

**WPCT 61 of 2021**  
**Union of India & Ors.**  
**v.**  
**P. Jagadishwar Rao**

10.08.23  
Ct-11  
Sl-08  
(S.R.)

|                            |                          |
|----------------------------|--------------------------|
| Mr. Indrajeet Dasgupta     | ... for the petitioners. |
| Mr. Kedareswar Chakraborty |                          |
| Mr. Priyatosh Sanyal       |                          |
| Mr. Saptarshi Chakraborty  | ... for the respondent.  |

The present writ petition has been preferred challenging an order dated 22<sup>nd</sup> January, 2021 passed by the learned Tribunal in an original application being OA No.350/642/2015.

Mr. Dasgupta, learned advocate appearing for the petitioners/respondents in the original application submits that the learned Tribunal erred in law in arriving at a finding that many other candidates placed on the same footing as the applicant/respondent herein have been given a different treatment. In view of such finding, nothing is left to be reconsidered by the petitioner no. 5. The directions contained in the impugned order passed by the learned Tribunal are mutually contradictory and self-defeating and as such the impugned order is not sustainable in law.

He further argues that the learned Tribunal failed to evaluate the stand taken by the petitioners in their reply to the original application and though as per the records the respondent's claim does not deserve

consideration afresh, the petitioner no.5 has been unnecessarily directed to embark upon a fresh exercise.

*Per contra*, Mr. Chakraborty, learned advocate appearing for the applicant/respondent in this writ petition submits that the respondent applied for the post of Gangman, a Group-D category post in South Eastern Railways. He successfully completed the Endurance/Physical Fitness Test (in short, EPFT) on 1<sup>st</sup> November, 1999 and also emerged to be successful in the written test on 5<sup>th</sup> March, 2006. In the midst thereof, he suffered a road accident in the month of June, 2002 for which he was declared unfit in the medical examination of which result was declared on 22<sup>nd</sup> May, 2006. In similar facts and circumstances the respondents have sympathetically considered the claims of even visually impaired candidates to be accommodated by way of alternative appointment but a different yardstick has been applied in respect of the respondent and as such the petitioner no.5 was directed to consider the respondent's representation *de novo*. Such direction neither does prejudice the petitioners in any manner nor does suffer from any infirmity warranting interference of this Court.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

In the order impugned, the learned Tribunal observing *prima facie* that the respondent's perception of being at the receiving end of discriminatory treatment

may not be out of place, relegated the matter for consideration of his claim *de novo*. Such direction was issued in the backdrop of the facts that the respondent emerged to be successful in the Physical Endurance Test and the written test but could not succeed in the medical examination as he suffered a road accident.

In our opinion, the argument of Mr. Chakraborty that in view of the observations made in the impugned order nothing is left to be reconsidered by the respondent no.5 is misconceived. The learned Tribunal upon disclosing the reasons had exercised discretion in favour of the respondent and directed the petitioner no.5 to consider the representation of the respondent *de novo* in the light of the existing vacancies in Group-D wherein the orthopedic handicap of the respondent does not act as an impediment. The learned Tribunal rightly observed that while considering the representation the concerned authority would also ensure that the case of the respondent is dealt with in accordance with the same principles and approach as was adopted in case of other candidates, who have been accorded alternative appointment. Such directions, in our opinion, are neither unreasonable nor impulsive. The order impugned does not suffer from any patent error or any manifest injustice warranting interference of this Court.

The writ petition being WPCT 61 of 2021 is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of the order if applied for, be made over to the parties as expeditiously as possible.

**(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)**