court of Allahabad by filing Civil Misc Writ Petition No. 2858 of 2017 and the Hon'ble High Court vide order dated 23.01.2017 directed the applicant to approach this Tribunal for redressal of his grievance and the Writ Petition was dismissed. Following the order of the Hon'ble High Court, the applicant has approached this Tribunal through this OA seeking the quashing of the impugned order dated 21.06.2016.

5. The applicant in support of his argument has relied upon the Entitlement Rules of Casualty, Pensioner Award, 1982, judgement of Hon'ble Punjab and Haryana High Court in the case of Ex-Recruit Naresh Jain Vs. State of Punjab & Haryana, the judgement passed by the Hon'ble Delhi High Court in the case of Puneet Gupta Vs UOI and others and the order of this Tribunal passed in OA No. 234 of 2012 - Avadesh Singh Vs Union of India.

6. In the supplementary affidavit filed on 06.03.2017 and the second supplementary affidavit filed on 23.03.2017, the applicant has reiterated the points made in the OA and have annexed the copies of the advertisement and terms and conditions of the UPSC Civil Services Examination and a copy of the Ministry of Defence circular dated 31.01.2001 regarding implementation of Government decisions on the recommendation of 5th CPC regarding disability pension etc and the judgement of the Hon'ble Apex Court in the case of Union of India & Ors Vs Ex-Naik Vijay Kumar.

7. In the short counter affidavit filed by the respondents, it is clarified that this OA has been filed by the applicant challenging the order dated 21.06.2016 passed by respondent no. 4 in pursuance of the Hon'ble High Court's order dated 13.05.2016. It has been further clarified in the counter affidavit that UPSC is a constitutional body established under Article 315 to 323 in the Part XIV, Chapter II of the Constitution of India and the main function of the Commission is to hold examinations for appointment to the service of Union including Civil Services Examination for recruitment to the IAS, IFS, IPS and other Central Services in Group 'A' and Group 'B'. The Civil Services Examination is held in accordance with the rules framed and notified by the Department of Personnel and Training, Government of India. The applicant had appeared in Civil Services (Preliminary) Examination as well as in Civil Services (Main) Examination, 2012 as a General non-PH category candidate. After declaration of the final result, he made a representation and submitted a disability certificate with 20% disability issued by Military Hospital, Meerut and requested the Commission to consider his case.

8. It is further reiterated that the applicant had applied in the Civil Services (Preliminary) Examination 2012 as a "General" candidate and clearly indicated "No" against the physically handicapped column of the application form. On being declared successful in the preliminary examination, he filled-up detailed application form for the Civil Services (Main) Examination, 2012 in the General Category. In the said detailed application form, he again indicated "No" against the column "whether you are a physically challenged candidate". He obtained 876 marks which were less than the cut off for candidates of General non-PH category and was therefore, not selected. Copies of the application form were also annexed with the short counter reply.

9. It is further stated by the respondents that the applicant had himself declared that he was not Physically Challenged while applying for the Civil Services Examination, 2012 at both the preliminary as well as the main stage and it is only as an after-thought that he submitted a representation on 21.05.2013 for

consideration of his request to treat him as a Physically Handicapped-I candidate (Orthopedically challenged) and the same was replied vide letter dated 13.06.2013 by the respondent no. 4 clearly stating that since he claimed to belong to general non-PH category in the Civil Services (Preliminary) Examination, 2012 and qualified the preliminary as well as the Main Examination, 2012 in the said category, his request for being considered as PH category subsequent to declaration of result cannot be accepted. Moreover, the percentage of disability was shown as 20% in his case, which is less than the criteria of 40% prescribed for PH candidates appearing for UPSC Civil Services Examination. Therefore, his request was rejected and he was treated as a General candidate.

10. It has also been stated in the counter affidavit that the Civil Services Examination is conducted in accordance with the Rules of the Examination framed and notified by DoPT and para-22 of the notification clearly mentions that the eligibility for availing reservation against the vacancies reserved for the physically disabled persons shall be the same as prescribed in "The persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act, 1995", which defines the persons with disability, in Section 2 (t) of the said Act, as follows:-

"persons with disability means a person suffering from not less than forty percent of any disability as certified by a medical authority."

11. It is further clarified that the applicant did not apply under the PH category and that his level of disability was also 20% which is less than the prescribed 40% under the Rules in this Examination. It is also indicated that judgement quoted by the applicant in the case of Recruit Naresh Jain Vs State of Punjab and others cannot be applied for his benefit as the judgement was in relation to appointment to Class-IV posts, not conducted by UPSC.

12. In the short rejoinder affidavit filed by the applicant on 12.12.2017, general points quoted in the OA and supplementary affidavits have been reiterated with the main emphasis on treating the disability between 1 to 49% as 50% in terms of the Entitlement Rules for Casualty Pensioner Awards 1982 for armed forces personnel.

13. Learned counsel for the applicant has repeatedly argued and emphasised the fact that the applicant could not submit the physical disability certificate before he applied for and appeared in the Civil Services Examination, 2012 as he was not in the possession of the same. Thereafter, the applicant appeared in the Civil Services (Preliminary) and (Mains) Examination, as a General candidates, however, having received his physical disability certificate from Military Hospital, Meerut, he made a representation to the UPSC which was rejected as the applicant had applied and appeared in the examination as a general candidate. The applicant having observed that candidates in the PH-1 category having secured lesser marks than him in this examination were selected, made a representation and also filed a Writ Petition in the Hon'ble Allahabad High Court.

The Hon'ble High Court directed the respondents to consider the representation of the applicant. In compliance of Hon'ble High Court's order, the representation of the applicant was considered and rejected vide order dated 21.06.2016. Thereafter, the applicant again approached the Hon'ble High Court challenging the order dated 21.06.2016. The Hon'ble High Court vide order dated 23.01.2017 directed the applicant to approach this Tribunal. It was also emphasised by the learned counsel for the applicant that broadbanning has been prescribed in the Entitlement Rules for Casualty Pensionary Awards, 1982 which prescribes that the disability between 1 to 49% should be taken as 50% and therefore in this case also this should be applicable and applicant's disability should be assessed as 50% and not 20%, which has been the basis on which the UPSC rejected the representation of the applicant. In support of his arguments, he has quoted the judgements of the Apex Court, High Courts and this Tribunal.

14. Learned counsel for the respondents during his argument has pointed out that the applicant had applied as a General candidate having clearly mentioned "No" in the physically handicapped column of the application form and that once a candidate applies under a certain category and appears in the examination, he cannot change his eligibility as this will be against the prescribed rules. With regard to the applicant's plea that he should be considered as physically handicapped candidate taking his disability as 50% in terms of Casualty Pensionary Awards, 1982, learned counsel for the respondents have stated that the rules and regulations of UPSC Civil Services Examination based on the Persons with Disability (Equal Opportunities, Protection of Right and Full Participation), Act, 1995, clearly mentioning that physical disability should be 40% and not below 40%. This Act gives the rules and regulations prescribed for the DoPT, UPSC and Civil Services Examination. Learned counsel for the respondents has also mentioned that judgements quoted by the applicants are not relevant in this case.

15. Heard the learned counsels for both the parties and perused the records.

16. This OA has been filed by the applicant as per the directions of Hon'ble Allahabad High Court which on the first instance has directed the respondents to consider the representation of the applicant and in the second instance, the Hon'ble High Court directed the applicant to seek remedy from this Tribunal. The applicant has sought relief primarily on two aspects which are interlinked. The first is that he could have been selected on the basis of marks obtained by him which are more than the marks scored by the Physically Handicapped-(1) category candidates and secondly that the UPSC should have considered his 20% disability by broad banding in terms of Entitlement Rules For Casualty Pensioner Awards, 1982, considering the same as 50% disability for this selection.

17. The Civil Services Examination is conducted by the UPSC under prescribed and announced rules and regulations and it is expected that all candidates adhere to these guidelines, rules and regulations while applying for this examination and appearing in the same. In this case, it is quite evident that the

applicant has applied and appeared for the Civil Services (Preliminary) Examination and also for Civil Services (Main) Examination as General Candidate specifically mentioning "No" in the column of PH candidate. Therefore, his result has been announced as General candidate. The other aspect is about treating the 20% disability of the applicant as 50% in terms of Entitlement Rules For Casualty Pensioner Awards, 1982, which indicates that disability upto 1 to 49% can be treated as 50%. In this connection also, it is specifically mentioned in the UPSC notification that the persons with minimum 40% disability shall be considered in the Physically Handicapped category and the same is governed by the Persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act, 1995, which clearly states that persons with disability means a person suffering from not less than forty percent of any disability as certified by a medical authority. The Entitlement Rules For Casualty Pensioner Awards, 1982, issued by the Ministry of Defence vide letter dated 21.08.1984 prescribe broadbanning primarily for the purpose of pensionary benefits.

18. In view of the above mentioned, we find that the applicant failed to apply in this examination as a physically challenged candidate and has appeared in the General category. He did not qualify the examination under the General category on the basis of marks obtained by him. This OA seeking quashing of impugned order dated 21.06.2016 is devoid of any merit.

19. Accordingly, the OA is dismissed. No order as to costs.