

(2019) 02 CAT CK 0148

In the Central Administrative Tribunal

Case No : Original Application No. 4198 Of 2017

Krishna Indukumar Thakar

APPELLANT

Vs

Kendriya Vidyalaya Sangathan & Ors

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Rights Of Persons With Disabilities Act, 2016 — Section 2(s)

Citation : (2019) 02 CAT CK 0148

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Shalini Rana, S. Rajappa, Anil Srivastava

Final Decision : Dismissed

Judgement

1.Today when this matter was taken up for hearing, learned counsel for the respondents sought further time to file reply, which was objected to by learned counsel for the applicant, who insisted that right to file reply of the respondents be forfeited and this case be heard. Counsel for the respondents agreed to argue this case and submitted a copy of written brief of the case, which is taken on record. Accordingly, this Court heard learned counsel for the parties.

2. In this OA, the applicant is seeking the following reliefs:-

"a) To direct the Respondent to, at the very least, waive or grant the marks from the questions requiring visual interpretation of the data in the entrance examination, taking into account the unfair challenge the Applicant has undergone, which will effectively make his cross the cut off for the interview process, and thereby call him for an interview.

b) To direct the Respondent to conduct a re-examination especially for the Applicant, while simultaneously keeping a seat vacant for him in the event that he qualifies;

c) To pass any other order that the Hon'ble Tribunal may deem fit and just in the

interest of the empowerment of all persons with disabilities."

3. The applicant earlier filed Special Civil Application No.10073/2017 before the Hon'ble High Court of Gujarat at Ahmedabad and the said petition was disposed of by the said High Court vide Order dated 6.9.2017 with observation that petitioner is relegated to approach the Court having its jurisdiction in Delhi only.

4. Brief facts of the case are that the applicant is visually impaired from birth and qualifies as a 'Person with Disability', as defined under Section 2(s) of the Rights of Persons with Disabilities Act, 2016.

4.1 The respondent no.1 issued an advertisement in 2016 for recruitment of Principal and other teaching posts in Kendriya Vidyalaya Sangathan (KVS). In response to the same, the applicant submitted his application for the post of Trained Graduate Teacher (TGT) and after scrutiny of the applications, the concerned department, i.e., Respondent No.3 (CBSE) issued Admit Card to the applicant for written examination, which was held on 8.1.2017. The applicant duly appeared in the written examination on 8.1.2017. The applicant alleged that he duly requested for a scribe.

4.2 On 13.4.2017 the respondents published the original answer key on their website and on 28.4.2017, the respondents declared the result of the written examination on their website and declaring that interviews were to be held on 22.5.2017. According to the applicant, he secured 86 marks and the cut off fixed for interview for the post of TGT (English) for PH category is 87 marks.

5. Learned counsel for the applicant submitted that respondents have not followed notification of the Govt. of India dated 26.2.2013, which provides that authorities have to make alternative arrangements for questions related to diagram. If alternative arrangements are made, the applicant would have scored more marks and would have been eligible to be called for interview.

6. Counsel for the respondents by referring the brief facts of the case, as produced today during the course of hearing, submitted that applicant had obtained 77 marks in the written examination and admittedly the cut off marks was fixed by KVS for the said post was 87 marks for PH category and as such the applicant's contention that he was short by one mark for qualifying for the interview is not correct. He further submitted that KVS has given provision of scribe for physically challenged candidates and the scribe is free to describe the diagram to the candidates through Braille and the scribe is permitted to give visual description of the diagram. He further submitted that a scribe is free to describe the diagrams in the question to the candidates and even there was no restriction with regard to educational qualification or age etc. for the scribe. Counsel for the respondents further submitted that compensatory time was also allowed for all candidates with disability of 40% or more and the same was 20 minutes per hour of examination. He categorically submitted that the candidates may also be allowed to take more than one scribe/reader for writing different papers, especially for languages.

6.1 Counsel for the respondents further submitted that 244 differently abled candidates had applied for the post of TGT (English) from all India and twelve differently abled candidates had been shortlisted for interview for the post of TGT (English), out of which 02 were visually handicapped, 01 was Hearing Handicapped and 09 were Orthopedically Handicapped. No other differently abled candidate has intimated such problem as submitted by the applicant.

7. Having regard to the stand of the respondents in this matter, it is clear that applicant was provided scribe in the said examination to assist him in giving the examination and the fact that cut off was 87 marks and applicant obtained 77 marks in the said written examination and as such the respondents have rightly not included his name in the list of candidates, who were called for interview.

8. The contention of the applicant that he was short of one mark to come within the cut off to appear in the interview for the said post is not correct as evident from the contention of the respondents that he scored only 77 marks. Contention of the applicant that he had scored 86 marks as per his own calculation cannot be accepted without any cogent evidence.

9. Another contention of the applicant is that 6 questions which he answered incorrectly were requiring visual cues, which put him at a clear and obvious disadvantage. It is the contention of the applicant that had he been provided with alternative set of questions, he would have qualified for the interview stage in all reasonable certainty. On the other hand learned counsel for the respondents submitted that the applicant was not only a candidate in the said examination but 243 other similar candidates of his category had also appeared in the said written examination and since the respondents have categorically stated that no other candidate had intimated such problem as submitted by the applicant. As such this contention of the applicant is also not sustainable, being an afterthought.

10. It is further relevant to mention that there is no evidence on record that applicant had at any time prior to declaration of cut off marks for the post in question had made any such request to the respondents or even at the time when the said examination was held. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome, as held by the Supreme Court in catena of judgments, especially in the case of Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521, Apex Court held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non selection; and also in Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493, the Apex Court held that:

"Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the

interview and declaration of result. However, the appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted."

The aforesaid principle has been reiterated in the case of *Madras Institute of Development Studies v. K. Sivasubramaniyan*, (2016) 1 SCC 454.

11. We also found that in clause (d) of para 3 (Mode of Selection) of the advertisement of the post in question, it is specifically provided that "candidates with disability of 40% or more, if they need Scribe, will have to bring their own scribe to assist them in the examination. There is no restriction with regard to educational qualification or age etc. for the scribe". As such the applicant was free to bring his own scribe, which the applicant has not chosen to do. Now after having failed to obtain the cut off marks for the post in question, the applicant cannot be allowed to take the pleas, as raised in this OA.

12. In the above facts and circumstances of the case and for the reasons stated above, the present OA being devoid of merit is dismissed accordingly. There shall be no order as to costs.