
(2019) 05 CAT CK 0108
In the Central Administrative Tribunal
Case No : Original Application No. 95 Of 2018

Harsh Shrivastava

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 25-05-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Disabilities (Equal Opportunities Protection Of Rights And Full Participation) Act, 1995
— Section 2(o)

Citation : (2019) 05 CAT CK 0108

Hon'ble Judges : Dinesh Gupta, J;K.N. Shrivastava, Member (A)

Bench : Division Bench

Advocate : Rajiv Ranjan Dwivedi, Naresh Kaushik, Manju Jaglan

Final Decision : Dismissed

Judgement

K.N. Shrivastava, Member (A)

1. This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main reliefs:

"(A) Allow this applicant to appear as a disabled candidate for the Interview in the Civil Service Exam-2017.

(B) Quash/Revoke the order dated 27/12/2017 passed by the Respondent No.2, cancelling his candidature on frivolous grounds.

(C) Direct the Respondents not to interfere with the result of the Applicant till the outcome of the present Petition;

(D) Direct the Respondents to consider the Applicant as per Point No.9 of Examination Notice No.06/2017 - CSP dated 22.02.2017."

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The applicant is an Indian Railway Traffic Service (IRTS) Officer. He got into

the service through Civil Services Examination (CSE), 2014 held by the Union Public Service Commission (UPSC).

2.2 The applicant has stated that he has had a childhood injury in his right thumb which remained undiagnosed for years and that while playing volleyball in the year 2016 he suffered injury at the same spot, as a result, he has been unable to write and perform his hand functions.

2.3 The applicant obtained a medical certificate from Chief Medical and Health Officer, District Gwalior (MP) dated 13/14.10.2016 (p.85) which would indicate that he has functional disability in his right hand thumb and writing disability about 45%. The applicant obtained another certificate dated 28.12.2016 (p.87) issued by the Civil Surgeon-cum-Chief Hospital Superintendent, Gwalior District, Gwalior, which reads as under:

"This is to certify that Mr. Harsh Shrivastava S/o Shri Rajendra Shrivastava, Aged 28 years (Aadhar No. 257824234916), resident of 15, Johri Colony, Bawan Paiga, Nai Sarak, Lashkar Gwalior was present in Medical Board today 28 December 2016. He has been examined by the Medical Board and after Clinical examination and going through his investigation including MRI dated 14 Sep 2016, it was found that Mr. Harsh Shrivastava is suffering from thickening and scarring of the proximal phalangeal attachment of the radial collateral ligament at the metacarpo-phalangeal attachment joint of the right hand thumb.

This has lead to functional disability of the right hand thumb and will lead to slowdown of writing function to the extent of approximately 45% of normal average thumb function."

This certificate has been issued by the Medical Board of the hospital.

2.4 The applicant is aspiring to get into Indian Administrative Service (IAS). He unsuccessfully appeared in CSE, 2015 and 2016 for it.

2.5 The applicant filed Writ Petition No.7973/2016 in the Hon'ble High Court of Madhya Pradesh Bench at Gwalior seeking a declaration that he should be provided the facility of use of a scribe and compensatory time for CSE (Main) Examination, 2016 which was going to commence on 03.12.2016. The applicant had annexed a medical certificate dated 13/14.10.2016 with the Writ Petition. The Hon'ble High Court dismissed the Writ Petition vide order dated 28.11.2016 in the following terms:

"Therefore, to assess the locomotor disability the concerning doctor was required to show that how much percentage of bones, joints or muscles were affected leading to how much percentage of restriction of movement of the limb. There is no such description in the certificate annexed by the petitioner, on the contrary it is mentioned that petitioner suffers from writing disability of about 45% which is not in consonance with the requirement of the definition of locomotor disability provided under Section 2(o) of the with Persons Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995.

In view of the aforesaid, the petitioner has failed to substantiate that as per the guidelines issued by the UPSC he falls under any of the categories necessitating inclusion of his name in the physically handicapped category or providing facility of use of scribe and compensatory time. Thus, this petition fails and is dismissed."

2.6 The applicant desirous of appearing in CSE, 2017 sent Annexure A-3 e-mail dated 23.02.2017 to the Under Secretary, UPSC, stating therein as under:

"Dear Sir,

I am candidate for Civil Service Examination, having already appeared earlier as General Category Candidate.

Having suffered a permanent injury in my hand, last year I had asked for a Scribe for the CSM 2016, and I was denied the same as I hadn't filled the form for CSE 2016, as a PH category candidate.

Since this will be my last attempt if I apply under General Category, I would like UPSC to please check my medical certificate before I attach it this year for CSE 2017, I have attached a copy of the same.

If there is something missing in the attached medical certificate, then kindly tell me the precise details of what more is required, so that I can ask for the same from the Doctors.

Kindly, reply as soon as possible as I have to fill the CSP 2017 from either as a PH Category Candidate or a General Candidate based on your reply."

2.7 The Under Secretary vide his letter dated 07.03.2017 (p.115) informed the applicant through e-mail as under:

"I am directed to refer to your e-mail dated 23/02/2017 on the subject cited above. The Commission conducts Civil Services Examination as per the rules of Examination notified by the Government (Department of Personnel & Training). The Civil Services Examination, 2017 has been notified by the Government and the process of submission of online application has been started from 22nd February, 2017. As per these notified Rules, blind candidates and candidates with Locomotor Disability and Cerebral Palsy where dominant (writing) extremity is affected to the extent of slowing the performance of function (minimum of 40% impairment) are allowed to write the examination with the help of a scribe and they also eligible to have compensatory time of 20 minutes per hour if so desired by them. Further, on the basis of information furnished by the Blind and LD/CP category candidates in the online application for Civil Services (Preliminary) Examination, the Commission allows Scribe and Compensatory time to the above mentioned physically disabled category candidates (and also based on the declaration of possessing the necessary disability certificates with them) and no certificates are required to be produced at that stage. Certificates of disability are required to be scanned and uploaded at the time of filling of online application forms for the Civil Services (Main) Examination in the proforma prescribed by the

Government in the Rules of Civil Services Examination, 2017, which is available at the following link: <http://egazette.nic.in/WriteReadData/2017/174290.pdf>."

2.8 The applicant approached this Tribunal in OA No.3671/2017 in which the Tribunal has passed the following order on 24.10.2017:

"The applicant is aggrieved of cancellation of his candidature for the Civil Services (Main) Examination 2017, as ordered vide impugned order dated 18.10.2017. When this matter was taken up, the applicant placed on record a copy of mail dated 24.10.2017 whereby the competent authority has provisionally allowed the applicant to appear in the Civil Services (Main) Examination, 2017. In this view of the matter, the main relief claimed in the O.A. stands allowed.

The other grievance of the applicant is that he should be provided a scribe of his own choice, as he is disabled to write the Examination."

The applicant had already participated in the Preliminary Examination and had cleared it.

2.9. During the pendency of the OA, a submission was made by the learned counsel for the applicant before the Tribunal on 26.10.2017 that he has been provisionally allowed by the UPSC to appear in CSE, 2017 commencing from 28.10.2017. He further submitted that the applicant has been provided the assistance of a scribe. He thus sought permission of the Tribunal to withdraw the OA. Accordingly, the Tribunal vide order dated 26.10.2017 dismissed the said OA as withdrawn with liberty to seek appropriate remedy in accordance with law. The *ibid* order reads as under:

"Learned counsel for the applicant submits that during the pendency of this OA, the applicant has been provisionally allowed to appear in Civil Services(Main) Examination, 2017 commencing w.e.f.28.10.2017. His further contention is that he has also been provided the Scribe. He seeks permission of this Tribunal to withdraw this OA.

2. In this view of the matter, the reliefs claimed in the present OA are satisfied. However, if any adverse order is passed regarding the provisional admission of the applicant, he will be at liberty to seek appropriate remedy in accordance with law. OA is dismissed as withdrawn."

2.10 The applicant appeared in the CSE (Main), 2017. However, the respondent no.2 vide impugned Annexure A-1 communication dated 27.12.2017 informed him that his candidature as a PH candidate for CSE, 2017 has been cancelled. The reasons for cancellation are indicated in para-4 of it, which is reproduced below:

"4. A perusal of the aforesaid facts highlights the following issues:-

A) The Disability certificate dated 14.10.2016 has been found to be invalid by the Hon'ble High Court of Gwalior, M.P. vide order dated 28.10.2016 in W.P. 7973 of

2016.

B) The Disability certificate dated 28.12.2016 has been described to be invalid by the M/o Social Justice & Empowerment, Deptt. of Empowerment of Persons with Disabilities.

C) The Disability Certificate dated 22.06.2017 is invalid being beyond the closing date of the application for Civil Services (Preliminary) Examination, 2017

D) Your Disability has also not been acquired by you after the commencement of the examination process and during the course thereof.

5. On the basis of the above facts the commission has reviewed your case and observed that you cannot be treated as a candidate suffering from Locomotor Disability and Cerebral Palsy and accordingly your candidature for civil services examination, 2017 has been cancelled."

2.11 The applicant sent an e-mail dated 18.10.2017 (Annexure A-5) to respondent no.2 protesting against the cancellation of his candidature. The applicant had, in the meanwhile, also obtained another medical certificate dated 22.06.2017 (Annexure A-4) issued by the District Surgeon and Medical Superintendent, Karwar on the basis of a Medical Board report. He also sent a copy of the same to UPSC.

2.12 Aggrieved by the cancellation of his candidature vide Annexure A-1 letter dated 27.12.2017, the applicant has approached the Tribunal in the present OA praying for the reliefs as indicated in para-1 supra.

3. The main grounds pleaded by the applicant in support of the reliefs claimed are as under:

3.1 The UPSC asks for PH certificate of the candidates only at the time of 2nd stage of the examination, namely the Main and not at the time of Preliminary Examination and that he proceeded to fill up the application form for CSE, 2017 only after getting the confirmation regarding the validity of his medical certificate by the UPSC.

3.2 The UPSC has arbitrarily and unreasonably not considered the medical certificates dated 14.10.2016, 28.12.2016 and 22.06.2017 of the applicant.

3.3 The applicant has committed no wrong in attaching his latest disability certificate because such certificates are called for submission only after the Preliminary Examination. Further, he had applied as a PH candidate only after receiving confirmation of validity of his certificate from respondent no.2.

4. Pursuant to the notices issued, the respondents entered appearance. However, reply was filed only on behalf of respondent no.2 (UPSC). In its reply, respondent No.2 has broadly made the following averments:

4.1 The OA is barred by the principle of res judicata as the applicant's medical certificate dated 28.12.2016 in the context of CSE (Main), 2016 has already been

considered and rejected by the Hon'ble Gwalior Bench of Hon'ble High Court of MP in Writ Petition No.7973/2016 vide judgment dated 28.11.2016.

4.2 The applicant has not approached the Tribunal with clean hands as he has suppressed the factum of dismissal of his Writ Petition by the Hon'ble High Court of Madhya Pradesh.

4.3 Furthermore, despite being informed through e-mail dated 07.03.2017 by respondent no.2, the applicant has not informed the Tribunal about the format of the medical certificate for claiming disability.

4.4 The applicant has indulged into abuse of process of law and process of court. He has obtained the medical certificates dated 14.10.2016 and 28.12.2016 from the authorities at Gwalior whereas he has obtained the medical certificate dated 22.06.2017 from the District hospital, Karwar. The contents of these certificates are sketchy. The expression 'Locomotor Disability' under Section 2 (o) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, in short, the Disability Act, has not been used in these certificates.

4.5 The respondent no.2 has got the validity of the medical/disability certificates furnished by the applicant checked from the nodal department, i.e., Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment, who vide their letter dated 11.12.2017 have informed as under:

"I am directed to refer to your letter No. CSM/Roll No. 0060553/2017-E.III dated 14/11/2017 on the above noted subject and to say that prior to 19.04.2017, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and rules thereunder (sic. thereunder) were applicable. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Amendment Rules, 2009 provides for format for grant of disability certificate in respect of various categories of disabilities namely blindness, low vision, leprosy-cured, hearing impairment, Locomotor disability, mental retardation, mental illness and multiple disability. The Disability Certificate of Shri Harsh Shrivastava dated 28.12.2016 does not conform to the format prescribed under the above rules.

2. It may further be noted that the Rights of Persons with Disabilities Act, 2016 has come into force with effect from 19.04.2017. The Rights of Persons with Disabilities Rules, 2017 notified on 15.06.2017 provides for format for grant of disability certificate in respect of categories of disabilities identified in the RPwD Act, 2016. Any disability certificate to be issued on and after 15.06.2017 should conform with this format."

4.6 On the basis of the information furnished by blind and LD/CP category candidates in the online application for Civil Services (Preliminary) Examination, the UPSC allows scribe and compensatory time to the above mentioned physically disabled category candidates based on the declaration of possessing

the necessary disability certificates with them and no certificates are required to be produced at that stage. Certificates of disability are required to be scanned and uploaded at the time of filling of online application forms for the Civil Services (Main) Examination in the proforma prescribed by the Government in the Rules of CSE, 2017.

4.7 The applicant's candidature has been rejected by the UPSC after thorough enquiry of the medical certificates furnished by him. For this purpose, consultation with the expert Nodal Ministry, i.e., Ministry of Social Justice and Empowerment has been done. The applicant had appeared for the CSE, 2014 and was selected for IRTS not under PH category. He was considered and selected as a general candidate. The applicant's medical certificate dated 28.12.2016 was invalidated by the Hon'ble High Court of Madhya Pradesh vide judgment dated 28.11.2016. The applicant secured another medical certificate from District Surgeon, District Hospital, Karwar on 22.06.2017 for the purpose of getting PH benefits in CSE, 2017. The applicant did not inform this Tribunal that CSE, 2017 was notified on 20.02.2017 and the last date of submission of application forms was 13.07.2017. Hence, medical certificate dated 22.06.2017 secured by the applicant from the District Surgeon, District Hospital, Karwar is thus invalid in the light of point No.10 of the instructions contained in the examination notice, which reads as under:

"Candidates seeking reservation/relaxation benefits available for SC/ST/OBC/PH/ Ex-servicemen must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the Rules/Notice. They should also be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the Rules/Notice for such benefits, and these certificates should be dated earlier than the due date (closing date) of the application of Civil Services (Prelims) Examination, 2017."

5. The applicant has filed rejoinder to the reply filed on behalf of respondent no.2 in which, besides reiterating his averments in the OA, has stated that he has not concealed any facts from the Tribunal and that his Writ Petition was dismissed by the Hon'ble High Court of Madhya Pradesh on the ground that "the petitioner has failed to substantiate that as per the guidelines issued by the UPSC he falls under any of the categories necessitating inclusion of his name in the physically handicapped category or providing facility of use of scribe and compensatory time."

6. On completion of the pleadings the case was taken up hearing the arguments of the learned counsel for the parties on 24.04.2018. Arguments of Shri Rajiv Ranjan Dwivedi and that of Shri Naresh Kaushik with Ms. Manju Jaglan and Shri Omung Gupta, learned counsel for respondents were heard.

7. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings. Admittedly, the applicant was selected to IRTS through CSE, 2014 conducted by the UPSC under general category and not PH

category. It is also not in dispute that at the time of appearing in the CSE (Preliminary) Examination, PH certificate is not required to be uploaded online along with the application form. Accordingly, the applicant applied for and allowed to appear in Preliminary Examination of CSE, 2017.

8. The applicant has corresponded with the UPSC in regard to his candidature under the PH category and has also furnished the medical certificates dated 14.10.2016 and 28.12.2016 to the UPSC. Since his candidature was cancelled by the UPSC for the Main Examination of CSE, 2017, he had approached the Tribunal in OA No.3671/2017. During the consideration of *ibid* OA, on 24.10.2017, the applicant had brought to the notice of the Tribunal that he has received an e-mail dated 24.10.2017 from UPSC allowing him to participate in the Main Examination of CSE, 2017 and further informed the Tribunal on 26.10.2017 that the UPSC has permitted him to permit him a scribe. In the light of these developments, the applicant sought leave of the Tribunal to withdraw the OA and accordingly *vide* order dated 26.10.2017 the *ibid* OA was dismissed as withdrawn.

9. It would appear that UPSC (R-2) after the conduct of the Main Examination of CSE, 2017 undertook the exercise of scrutinising the medical certificates dated 14.10.2016, 28.12.2016 and 28.12.2016. The applicant has also secured the third medical certificate from District Surgeon, District Hospital, Karwar dated 28.12.2016 where he was posted then as IRTS officer.

10. We do not agree with the argument of Shri Naresh Kaushik, learned counsel for respondents that the two medical certificates 14.10.2016 and 28.12.2016 have been invalidated by the Hon'ble High Court of Madhya Pradesh. A bare reading of the judgment of the Hon'ble High Court of Madhya Pradesh would indicate that the Writ Petition was dismissed on some technical grounds as noticed hereinabove by us in para-5. The respondent no.2, however, has got all the three medical certificates verified by the Nodal Ministry, i.e., Ministry of Social Justice and Empowerment who *vide* their Annexure R-2 letter dated 11.12.2017 have confirmed that the disability certificates of the applicant do not conform to the format prescribed under the rules of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Amendment Rules, 2009. The UPSC has acted on the letter of Ministry of Social Justice and Empowerment has accordingly *vide* impugned Annexure A-1 letter dated 27.12.2017 has informed him that he cannot be treated as a candidate suffering with Locomotor Disability and Cerebral Palsy and accordingly his candidature for CSE, 2017 has been cancelled. We notice from Rule-4 of the 1996 Rules that the disability certificate relevant to the applicant was required to be issued in Format prescribed in Form-IV. Obviously, none of the certificates furnished by the applicant are in the prescribed format. The applicant ought to have realized that the certificates furnished other than in the prescribed format, cannot be considered for his claim that he belongs to PH category.

11. In the conspectus of the discussions in the foregoing paras, we are of the

view that the UPSC was well justified in cancelling the candidature of the applicant for CSE, 2017 in PH category as the disability certificate furnished by him is not in the prescribed format. Accordingly, we dismiss this OA being found devoid of merit.

12. No order as to costs.