

(2019) 07 DEL CK 0412

In the Delhi High Court

Case No : Civil Writ Petition No. 1574 Of 2019, Civil Miscellaneous Application
No. 7295 Of 2019

Chandan Singh

APPELLANT

Vs

Prasar Bharti And Anr

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Rights Of Persons With Disabilities Act, 2016 — Section 77

Citation : (2019) 07 DEL CK 0412

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Rajeev Sharma, Anmol Nag, Rajat Krishna, Saket Chandra, Ashim Sood, Rhythm B.

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

1. Vide the present petition, the petitioner seeks direction thereby directing the respondent No.1 to implement the order dated 22.12.2017 of the Chief Commissioner of Persons with Disabilities and grant appointment to the post of Multi-Tasking (Non-Technical) Staff at par with other candidates.

2. The brief facts of the case are that on 26.02.2013, Ministry of Social Justice and Empowerment issued guidelines vide office Memorandum No. 16-110/2003-DD.III for conducting written examination for the persons with disabilities. On 09.12.2016, the respondent vide advertisement no. 1/2017, invited applications for the post in question under a special recruitment drive for persons with disabilities for Doordarshan Kendras and in response to which the petitioner also applied. On 28.02.2017, the petitioner addressed an e-mail to the respondent categorically informing them that he is suffering from cerebral palsy with locomotor impairment and sought compensatory time as his writing speed was affected and that he will not be using a scribe. On 06.03.2017, the respondent

responded to e-mail of the petitioner and confirmed that he will get compensatory time as per the advertisement notice no. 1/2017 in the examination to be held, even if he does not use a scribe. On 19.03.2017, the examination was held and in violation to rules/ regulations/ guidelines, thus, the petitioner was not given compensatory time and his answer-sheet was snatched.

3. The further case of the petitioner is that on 20.03.2017 and 21.03.2017, the petitioner made a complaint to the Chief Commissioner as well as respondent no.1 via email seeking re-examination with compensatory time. On 31.05.2017, the Chief Commissioner wrote to the respondent no.1 and sought response of the said respondent on the complaint of the petitioner. On 14.08.2017, the said respondent filed reply to the notice issued by Chief Commissioner. On 22.09.2017, the notice of hearing was issued to the parties for hearing under Section 77 of the Rights of Persons with Disabilities Act, 2016. The Chief Commissioner heard both the parties on 16.10.2017. On 30.10.2017, the Chief Commissioner asked the respondent no.1 why the petitioner cannot be appointed and granted one week time to respondent no.1 to respond. On 13.11.2017, the said respondent submitted its response to the opportunity granted by Chief Commissioner vide order dated 30.10.2017. The Chief Commissioner passed an order dated 22.12.2017 that the respondent No.1 has violated the guidelines and discriminated against the rights of the petitioner to get compensatory time and ordered the respondent to take immediate action and issue appointment letter to the petitioner for the post in question. However, on 01.02.2018, the respondent no.1 rejected the recommendation of the Chief Commissioner.

4. Being aggrieved, the petitioner approached the Central Administrative Tribunal by filing OA and the said Tribunal vide its order dated 04.01.2019 passed an order that any Tribunal under the Administrative Tribunal Act 1985 cannot have jurisdiction to entertain the prayer as prayed for by the petitioner and dispute raised by the petitioner about non-compliance of the advice/recommendation under the provisions of the Persons with Disabilities Act, 2016 cannot be redressed under the provisions of Administrative Tribunal Act, 1985. Accordingly, granted liberty to the petitioner to take legal recourse before appropriate Forum. Hence, he has filed the present petition.

5. The case of the petitioner before the Chief Commissioner was that the respondents provided the facility of scribe and compensatory time only to the candidates with visual impairment and/or cerebral palsy but did not provide the facility of scribe and compensatory time to the candidates whose writing speed was hampered due to the disability in hands (upper limbs). The respondents did not provide the facility of compensatory time to the petitioner whose writing speed is hampered due to 65% disability in his both the upper limbs (hands) despite his request as per the guidelines.

6. Accordingly, it is observed by the Chief Commissioner that the respondents have violated the guidelines for conducting written examination for persons with Disabilities, issued by the Ministry of Social Justice & Empowerment, vide Office

Memorandum No.16-110/2003-DD.III dated 26.02.2013 read with clarification vide letter No. 10413929/2007 & 65/1041/12-13 dated 18.03.2013 by infringing the complainant's legitimate right to get compensatory time to write the examination conducted by the respondents on 19.03.2017. Further, it is observed that the impugned act of respondents have debarred the complainant from getting recruited to the post in question. Accordingly, the respondent was advised by the Chief Commissioner for Persons with Disabilities to convey their decision to the Court, for not giving appointment of the complainant within one week from the date of receipt of the record of proceedings.

7. Pursuant to the order passed by Chief Commissioner for Persons with Disabilities, the respondent no.1 responded to the directions of Chief Commissioner through communication dated 01.02.2018 that only 28 candidates were found suitable for appointment as against 33 vacancies. For the remaining five vacancies, a recruitment exam is likely to be held in near future. The selection process was completed and the post at the Centre opted (i.e., Patna) by the complainant has been filled up by a candidate with disability who had secured more marks than that of the petitioner. Accordingly, upsetting the candidate already selected would gravely prejudice his right to the post. Moreover, the order dated 22.12.2017 also seems to appear to be beyond the relief pleaded by the petitioner.

8. It is further stated that the Complainant attempted 103 questions out of 150 questions and obtained 79 marks. Even if it be assumed that he was entitled to compensatory an additional 40 minutes and that he could have attempted all 150 questions, making proportionate increase of marks obtained by him, his marks would be 115. The selection was Doordarshan Kendra-wise and the complainant had opted for Patna. There was only one post available at Patna and the candidate who was selected has secured 123 marks. Thus, even if appropriate adjustments are made for compensatory time, the petitioner would still not make the grade.

9. It is not in dispute that the examination in question was confined only to physically handicapped candidates. More than 2000 physically handicapped candidates appeared and Prasar Bharati has uniformly followed the same procedure for all the physically handicapped candidates. All of them were given the option of taking the services of the scribe. Compensatory time was given to all candidates who opted for the services of a scribe.

10. For convenience, the guidelines dated 26.02.2013, issued by the Ministry of Social Justice & Empowerment, Department of Disability Affairs (now renamed as 'Department of Empowerment of Persons with Disabilities') are as under:-

"The word "extra time or additional time" that is being currently used should be changed to "compensatory time" and the same should not be less than 20 minutes per hour of examination for persons who are making use of scribe/reader/lab assistant. All the candidates with disability not availing the facility of

scribe may be allowed additional time of minimum of one hour for examination of 3 hours duration which could further be increased on case to case basis.

A clarification on the aforesaid guidelines has also been issued from this Court vide letter No.10413929/2007 & 65/1041/12-13 dated 18.03.2013 and has clarified Clause XI that the facility of scribe/reader/lab assistant is meant for only those candidates with disabilities who have physically limitation to write including that of speed."

11. It is not in dispute that the respondent provided the facility of scribe and compensatory time only to the candidates with visual impairment and/or cerebral palsy and did not provide the facility of scribe and compensatory time to the candidates whose writing speed was hampered due to the disability in hands (upper limbs). The petitioner herein is physically handicapped and his writing speed is hampered due to 65% disability in his both the upper limbs (hands) despite that, compensatory time was not granted to the petitioner. Thus, respondent no.1 has violated the Guidelines for conducting written examination for Persons with Disabilities, issued by the Ministry of Social Justice & Empowerment.

12. It is also not in dispute that scribe was provided for the petitioner, however, he declined for the same and wrote the examination himself. Thus, the writing speed was hampered due to 65% disability in both upper limbs.

13. During the course of arguments, the petitioner in person claimed and stated before this Court that there were four parts of the examination as under:-

Part-I General Intelligence and Reasoning

Part-II Numerical Aptitude

Part-III General English

14. It is further submitted that the respondent in writing promised to provide compensatory time of 40 minutes to the petitioner as he is entitled for. However, the duration of the exam was two hours. Five minutes before the time, the respondents rang the warning bell and invigilator also informed him that only five minutes were left, therefore, complete the exam. In his reply, the petitioner stated that he is entitled to get extra 40 compensatory minutes to which the invigilator declined and after the duration of two hours, the paper was snatched from the petitioner.

15. Before lunch, the petitioner stated that the respondent no.1 was supposed to grant as per the guidelines additional 40 minutes to the petitioner, however, five minutes before the two hours the time warning bell rang, due to which he got disturbed and could not complete his paper. Further, he submitted that since there were four parts of paper mentioned above and those four parts could not be attempted for the reason that there was no time left. If the respondent no.1 had given additional compensatory time certainly would have completed the

paper and would have secured more marks than the last selected candidate.

16. This Court asked the petitioner that whether he attempted any question of the General Awareness to which he declined, however, requested this Court to direct the respondent no.1 to produce his OMR Answer-Sheet and Question Booklet. Accordingly, the counsel appearing for respondent no.1 produced the question booklet and answer-sheet of the petitioner. On perusal of the same, it is found that question for General Awareness which is the fourth part of the booklet starts from question no. 101 to 150. The petitioner has attempted 19 questions out of the same, thus, it seems the petitioner had completed his written examination in two hours time.

17. It is pertinent to mention here that when this booklet and answer-sheet was produced in this Court for perusal of the same, then he took another stand that he could not revise the same because the compensatory time was not granted. For the satisfaction of the Court, as mentioned above, the General Awareness questions starts from 101 which was not attempted by the petitioner and the question no. 101 is that the Simon Commission was generally boycotted by the Indian Political Parties, what was the reason for this non-cooperation? (a) The Commission aimed at divide & rule (b) It was the whole white commission (c) He came after the JaliaWala Bagh (d) He was an eye wash. This question, even after giving all four options to the petitioner, he could not reply, therefore, neither he was aware of the answer of this question on the date of examination nor today.

18. It seems that the petitioner had attempted all questions whatever he could, if he would give the wrong answer by circling, then negative marks will be given.

19. Thereafter, the petitioner in person took the stand that in this exam, he had first gone through the question paper and ticked the answers out of the options given and thereafter, he was to encircle on the answer-sheet. He was aware that he had 40 minutes but warning bell rang five minutes before the completion of the stipulated time, therefore, in five minutes he could not encircle the full answers which had been ticked in question paper.

20. Since the petitioner in person coming from Bokaro, Patna and handicapped, therefore, this Court started hearing this matter on priority basis, whereas, the present petition is of 2019. On the very first date i.e. 15.02.2019, the interim order was passed that till further order, the respondents shall keep one post vacant for the post in question and the respondents were directed to file counter affidavit within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter. Accordingly, the matter was directed to be posted on 09.04.2019. However, on said date since I was on leave, therefore, Court Master of this Court had given date to the petitioner of 03.07.2019 (i.e. very short date). On 14.05.2019, the petitioner in person moved an application vide C.M.APPLN. 23014/2019 for early hearing of the petition. Since pleadings were complete as per the directions of this Court, therefore, the application was allowed. Consequently, the Registry was directed to list the present petition for final

hearing on 24.05.2019. The date already fixed i.e. 03.07.2019 stands cancelled.

21. It is pertinent to mention here that the present petition was filed by Ms.Ruchika Mittal, Advocate, but the petitioner was not satisfied and submitted before this court that he would not allow the advocate to argue but argue in person. Accordingly, Ms.Ruchika Mittal, advocate was discharged from his case vide order dated 14.05.2019.

22. Since the matter could not reach on 24.05.2019 and June vacations were ensuing, therefore, the matter was directed to be posted on 03.07.2019. However, on 28.05.2019, the petitioner moved CM APPLN. 26416/2019 for early hearing of the writ petition. On 24.05.2019, the matter could not reach till 04:30 p.m., therefore, directed to renotify on 03.07.2019. Though, counsel for the respondent no.1 submitted before this court that he had no objection if the petition is to be listed for early hearing, however, sought time to file additional counter affidavit which was necessary to adjudicate the present petition.

23. In view of above, the application moved by the petitioner was dismissed and directed the respondent to ensure that additional affidavit be filed within two weeks. Response thereto, if any, be filed within one week thereafter and directed the petition to be listed on 03.07.2019. As the court was not held on 03.07.2019, the matter was renotified on 04.07.2019, i.e. today. The petitioner was insisting that this court should issue the directions directing the respondents to comply with order dated 22.12.2017 and issue an appointment letter in favour of the petitioner.

24. It is not in dispute that only 28 candidates were found suitable for appointment as against 33 vacancies. For the remaining five future vacancies, the recruitment exam is likely to be held in near future. Moreover, the selection process was completed and the post at the Centre opted (i.e., Patna) by the petitioner has been filled up by a candidate with disability who had secured more marks than the petitioner.

25. In addition, the petitioner attempted 103 questions out of 150 questions and obtained 79 marks. Even if it is assumed that he was entitled to compensatory time and he was entitled to an additional 40 minutes by way of compensatory time and that he could have attempted all 150 questions, making proportionate increase of marks obtained by him, his marks would be 115.

26. It is also not in dispute that the selection process was Doordarshan Kendra-wise and the petitioner had opted for Patna. There was only one post available at Patna and the candidate who was selected has got 123 marks. Thus, even if appropriate adjustments are made for compensatory time, the complainant would still not make the grade.

27. Since, the petitioner was voicing his issue stating that in first attempt he selected those questions to which he was sure. He submitted that General Awareness and English papers will take less time, therefore, he took more time

on General Intelligence and Reasoning and Numerical Aptitude. Therefore, if they had given compensatory time of 40 minutes, he could attempt more question and secure more marks.

28. It is further pertinent to mention here that this Court has given one option to the petitioner that he should attempt the unanswered questions in Court but he refused saying that some of the questions which he ticked in the Booklet, could not go through properly and encircled in the answer sheet.

29. The other option given by this Court that instead of two hours 40 minutes to which he is entitled by the scheme, this Court will give three hours if he is ready to answer the sheet in the Chamber in the presence of attendant of this Court. To that option, he replied that because this exam was conducted two years before therefore right now he is not ready for this exam.

30. But the fact remains that the petitioner is unemployed and at this stage, he said that he is not preparing for any competitive exam. On query, it is admitted by the petitioner that he is unemployed and his age is 30 years and till the age of 35 years, he can appear in competitive exams. Therefore, this Court cannot believe that he is not preparing for any competitive exams a person who is unemployed and is fighting with tooth and nail in Courts.

31. It is also pertinent to mention here that question No. 101 belongs to General Awareness and which is not answered by the petitioner. Just to test whether the petitioner was aware of the answer of the same, this question was put as noted above before the petitioner to which he could not reply and said he did not know. The aforesaid facts shows that whatever the petitioner knew the answer of the booklet he attempted the paper and all questions what he could, be answered.

32. It is also pertinent to mention here that at this stage, the petitioner submitted that he selected the question to be answered and ticked it and thereafter, he had to encircle on the answer-sheet.

33. Since morning, this matter was going on, therefore, this Court subsequently asked the petitioner that this Court will direct the respondent No.1 to bring the booklet in which you selected the questions to be answered. But this Court put a condition that if selected questions are same as answered or less than that, then action will be taken against him, but if the selected questions are more and answers are less, Court will certainly pass the order in his favour. But the petitioner instead of taking this option also, he started arguing the matter which since morning he has been doing.

34. In view of the above, I find no merit in the present petition.

35. The same is, accordingly, dismissed.

CM APPL. No.7295/2019

36. In view of the order passed in the present writ petition, the application has been rendered infructuous and is, accordingly, disposed of.