

\$~2

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

%

Date of decision: 5th March, 2021

+

W.P.(C) 8843/2020

KHITESH GUPTA

..... Petitioner

Through: Mr. Rajshekhar Rao and Mr.
Abhimanyu Garg, Advocates.

Versus

DEPARTMENT OF PERSONNEL & TRAINING & ORS.

..... Respondents

Through: Mr. Shashank Bajpai, Sr. Panel
Counsel with Mr. Abhishek Khanna
(G.P.), Mrs. Shakun Sudha Shukla
and Mr. Dhananjay Tewari,
Advocate for R-1.
Ms. Vibha Mahajan, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

RAJIV SAHAI ENDLAW, J.

[VIA VIDEO CONFERENCING]

C.M. No. 28412/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.
2. The application is disposed of.

W.P.(C) 8843/2020 & C.M. No. 28413/2020 (permission to file lengthy synopsis)

3. The petitioner, a candidate in the Central Civil Services Examination, 2013 with a rank of 184, which according to the petitioner made him eligible for consideration for appointment in the Indian Police Service (IPS), was denied the same for the reason of, during the medical examination, having been found to be suffering 'Moderate-Severe Ptosis of the right eye', making him fit only for non-technical services. Resultantly, the petitioner joined the Indian Revenue Service (IRS). The petitioner took the Central Civil Services Examination again, in the year 2014, and though secured a rank of 535 this time but in the medical examination was found fit. Realising that there was an error in the medical examination of the year 2013, the petitioner first filed a writ petition in this Court, seeking appointment in IPS on the basis of 2013 result and thereafter approached Central Administrative Tribunal (CAT), Principal Bench, which has vide order dated 27th September, 2019 dismissed the O.A. 2982/2016 preferred by the petitioner. Aggrieved therefrom, this petition has been filed.

4. The counsel for respondent No. 1 and the counsel for respondent No.2 appear on advance notice.

5. The counsel for the petitioner fairly states that pursuant to the hearing on an earlier date, he has examined the rules' position and is unable to cite any rule whereunder it is within the powers of the respondents to, on detecting the error in the medical examination during the previous year of recruitment, give a candidate the benefit of what has been denied in the previous year. He however appeals to the good conscience of this Court

and of the Government, to do justice to the petitioner by conferring to him what has been denied erroneously. It is stated that the petitioner, for the sake of fulfilling his aspiration of being an IPS Officer, is willing to sacrifice even his seniority.

6. In the absence of any rule empowering the respondents to do so, no mandamus directing the respondents, to even consider the case of the petitioner can be issued. The petitioner, in the previous year, accepted the medical report and did not even prefer the remedy of appeal available thereagainst and was satisfied with joining the IRS. The result of the 2013 examination thus attained finality and cannot now be reopened. Reopening the result can have the effect of opening a can of worms. Once, on the premise that the report of medical examination during recruitment of the year 2013, of the petitioner, relief is granted to the petitioner, it will be difficult for the court to refuse to consider the case of others who may also be aggrieved from the result of medical examination during recruitment of the year 2013. Finality achieved by a result of an examination / recruitment process cannot be so disturbed. We are afraid, for such reasons, it is not in the domain of the Courts also to grant the relief sought. If the petitioner had any grievance with respect to the medical examination during recruitment of 2013, he was required to challenge the same then and if had been successful, relief could have been granted; however not in the present facts where the petitioner accepted the result.

7. The counsel for the petitioner has also contended that a large number of posts in the IPS are lying vacant.

8. The aforesaid also cannot be a reason for granting the relief to the petitioner. An employer is entitled in law to fix a benchmark and to keep the posts vacant if does not find candidates suitable for the said posts. The decision, whether to fill up the vacant posts, either by lowering the benchmark or in any other manner, is a matter of policy and it is not for the courts to advice the employer in this regard. In ***Chandigarh Administration Vs. Usha Kheterapal*** AIR 2011SC 2956 it was reiterated that it is for the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment and Courts and Tribunals can neither prescribe the qualification nor entrench upon the power of the appointing authority so long as the qualification prescribed by the employer is reasonably relevant or has a rational nexus with the functions and duties attached to the post.

9. We may clarify that we have not gone into the question of, whether the report of the medical examination of the petitioner of the year 2013 can be said to be erroneous on the basis of report of medical examination of the year 2014. It is well nigh possible that the Medical Board, which subsequently examined the petitioner, overlooked that the petitioner was suffering from 'Moderate-Severe Ptosis of the right eye'. Ptosis of the eye is a condition of drooping of the upper eyelid due to paralysis or disease or as a congenital condition and is treatable with surgical resection of the muscle. It is thus also possible that the petitioner, in between the two medical examinations, underwent corrective surgery, though it is not the case of the respondents and the counsel for the petitioner denies. Moreover, a medical condition like Ptosis, particularly the severity thereof is a matter

of opinion, which in the field of medicine, like in the subject of law, can differ from practitioner to practitioner. Reference in this regard can be made to *Jonu Tiwari Vs. Union of India* MANU/DE/1524/2020, SLP(C) No.13492/2020 preferred whereagainst was dismissed on 17th December, 2020.

10. Though a number of judgments are cited in the pleadings but no reference thereto having been made during the arguments, need to deal with the same is not felt.

11. Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 05, 2021

‘A’