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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 08.02.2019

+ **W.P.(C) 1308/2019**

UNION OF INDIA

..... Petitioner

Through: Mr. Thakur Prasad Singh, Sr. Central
Govt. Counsel for UOI.

versus

SH. RAVINDRA U GARKAL

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

CM APPL. 5914-5915/2019

Exemptions allowed, subject to all just exceptions.

W.P.(C) 1308/2019 & CM APPL. 5913/2019 (for stay)

1. The petitioner-UOI assails the order dated 25.07.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal') in OA No.4124/2013. It also assails the order passed in Review Application No.8/2018 on 16.01.2018. The Tribunal has allowed the Original

Application preferred by the respondent, and dismissed the Review Application preferred by the petitioner.

2. The respondent participated in the Civil Services Examination (CSE) 2007. He came out meritorious and was allocated IRS (C&CE) vide letter dated 18.12.2008. The respondent belongs to the physically handicapped category—suffering from hearing impairment. The petitioner, admittedly, was not implementing the provisions of “**Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**” (‘the Act’), which prescribes horizontal reservation to the extent of 3% of the public posts in favour of persons suffering from disabilities. 1% posts were required to be reserved for persons with ‘hearing impairment’. Admittedly, the respondent was allocated to IRS (C&CE) on the basis of his rank in CSE 2007. That allocation was not made on the basis of grant of 1% reservation for the hearing impairment category candidates. Consequently, he preferred the above mentioned Original Application. We may take note of some of the relevant decisions which have also been noticed by the Tribunal.

3. In the case of **Ravi Prakash Gupta**, the Applicant assailed the inaction on the part of the Government in implementing the provisions of the Act. The Tribunal dismissed his OA No. 1397/2007 on 07.04.2008. He carried the same to this Court in W.P.(C) 5429/2008 titled **Ravi Prakash Gupta vs. UPSC & Ors.**, decided on 25.02.2009. The Court allowed the writ petition and enforced the provisions of the Act which grants reservation to persons with disabilities. The Court, *inter alia*, observed:

“Insofar as IAS is concerned, 785 vacancies were filled from 1996 to 2006. Thus during this period eight number of vacancies were to be reserved for visually handicapped persons. As against eight, only one person belonging to this category was given appointment in the year 2005, leaving seven posts which could be filled in the year 2006. However, in that year only one post from this category has been filled.

The applicant was at serial number five and was a successful candidate. Thus when sufficient numbers of successful candidates were available against the said reserved posts, we fail to understand as to why the requisition for filling up only one post was sent by the DOP&T to the UPSC.”

The Court took note of DoP&T's O.M. No. 36035/3/2004-Estt. (Res) dated 29.12.2005, as per which the identification of posts was done. This O.M., the Court observed stated in no uncertain terms that such reservation would start from the year 1996. The Division Bench observed in respect of the said O.M. :

“Following position follows from the reading of this OM :

- (a) Reservation for persons with disabilities were to be earmarked from the year 1996;*
- (b) If the vacancies so earmarked had not been filled up by reservation in this previous year, they had to be treated as having been carried forward to the first recruitment year occurring after the issue of the said OM and were to be filled as such;*
- (c) Only if it was not possible to fill up such reserved vacancies during the following recruitment years and within a further period of two years thereafter, they were to be treated as lapsed.*

(d) The mandate of even this OM was to calculate the backlog from the year 1996 and fill up the same in the following year. The OM is dated 26.04.2006 and therefore, the vacancies which were to be filled up in the year 2007 were to be done in the aforesaid manner.”

(emphasis supplied)

The relief granted by the Division Bench was the following :

“In view of the aforesaid, this writ petition is allowed. The order dated 07.04.2008 passed by the Central Administrative Tribunal is hereby set aside. Consequently, OA 1397/2007 preferred by the petitioner before the Tribunal stands allowed. Since clear vacancy is available to which the petitioner can be accommodated on the basis of his position in the merit list, Mandamus is issued to the respondent to offer him appointment to the said post by issuing appropriate appointment letter within six weeks from today.

In case the vacancies are filled up by diverting the same to the other categories, It will be for the respondents to carry out necessary exercise for restoring these vacancies in the category of visually handicapped persons and offer the petitioner appointment as such. The petitioner shall also be given his seniority along with his batch mates who took the examinations in the year 2006 and his pay shall be fixed notionally on that basis. However, the actual pay shall be given to him from the date he joins. The petitioner shall be entitled to costs of Rs.25000/- and respondent No.1 shall pay the costs to the petitioner.”

4. The matter was carried further to the Supreme Court vide SLP (C) No.14889 of 2009, which was dismissed on 07.07.2010. The Supreme Court, *inter alia*, observed as follows :

“17. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, does not arise.”

(emphasis supplied)

5. Original Application No.1893/2009 alongwith several others, preferred before the Tribunal in the case of **N. Sharavan Kumar & others. vs. Union Public Service Commission & others** to seek the benefit of reservation for persons with disabilities under Section 33 of the Act were disposed off by the Tribunal on 08.10.2010. All, but one, were allowed. Only OA No. 1545/2009 was dismissed on the ground of limitation. The Tribunal summed up its conclusions as follows :

“10. To sum up on the basis of above discussion:

(a) the Disabilities Act provides for reservation for physically handicapped to the extent of three per cent, one per cent each for visually handicapped, hearing impaired and persons with loco motor disability and cerebral palsy;

(b) the reservation would be applicable from the year 1996, regardless of identification under Section 32 of the Disabilities Act;

(c) the candidates selected on their own merit would not count among the reserved category and would be counted as unreserved category as per the DOP&T's OM of 29.12.2005;

(d) vacancies not filled in a particular year would be carried forward and would lapse if not filled up for the next two years;

(e) reservation was not made under Section 33 of the Disabilities Act and, therefore, the question of carry forward and lapsing of posts does not arise;

(f) those selected on their own merit would not be counted among the reserved category candidates;

(g) the persons belonging to the non-disabled category who have secured lesser marks than the persons belonging to the disabled category cannot be recommended for appointment disregarding the claim of the candidates of disabled category on the basis of the posts available for them; and

(h) advantage of reservation has to be given to the physically handicapped candidates after working out the number of vacancies available on the basis of total number of posts recommended and the backlog vacancies.

11. The OAs numbers (mentioned in paragraph 3(i) and 3(ii)) are allowed. **The First Respondent is directed to carry out an exercise to work out the backlog vacancies in different services and the vacancies of the year 2008 to consider allocation of the Applicants to suitable services as per their choices.** Since this would entail consultation with cadre controlling authorities, we are giving six months time to complete this exercise. **The allocation of services to the**

Applicants would be from the date of allocation of services to the candidates of CSE 2008. The allocation would be on notional basis and the Applicants would not be entitled to back wages, but it would count towards seniority and calculation of increments. If no service is decided to be allocated to any one of the Applicants, detailed, cogent and logical reasons would be recorded in a speaking order, which the Applicants would be at liberty to challenge in a fresh proceeding before the appropriate forum. The Applicants in OAs numbers 2717 and 2369 of 2009 would be considered for allocation to IAS within eight weeks from the receipt of this order.

12. We cannot give any relief to the candidate in OA number 1545 of 2009, who appeared in the CSE 2005. The reasons for condoning delay that the Applicant came to know about the judgement of the High Court in Ravi Prakash Gupta (supra) only in April 2009, cannot be accepted. The limitation before the Tribunal is counted as per the provision of Section 21 of the Administrative Tribunals Act, 2005, which reads thus:.....”

(emphasis supplied)

6. On account of the non-compliance of aforesaid order dated 08.10.2010, CP No.74/2013 was preferred. The respondent filed its reply stating that the persons suffering from blindness had been adjusted against vacancies reserved for them, even though they were successful on the basis of general merit. It was also disclosed that consequent upon the directions issued by the Tribunal in various OAs, the UPSC had carried out the exercise for working out the backlog vide letter dated 30.08.2011.

7. Yet another Original Application was preferred before the Tribunal by Pankaj Kumar Srivastava vide O.A. No. 3493/2011. The said Original

Application, along with three others was disposed of on 30.05.2012. The Tribunal directed the UPSC to undertake the exercise-in order to determine as to how many candidates, on the basis of their ranking, deserve to be selected on their own merits in CSE 2008 and other examinations. The Tribunal further directed that they should be adjusted against unreserved vacancies on their own merit on the basis of Office Memorandum dated 29.12.2005 and, thereafter, the rest of the candidates belonging to the visually impaired category must be adjusted against the reserved category vacancy. The said decision was assailed before this Court vide W.P.(C) 4902/2013, ***Union of India v. Pankaj Kumar Srivastava & Anr.*** The said writ petition was dismissed by the Division Bench on 11.10.2013. The issue raised by the Union of India in the said writ petition was that the principle of general merit evolved by judicial pronouncements and incorporated in the OM dated 29.12.2005, was incapable of application in respect of candidates belonging to the physically handicapped category, as candidates belonging to the physically handicapped category are not subjected to the same medical standards as are made applicable to candidates belonging to the General Category. It was the case of the Union of India that candidates with physical handicap are granted relaxation of time in the examination process and, thus, they could not be adjusted against the General Category vacancies on the basis of their merit. While dismissing the writ petition, this Court observed as follows:

“15. The short point for consideration which therefore arises in the present writ petition pertains to the entitlement of the applicants before the Tribunal, for being considered

against the vacancies, which become available on application of the principle of general merit. There cannot be two opinions about the applicability of the said principle in the light of the Office Memorandum dated December 29, 2005 and April 26, 2006 issued by the petitioner itself. The same is the situation reflected in the mandate under Rule 17 of the CSE Rules 2008 noted above. Thus it is not possible for the petitioner to contend before us that there is an error in the order of the Tribunal in issuing directions to consider the entitlement of the applicants on the basis of said principle. We affirm the view taken by the Tribunal with regard to its observation that grant of the facility of scribe and extra time of 30 minutes in the examination to the visually impaired candidates does not amount to relaxation of standards in their favour.

16. The non-fulfilment of the medical standard prescribed for the general candidates by the physically handicapped candidates as per the CSE Rules has not been debated before the Tribunal and there is no finding in respect thereof. However, as pointed out by Sh.Naresh Kaushik, learned counsel for the UPSC, the petitioner i.e. the Union of India has not issued the consequential amendments contemplated by Rule 17 for reasons best known. (Shear lethargy of the executive). The omission on the part of the executive i.e. DOPT which is the Nodal Department to issue Office Memorandum/Executive Instructions on matters pertaining to the Central Service has created a situation wherein the benefit is sought to be given on the one hand through the issuance of Office Memorandum(s) dated December 29, 2005 and April 26, 2006, and stands taken away by the other hand as a result of the inaction to issue the consequential amendment contemplated by Rule 17 of the CSE Rules, 2008.

17. We are constrained to observe that the petitioner has been remiss in this regard and has itself caused a situation, whereby the entitlements which ought to have been available

to the differently abled persons as early as on February 07, 1996 (the date of the commencement of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) are being denied to them till today. The situation points out to a grim scenario which is the creation of the petitioner itself. It is pointed out at the cost of repetition that the realization of the rights in favour of the differently abled persons has to pass through similar obstacles which had to be removed by the Courts of law through the judgment in Ravi Prakash Gupta's case (supra). Be that as it may, the benefit of omission on the part of the petitioner cannot be allowed to go in the favour of the petitioner for the purpose of assailing the impugned order of the Tribunal. Instead, the petitioner ought to have taken necessary steps to issue consequential amendments to fully operationalise the Rules by incorporating the principle of general merit for the purpose of making available the advantage to the differently abled persons resulting from their success in the exam on the basis of general merit. In the absence of an operational provision as contemplated by Rule 17, it is not feasible for the UPSC to make recommendations on the basis of the said principle, since the UPSC has to conduct the examination and make its recommendations on the basis of rules notified by the petitioner itself. However, the petitioner would be obliged to devise a mechanism to give effect to the law. We reiterate. The petitioner cannot raise any grievance which emanates as a result of inaction by the petitioner itself.

18. Under the circumstances, we do not find any error in the impugned order passed by the Tribunal, and we affirm the same. But, in the light of the fact that the consequential amendment in Rule 17 has not been issued by the petitioner we direct that the needful be done by the petitioner expeditiously and in any event not later than within four months from the date of this decision. We also direct the petitioner to apply its mind with regard to the fulfilment of

the medical standards by the differently abled persons and issue appropriate guidelines in this regard, since Sh.S.K.Rungta, learned senior counsel appearing for the party impleaded had pointed out that the physical standards to be fulfilled by the differently abled persons have to be laid down separately and the medical standard for the general candidates cannot be made applicable to them.

19. Since the matter pertains to a very important issue concerning differently abled persons who have struggled to avail equal opportunities in the matter of employment, we are constrained to direct the Secretary DOPT to personally oversee the exercise with required seriousness and urgency to ensure that the persons of the differently abled category are not unduly deprived the benefits which have been made available to them under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

20. **On the subject of whether the applicants before the Tribunal who were allowed a scribe and were provided 30 minutes extra time to write the paper were granted the benefit of a relaxed standard, we find that the CSE Rules provide as to what would constitute the relaxed standards and they are:- (i) Additional number of attempts allowed to certain reserved categories including persons suffering with disabilities in terms of Rule 4 of Civil Service Examination Rules; (ii) Relaxation in upper age limit in terms of Rule 6 of Civil Service Examination Rules; and (iii) Relaxation of minimum qualifying marks for persons with disabilities as prescribed in Rules 15 & 16 for persons with disabilities. Thus, the Rule itself envisages that allowing a scribe and providing extra time for writing the answers would not be amounting to availing a relaxed standard. This being so, the very foundation of the challenge has no peg to anchor itself on to.”**

(emphasis supplied)

8. In the Original Application preferred by the respondent-to seek implementation of the provisions of the aforesaid Act, and for re-allocation of his service on the basis of 1% reservation in favour of the persons with hearing impairment, the petitioner filed its reply, which is found at page 116 of the record. The Tribunal while allowing the Original Application has taken note of the averments made in the said reply filed by the petitioner. In para 3.7.1 of the said reply, the petitioner has, inter alia, stated that 12 backlog vacancies had been found to exist for the hearing impaired category of candidates in IAS. The said paragraph reads as follows:

*“3.7.1 It is submitted that as per roster, since in the series of 100 vacancies, 1st vacancy is reserved for VI category, 34th vacancy is reserved for HI category and 67th vacancy is reserved for LDCP category. Accordingly, it was circulated that if there had been 3% reservation to PH candidates further divided as 1% reservation for the VI persons, 1% reservation for the HI persons and 1% reservation for the LDCP persons, from Civil services Examination 1996 to Civil services Examination 2009 (as in above para), the 12 candidates would have been recommended in VI, 12 in HI and **11 in LDCP category.**”*

9. The petitioner also relied upon the order of the UPSC dated 8.10.2010 by which it recommended to the DoP&T the names of the candidates for being considered for service allocation against the backlog of vacancies intimated to UPSC by different Cadre Controlling Authorities [CCAs]. The details of the backlog vacancies in LDCP category, as communicated by the UPSC to the DoP&T, *inter alia*, included 8 vacancies for the hearing impaired category candidates in the IAS.

10. The names of the candidates recommended by the UPSC against the backlog vacancies were disclosed. Pertinently, the PH category candidates from the CSE 2007-to which the respondent belonged, were not named in the said recommendation because the dossiers of candidates of CSE-2007 have been destroyed as per Record Retention Scheme as there were no pending Court case. It implies that records to CSE-2007 would not be available, and no recommendation from UPSC would be available in this regard. All the names recommended were from CSE 2008 and 2009.

The Petitioner stated in para 3.9 as follows:

“3.9 It is submitted that against the backlog of vacancy, the service allocation was made in accordance with the civil services examination Rules and principles mentioned in para 12.3 above. The details of the allocation in case of VI candidates’ (Table;-1), HI Candidates (Table-2) and LDCP candidates (Table-3) are under”:-

Table-2 is relevant for our purpose, and the same reads as follows:

Table-2:HI category

S.NO.	Rank	Name	Service allocated earlier	Proposed service	Remark
CSE-2006					
1.	471	NIRANJAN KUMAR	IAS	IAS	No change is proposed as the candidate has been allocated service of 1 st preference

					<i>along with the CSE candidates</i>
2.	472	POOJA SWAROOP	IRS(IT)	IAS	<i>If he get IAS(01), he would release one vacancy in IRS(IT)</i>
3.	473	SURESH CHAND MUKERIA	IRS(C&CE)	IAS	<i>If he get IAS(02), he would release one vacancy in IRS(C&CE)</i>
4.	474	ANUBHAV SINGH	AFHQ	IAS	<i>If he get IAS(03), he would release one vacancy in AFHQ</i>
CSE-2007					
1.	628	ANIL DHINGRA	IAS	IAS	<i>No change is proposed as the candidate had been allocated service of 1st preference along with the other CSE candidates</i>
2.	629	*ANUBHAV SINGH	IRS(IT)	-----	<i>Already proposed to be allocated</i>

					IAS on the basis of CSE-2006. He would release one vacancy in IRS(IT)
3.	630	K. MANORANJAN NAYAK	ICAS	IRS(IT)	Since he is fully deaf
4.	631	BHOPAL SINGH	IRS(IT)	IAS	If he get IAS (04), he would release one vacancy in IRS(IT)
5.	632	RAHUL KAUSHIK	IPoS	IRS(C&CE)	Since he is fully deaf
6.	633	N S SHASHIDHARA	IRS(IT)	IAS	If he get IAS (05), he would release one vacancy in IRS(IT)
7.	634	*SURESH CHAND MUKERIA	No allocation	No allocation	Already proposed to be allocated IAS on the basis of CSE-2006
8.	635	SUNDER LAL	IRS(C&CE)	IAS	If he get IAS (06), he would release one vacancy in

					<i>IRS(IT)</i>
9.	636	RAVINDRA U GARKAL	IRS(C&CE)	IAS	<i>If he get IAS (07), he would release one vacancy in IRS(IT)</i>
10.	637	SUBIR KUMAR CHATTERJEE	IRAS (4)	IRS(IT) (1)	<i>If he get IRS (IT) released by rank-629 of CSE-2007, he would release one vacancy in IRAS. He preferred IAS at 6th Number</i>
11.	638	ANAND KUMAR ROY	IRPS	IAS	<i>If he get IAS (08), he would release one vacancy in IRS(IT).</i>

(emphasis supplied)

11. Thus, the respondent's name figures at Sl. No. 9 of the HI category candidate recommended by the UPSC and he was also shown to have been allocated to the IAS – in respect whereof there were 12 backlog vacancies identified. The Tribunal has allowed the Original Application on the basis that the petitioner, in its reply, had not explained as to whether the backlog

vacancies worked out by the UPSC in its letter dated 30.08.2011, inter alia, for the candidates with hearing impediment, had been utilized/ filled, or not.

12. The submission of learned counsel for the petitioner is that the decision of this Court in ***Union of India vs. Pankaj Kumar Srivastava***, W.P.(C) 4902/2013 dated 11.10.2013 is pending consideration before the Supreme Court. He submits that leave has been granted by the Supreme Court and the appeal is registered as Civil Appeal No.3303/2015.

13. We have considered the submissions of learned counsel for the petitioner and perused the impugned order, as well as several other orders and decisions referred to in the impugned order and those relied upon by the petitioner. We have also considered the stand taken by the petitioner before the Tribunal in the present Original Application. Admittedly, there is no stay granted by the Supreme Court in the said Civil Appeal arising out of the decision in ***Pankaj Kumar Srivastav*** (supra). Thus, the judgment of this Court is bound to be implemented, and pendency of the Civil Appeal cannot be a ground not to implement the said decision.

14. Learned counsel for the petitioner is not able to dispute the fact that the present case is squarely covered by the aforesaid decision. Moreover, we find that the Tribunal has allowed the Original Application on the basis of the affidavit filed by the petitioner through Sh. S.S. Shukla, Under Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, which itself demonstrates that the backlog vacancies in the IAS, in respect of the candidates suffering from

hearing impairment, were worked out as 12, and the petitioner's name figured at serial no.9 for the CSE-2007. Therefore, we find no justification for the petitioner denying allocation of IAS to the respondent.

15. The submission of learned counsel for the petitioner is that the respondent approached the Tribunal belatedly, inasmuch as, he approached the Tribunal only in the year 2013. The allocation of service of the respondent was made on 18.12.2008. Firstly, we may observe that the vacancies for the physically handicapped category candidates were not worked out and no reservation was granted till the judgment of this Court was rendered in **Ravi Prakash Gupta** (Supra). Thus, there was no question of delay or lapsing of the said vacancies. The petitioner has not claimed, and has not demonstrated that the vacancies for the hearing impaired candidates had been filled by the time the respondent approached the Tribunal. The respondent would not have been aware whether the petitioner had implemented the reservation granted to the physically handicapped category. The earlier orders passed by this Court, as well as by the Supreme Court clearly show that the rights of candidates were sought to be protected several years after they had participated in the Civil Services Examination and had come out successful, even though they had been denied allocation of the service to which they were entitled, by grant of reservation. It is precisely for this reason that backlog vacancies were directed to be worked out and made available to the candidates in terms of the judgment in **Ravi Prakash Gupta** (supra).

16. We therefore find no merit in the petition and the same is accordingly dismissed along with the pending application.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

FEBRUARY 08, 2019

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