
(2014) 12 DEL CK 0235
In the Delhi High Court
Case No : Writ Petition (Civil) 8944/2014

Ramesh Choudhary

APPELLANT

Vs

Union Public Service Commission

RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 12 DEL CK 0235

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : S. Janani, Deepak Goel and Sunando Raha, Advocate for the Appellant; Naresh Kaushik, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—Issue notice. Mr. Naresh Kaushik, Advocate accepts notice. With consent of counsel, the matter was heard finally.

2. The petitioner challenges an order of the Central Administrative Tribunal (hereafter referred to as "CAT") dated 5.11.2014 in OA 4259/2013. The Original Application preferred by the present petitioner seeking a relief that the order debarring him from participating in Civil Services Examination for ten years issued by the UPSC, and cancelling his candidature for the Engineering Services Examination 2012, be set aside, was rejected.

3. The brief facts are that the petitioner is an engineering graduate. Sometime in the year 2011, he had applied for the Engineering Services Examination claiming to be a physically challenged (disabled) candidate. The candidature was cancelled since his disability percentage was less than 40%. The final order to this effect was passed on 2.2.2012. In these circumstances, he once again applied for the Engineering Services Examination 2012. In part-I of the application to the query "as to whether he was physically challenged", his reply was "Yes". After qualifying the written examination, he was asked to fill up another form for participating in the further process, i.e., interview etc. On this occasion, in reply to the query put to him in the relevant form, i.e., "indicate whether you are

physically challenged candidate" the petitioner answered in the negative "No". On 24.7.2014, the UPSC issued a show cause asking him to state why action towards debarring him and cancelling his candidature ought not to be taken. This was resisted by the petitioner, who explained that since he was physically disabled, the initial form furnished by him merely described the condition, but later when he was asked to fill the detailed form for further process in interview etc., he clearly indicated that he was not physically challenged and would not claim any reservation under The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (hereafter "the Act"). On 23.10.2013, the UPSC determined that the petitioner had violated Rule 11 (v) of the Engineering Services Examination Rules, 2014 and proceeded to debar him for a period of ten years w.e.f. 11.09.2013 for all examination and selections to be conducted by the UPSC. His candidature too for Engineering Services Examination, 2012 stood cancelled. The said Rule, i.e. 11 (v) insofar as it is relevant, reads as follows: -

11. A Candidate who is or has been declared by the Commission to be guilty of: -

XXX

(v) making statements which are incorrect or false or suppressing material information: or

XXX

4. The petitioner contended before the CAT that the UPSC's actions were arbitrary and that he had not furnished any deliberate, misleading, incorrect or false information, nor had he suppressed any material information. It was also contended, importantly, that he did not claim or derive any benefit from such allegedly false statement. The UPSC defended its order, contending that in the first instance when the application form was filed on 20.3.2012, the petitioner was aware that he could not be treated as a disabled candidate since he was not disabled to the extent of 40% and, therefore, it should have appropriately reflected in his application.

5. The CAT rejected the petitioner's application after considering the submissions. In the course of the impugned order, it observed as follows: -

16. Having observed the above inconsistencies in the contentions raised by the applicant and having further observed that despite having been informed by the UPSC itself on 02.02.2012 (Annexure A-2) that since he had indicated his disability percentage as 30% a he could not be considered in PH category, the applicant deliberately mentioned in the online application form of being physically challenged under the "Ortho" category. He thus furnished wrong information and this must obviously have been done by him to get employment under that category. We have also noticed that the respondents have exercised powers as laid down under the Engineering Services Examination Rules, 2012 and that proper opportunity to defend himself was provided to the applicant by way of

issue of show cause notice dated 24.07.2014 (Annexure A-5). The respondent UPSC after having considered the applicant's reply to the show cause notice in which the applicant had committed his mistake, have passed the impugned order. A consistent policy of debarment of ten years has been followed by the UPSC, as has been observed by the Hon'ble Delhi High Court in the matter of Subhra Ranjan Mishra's case (Supra). The period of debarment of ten years, therefore, cannot be challenged as inconsistent or excessive.

6. The petitioner's counsel submits that there is nothing on the record to indicate that a deliberate or false statement was made or that any vital information was suppressed at the initial stage. Counsel reiterated that all that the petitioner did was to reflect his actual status that he was physically challenged. It is emphasized that the petitioner is in fact orthopedically challenged to the extent of 30%. That he cannot be given the benefit of reservation under the Act is a matter of detail - which was never elicited from him in the initial form filled. In these circumstances, when he was asked to indicate in the detailed questionnaire at the later stage of recruitment, he clearly disclosed the correct position which meant that he did not claim the benefit of reservation. In these circumstances, he could not be treated differently from another candidate who did not and could not claim such reservation. Learned counsel also relied upon the application form for Engineering Services Examination, 2014 devised by the UPSC recently, which has factored in the reservation percentage in order to elicit accurate information. The relevant column of the said application form is as follows: -

Physically Challenged : Yes

If Yes Select the Category : Ortho [Candidates (with less than 40% disability) will be considered as NON-PH and required to pay fee if not exempted under the rules.)

Select Percent : Less than 40% [An extra time of 20 minutes per hour shall be permitted for the 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) in the conventional type papers. However no scribe shall be permitted to such candidates]

7. Learned counsel for the UPSC contended that the petitioner was made aware that he could not claim reservation as a disabled candidate. The last communication pertaining to the Engineering Service Examination of 2011 was given to him on 2.2.2012. On 20.03.2001, he nevertheless stated that he was a physically challenged candidate in the initial form. This clearly pointed out to his intention to receive undue benefit. In these circumstances, counsel submitted that the UPSC's decision to debar him for ten years cannot be faulted. Counsel emphasized that exercising its discretionary jurisdiction under Article 226 of the Constitution of India, this Court ought not to interfere with this finding of the CAT which had considered all material facts and held that the administrative order

was valid and justified.

8. The above discussion would disclose that the premise on which the UPSC proceeded against the petitioner in the Engineering Services Examination, 2012 was that even though his candidature as a disabled candidate was not accepted in the previous year, he chose to fill the form as a physically disabled candidate. He, nevertheless, described himself as a physically challenged person. At the same time, there is no dispute that the petitioner is, in fact, orthopedically disabled - but to the extent of 30%. Now, this aspect is important because the 2012 form nowhere nuances or distinguishes the extent of disability, so as to properly guide the candidate to fill the correct answer, or enable the UPSC to judge whether reservation is claimed or not. Apparently, that factor is examined at the later stage, once the candidate - who otherwise qualifies in the written test, is required to undergo the further recruitment process, such, as interview and later medical examination. The petitioner, undoubtedly, disclosed in the detailed questionnaire in reply to query at Sl.no.19 (i) of the subsequently filled form that he was not physically disabled so as to claim reservation. This, in the opinion of the Court, ought to have weighed with the CAT in deciding the UPSC's decision to debar the petitioner - which is facially harsh. There is no gainsaying the fact that harsher the penalty or more oppressive, the adverse consequence upon the individual, the more circumspect and careful should be the level of scrutiny of the Courts and Tribunals, who have to be vigilant both that the procedure followed, as well as to the substantive nature of the merits of the case. In the present case, it was not pointed out to the CAT, nor indeed before this Court - as to how the petitioner could have benefitted by claiming to be a disabled candidate when he applied at the threshold stage. He, undoubtedly, was entitled to participate as a general category candidate and be considered, subject to his OBC status, on his merits. Apparently, he did sufficiently well in that regard and then was required to disclose whether he was physically challenged as to be accommodated in the 3% disability reservation under the Act. At that stage, if the petitioner had indeed made a wilfully false misrepresentation, the UPSC would have been undeniably justified in cancelling his candidature. He did not do so. In the circumstances, the decision of the UPSC to cancel his candidature, and impose ten year bar pursuant to Rule 11 (v) which is ipso facto discretionary, acts in an extremely unreasonable and arbitrary manner.

9. The petitioner, in the opinion of this Court, is correct in his submission that UPSC never visualized candidates claiming the benefit of disabled persons quota under the ACT at the initial threshold; the organisation seems to have become sensitive and woken up to this only recently as is evident from the changed form of Engineering Services Examination, 2014 where the distinction has been made between physically challenged persons entitled to claim reservation as being disabled to the extent of 40% or more, and those who are physically challenged but cannot claim such reservation. Such detailed nuancing was not done earlier and the petitioner cannot be at the receiving end, as did happen unfortunately, in the present case.

10. For the forgoing reasons, this Court is of the opinion that the impugned order of the CAT cannot be sustained; it is accordingly set aside. For the same reasons, the impugned order of the UPSC cancelling the petitioner's candidature and debarring him for a period of ten years w.e.f. 11.09.2013 is hereby set aside. UPSC is hereby directed to declare the results of the petitioner in the Engineering Services Examination, 2012 as well as the Engineering Services Examination, 2014 which he had been permitted to appear in the meanwhile during the pendency of the proceedings before the CAT forthwith and in any case within next two days. It shall also take necessary consequential steps to process the further formalities with the same expedition.

11. The writ petition is allowed in the above terms but without any order as to costs. Dasti under signatures of Court Master.