

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 07, 2023

+ W.P.(C) 4638/2021

KARANTI GOYAL

..... Petitioner

Through: Mr. Pankaj Sinha, Adv.

versus

MINISTRY OF ENVIRONMENT FORESTS

CLIMATE CHANGE & ANR.

..... Respondents

Through: Mr. Avnish Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The sole petitioner, Karanti Goyal, filed this present petition challenging the order dated January 13, 2021 of the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application being O.A. 1078/2015, whereby, the Tribunal has dismissed the O. A, as being without merit.

2. The Original Application was filed by two applicants including the petitioner herein. The petitioner, a physically disabled candidate, had taken part in the Indian Forest Service Examination, 2014. He appeared in the Preliminary and Main Examination and was selected for Indian Forest Service (IFoS). The Recruitment Rules for IFoS, stipulate a walking test of 25 kilometers of distance to be covered in four hours by male candidates and 14 kilometers in four hours by

female candidates. The petitioner appeared for the walking test and was not able to cover the distance within the stipulated time. He was given another opportunity, as provided for under the Rules, but he was not successful and as such was not included in the list of selected candidates.

3. It was the case of the petitioner before the Tribunal that, wherever any requirement is stipulated with reference to time, the relevant rules provide for compensatory / extra time for candidates with physical disability, but in the case of the petitioner, such a facility was not extended. It was also the case of the petitioner that, the requirement stipulated by the respondents with regard to the walking test is contrary to the guidelines framed by the Ministry of Social Justice.

4. The case of the respondents was that the petitioner cannot be permitted to challenge the condition, once he had participated in the examination and taken subsequent steps thereof. It was also stated that, though the reservation is provided for in favor of physically disabled candidates, there is no relaxation on certain conditions that are required to be complied with; the walking test being one such condition.

5. The Tribunal while dismissing the Original Application, has in paragraph 7 and 8 stated as under:-

“7. The UPSC published a notification in the year 2014. Separate set of rules was published for selection to IFS. In the instructions to the candidates also, it was clearly mentioned that a candidate must successfully complete the walking test, covering the distance of 25 kilometres in 4 hours. For woman candidates, the distance is stipulated as 14 kilometres to be covered in the same

time. According to them, separate parameters are provided in favour of the disabled candidates. However, much would depend upon the nature of the requirement under the rules and the advisability or possibility of providing for relaxation. In its wisdom, the concerned Ministry did not provide for any relaxation in favour of physically disabled candidates, in the context of the walking test, even while some relaxation is provided for in favour of woman candidates. It is purely a policy: decision that was taken, on the basis of relevant inputs. The Tribunal cannot express its view on such policy matters.

8. Another aspect is that the applicants did not challenge the condition, before participating in the examination. Not only they participated in the examination, but also attempted the walking test, twice. It is fairly well settled that a candidate cannot take the chance of getting selected and then turn around and challenge the rules, if he is not selected. The selections took place way back in the year 20 17. Even if the respondents are required to amend the rules duly taking into account the interest of physically disabled candidates, that would be applicable only for future selections. No benefits would accrue to the candidates in earlier selections.”

6. Mr. Pankaj Sinha, learned counsel for the petitioner, would make similar submissions as were made before the Tribunal, that as is permitted under various other rules, a physically challenged person needs to be assessed on a lower threshold, inasmuch, a physically challenged person cannot be put to test on the same parameters applicable to general candidates. That apart, it is his submission, by relying upon Rules 18 and 19 of the Indian Forest Service Examination Rules, 2014 ('Rules of 2014', hereinafter) that the respondents were

required to constitute a special Medical Board with experts in the area for conducting the medical examination of physically disabled candidates.

7. That apart, he stated that Rule 19 of the Rules of 2014 provides that a physically disabled candidate shall also be required to meet the special eligibility criteria in terms of physical requirements/functional classification consistent with the requirements of the identified service/post, as may be prescribed by the Cadre Controlling Authority. In other words, it is his submission the appointment of vision disabled male candidates is subject to usual medical examination elaborated in Appendix III, including walking test of 25 kilometers in four hours.

8. Mr. Sinha conceded that the petitioner appeared before the specially constituted Central Standing Medical Board for Persons with Visual Disabilities on February 13, 2015 to March 26, 2015, as scheduled by respondent No.1 for his medical examination. According to him, he fulfilled the special eligibility criteria in terms of functional classification / fulfill requirement (abilities / disabilities).

9. After conducting various tests including test for physical requirements like manipulation by fingers, pulling and pushing, lifting, kneeling and crouching, bending, sitting (on bench or chair), standing, walking, seeing, hearing/speaking, communication, reading, writing etc. on February 13, 2015 and March 26, 2015, the petitioner was declared fit for appointment in IFoS by the specially constituted Central Standing Medical Board as per the provisions of the Rules 18 and 19 of the Rules of 2014.

10. According to Mr. Sinha, after being declared fit for

appointment in IFoS by the specially constituted Central Standing Medical Board vide its report dated February 13, 2015 and March 26, 2015, which were examined in terms of the above mentioned Rules 18 and 19 of the Rules of 2014, there was no reason for the respondent not to appoint the petitioner in IFoS, without taking part in the walking test. The petitioner being a person with low vision fulfils all eligibility criteria/conditions, and is fit for IFoS, as per the Rules of 2014.

11. Mr. Sinha by referring to the Appendix III of the Rules of 2014, stated that, on a conjoint reading of clauses 2 and 7 thereof, it is evident that, a non disabled male candidate with 6/6 eyesight i.e. 100% visual ability, will have to complete the walking test of 25 kilometers in four hours and a non disabled female candidate with 6/6 eyesight i.e., 100% visual ability, will have to complete the walking test of 14 kilometers in four hours. The petitioner was wrongly called to appear for the walking test and no relaxation/special guidelines for walking test was provided for visually disabled candidates. Even otherwise, walking test is not part of the selection process and the same is not mentioned anywhere in the advertisement for the examination. Furthermore, he stated, paragraph 9 of the advertisement issued by respondent No.2, is similar to the provision mentioned in Rule 19 of the Rules of 2014, which is related to fulfillment of special eligibility criteria in terms of functional classification/physical requirement (abilities/disabilities) for persons with disabilities.

12. It is his submission that, as per Section 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, reservation is applicable for persons having

disability not less than 40%. He stated that persons with visual disabilities or low vision constitute a larger group of individuals who may have different functional constraints related to various activities like reading, writing, walking etc. and may require varied and reasonable accommodations. Wherever vision is required to be used, a person with severe visual disability needs such reasonable accommodations. No such reasonable accommodation was provided to the petitioner for the walking test, although requisite reasonable accommodations were provided for written examinations by respondent No.2.

13. He has sought the prayers as sought for by the petitioner in the Original Application.

14. On the other hand, Mr. Avnish Singh, learned counsel for the respondent No.1 submitted that the petitioner appeared in IFoS Examination, 2014 and was declared qualified along with a total of 85 candidates. Appendix III of the Rules of 2014 provides for the stipulation of the walking test of covering 25 kilometers in four hours for male candidates and 14 kilometers in four hours for female candidates. The Rules do not permit any relaxation except that the candidates failing to complete the walking test in the first chance are given one more chance. Since the petitioner failed to complete the walking test, he was given one more opportunity. The petitioner being unsuccessful in the first chance held in February 16, 2015, filed the O.A. wherein, the impugned order has been passed. He submitted that reservation for two physically handicapped candidates is applicable in IFoS, since 2012.

15. Further, due to the arduous nature of the job, there cannot be any relaxation in the Rules as far as the walking test is concerned. The same is compulsory as per the Rules and is also in the interest of the candidates. He stated that, in fact one of the applicants in the O.A. before the Tribunal had cleared the walking test by covering 25 kilometers within four hours but he did not join IFoS as he got appointment in the Indian Administrative Service. In view of the position of the Rules, as there is no relaxation in walking test for any category, the petitioner would not be entitled to the prayer as made before the Tribunal and also in the writ petition.

16. Having heard the learned counsel for the parties, there is no dispute that the petitioner had applied for the IFoS Examination, 2014 and had cleared the same. As per Appendix III of the Rules of 2014, male candidates are to qualify the walking test of 25 kilometers in four hours, which admittedly the petitioner could not clear. Considering the fact that the Rules of 2014, which contemplate that a male candidate needs to qualify the walking test of 25 kilometers within four hours, is applicable to all candidates alike and since the *vires* of the said Rules has not been challenged by the petitioner, the issue which arises need to be examined on the premise that such Rules are valid.

17. In fact, after the petitioner failed to qualify the walking test in the first attempt, he was given one more chance in which he participated but was still unsuccessful. During the course of hearing, we were informed that the petitioner completed the walking test of 25 kilometers in four hours and 21 minutes. In other words, he had walked beyond four hours to complete 25 kilometers. That apart, considering

the fact that the second applicant before the Tribunal had qualified the same walking test within the time stipulated in Appendix III of the Rules of 2014 i.e., within four hours and the petitioner being similarly placed like the said applicant namely, Sh. Vijaya Bhaskar Reddy, it is clear that the stipulation is not arduous, which a person with low vision cannot achieve.

18. That apart, the Tribunal is justified in stating that the petitioner having participated in the selection process, cannot as an afterthought challenge the rules and stipulations of the selection process. The law in this regard is well settled; the Supreme Court in the case of ***Madan Lal and Ors. v. State of Jammu & Kashmir and Ors. (1995) 3 SCC 486*** has held as under:-

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the

Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644 : AIR 1986 SC 1043] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.....”

19. Insofar as the submission related to Rules 18 and 19 of the Rules of 2014 are concerned, the same shall not come to the aid of the petitioner. It is the conceded case of the petitioner that he was examined by a special Medical Board comprising of experts in the area for conducting the medical examination. Even the proviso to Rule 19 which as under:-

“Provided further that the physically disabled candidates shall also be required to meet special eligibility criteria in terms of physical requirements/functional classification (abilities/disabilities) consistent with requirements of the identified service/post as may be prescribed by its cadre controlling authority.”

The above contemplates that, a physically disabled candidate shall also be required to meet special eligibility criteria in terms of physical requirement/functional classification (abilities/disabilities) consistent with requirements of the identified service/post as may be

prescribed by its Cadre Controlling Authority. Consequently, the walking test of completing 25 kilometers within four hours, in the presence the said proviso would be an obligatory stipulation and need to be fulfilled / adhered to. In fact, the stand of the respondents as submitted by the learned counsel is that, such a requirement is in the interest of the candidate. The submission that since the service concerned is IFoS, every eventuality which an officer may encounter in a forest has been perceived to stipulate such a condition, is appealing. Insofar as the reliance placed by Mr. Sinha on the provision of Section 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is concerned, the same is without merit in view of the provisions of the Rules referred to above. Similarly, the submission made by Mr. Sinha that petitioner could not have been called for the walking test is also without merit in view of Appendix III of the Rules of 2014.

20. In view of the discussion above and considering the fact that examination was of the year 2014, i.e., eight years ago, we are of the view that in the facts of this case, the impugned order of the Tribunal needs no interference. The writ petition being without merit is dismissed. No costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

FEBRUARY 07, 2023/ds