



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

Judgment reserved on: 23.11.2023

Judgment delivered on: 18.12.2023

+ **W.P.(C) 8771/2021, CM APPLs.27317/2021, 33220/2022 & 9368/2023**
RATHOD ANIL Petitioner

Through: Mr.Rajshekhar Rao, Sr. Adv. with
Mr.Siddhant Buxy, Mr.Arijeet Shukla,
Mr.Dushyant Kaul, Mr.Yashraj
Samant and Mr.Krishna Sumanth,
Advs.

versus

UNION OF INDIA Respondents

Through: Mr.Sushil Raaja, Sr. PC for UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. The challenge in this writ petition is to orders dated April 07, 2021 passed in O.A. No.1559/2020 and July 12, 2021 passed in R.A.No. 38/2021 by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "Tribunal") whereby the O.A. as well as R.A. preferred by the petitioner were dismissed.

2. In brief, petitioner (a Mechanical Engineering graduate from NIT, Surathkal, Karnataka) appeared for Engineering Services Examination (ESE), 2018 conducted by UPSC for recruitment to various Engineering posts and services in the Government of India as an Orthopaedic Disabled (OH) candidate. Petitioner was recommended successful by the UPSC to the 'Engineering Services in Mechanical Engineering' in the PH1



(Orthopaedic Handicapped) category. On medical examination of the petitioner by the Railway Medical Board on November 26, 2018, he was informed vide letter dated December 21, 2018 that the Medical Board found him **‘unfit for all services on account of disability of both lower limbs (BL)’**, for which the PH vacancies were not identified as per Annexure-I of ESE Rules, 2018.

3. As provided under Rules, petitioner preferred an appeal for a second medical examination. Further, relying upon disability certificate dated January 08, 2019 from District Surgeon-cum-Medical Superintendent, District-Bidar, Karnataka, the disability was claimed only in left lower limb with no disability in the right lower limb. Petitioner also claimed to have obtained a medical certificate on December 27, 2018 from Matoshri Neurosciences Centre at Hyderabad which reflected that he had old (L) leg polioclastic disease affecting quadriceps and leg muscles.

4. Railway Board vide letter dated March 20, 2019 informed the petitioner that the Appellate Medical Board had declared him ‘unfit’ for all services in PwD category on account of both legs affected.

5. Aggrieved against the findings of the first Medical Board as well as Appellate Medical Board, petitioner preferred O.A. before the Tribunal for setting aside the communication of the Railway Board to the petitioner vide letter dated March 20, 2019 declaring him unfit for Engineering Services in the Government of India on account of disability in both legs. Petitioner also prayed for treating him as Orthopaedic Disabled (OH) candidate with one leg (OL) disability of 50-55% as per disability certificate dated 08.01.2019 and consequently declare him suitable for Mechanical Engineering Services.



6. In nutshell, learned counsel for the petitioner contends that petitioner satisfies the benchmark disability having 50-55% disability in his left leg on account of PPRP (Post Polio Residual Paralysis). However, the disability certificate dated May 25, 2009 obtained by the petitioner is erroneous to the extent it certified disability in both lower limbs, which was issued to the petitioner when he was a minor aged about 15 years. Further, since the said certificate is valid for a period of ten years, the competent medical authority instead of assessing his disability again, issued the same disability certificate No.4364 dated October 30, 2018 in the format prescribed in the ESE Rules without changing the contents.

7. In support of his stand that disability is only in one leg, reliance is placed by the petitioner upon medical report dated December 06, 2018 obtained from Dr.T. Umesh, Neuro Surgeon, Matoshree Neurosciences Centre, Hyderabad, which reflects, "*Neurogenic lesion involving mainly left leg*". Reliance is further placed upon medical certificate dated December 27, 2018 issued by said Dr.T. Umesh which mentioned that petitioner had old (L) leg Polioclasic disease affecting quadriceps and leg muscles and the disease was not active and was part of burnt out disease in the past. The fresh disability certificate No.08/08 dated January 08, 2019 obtained by the petitioner from the competent medical authority in his home district Bidar, is further relied to contend that disability of left lower limb is to the extent of 50-55%. Reference is also made to comprehensive evaluation of the petitioner made at National Career Service Centre for differently abled at Bangalore on November 06, 2020 certifying that the petitioner is suitable for mechanical engineering job and his disability does not hamper his work.



Reference is also made to Unique Disability Identity Card (UDID) issued on February 08, 2020 followed by medical certificate dated February 15, 2020 obtained from NIMHANS, Bangalore which stated that the disability mainly affected left lower limb and right lower limb functioning was adequate. It further noticed "*He is independent for his activities of daily living and he can walk independently without use of any assistive device*".

8. Based upon aforesaid medical certificates/reports obtained by the petitioner, learned counsel for the petitioner further vehemently submits that the assessment made by the first Railway Medical Board as well as the Appellate Medical Board constituted by the respondents is erroneous, declaring the petitioner to be unfit for all services in PwBD category on account of both legs affected. The certificates obtained by the petitioner under Section 8 of Rights of Persons with Disabilities Act, 2016 are claimed to be valid across the country and prevents any individual institution/entity from questioning the nature and extent of person's disability and repeatedly subjecting him to medical assessment. The distinction between 'OL (one leg)' and 'BL (both legs)' is stated to have no nexus with object behind identification and reservation of posts under Section 33 and 34 of the 2016 Act.

9. Learned counsel for the petitioner also further submits that without prejudice to the aforesaid contentions, petitioner cannot be deprived of appointment solely on the ground that he has disability in both legs instead of having disability only in one leg, since Annexure 1 to examination notification as well as ESE Rules prescribe 40% disability in one leg for the post of Mechanical Engineers but does not exclude from its ambit, candidates with disability in both legs (BL) as long as all the physical



requirements for discharge of duties are met. It is urged that functional classification of 'OL' is a minimum functional qualification of a benchmark disability to entitle a person to the post so identified and includes disability of 40% or more in both legs. The petitioner is stated to be able to use his right leg without any difficulty which would warrant disqualification on medical grounds and also having completed his practical training in 2014 in BHEL.

Reliance is further placed upon *Dr. Raman Khanna v. University of Delhi & Ors.*, 2003 SCC OnLine Del 720, *Railway Board v. Prashant Kumar*, 2018 SCC OnLine Del 10779, *Shweta Bansal v. Union of India & Ors.*, 2016 SCC OnLine Del 4265, *N. Manjushree (Ms.) v. Union of India*, O.A. No.353/2010 of Central Administrative Tribunal, Bangalore Bench, *Vikash Kumar v. Union Public Service Commission*, (2021) 5 SCC 370, *Satish Rawat v. Union of India*, (2002) 7 SCC 29, *State of Jammu and Kashmir & Another v. Ravinder Singh and Others*, (2019)n 13 SCC 782, *Gaurav Pradhan v. State of Rajasthan*, (2018) 11 SCC 352, *Union of India and Others v. Parul Debnath and Others*, (2009) 14 SCC 173, *P.P.C. Rawani (Dr.) and Others v. Union of India and Others*, (2008) 15 SCC 332, *Govinda Chandra Tiria v. Sibaji Charan Panda and Others*, (2020) 3 SCC 803, *D.K. Reddy and Another v. Union of India and Others*, (1996) 10 SCC 177, *Pushkar Singh and Others v. University of Delhi and Others*, 2001 (57) DRJ 734, *State of Kerala and Others v. Leesamma Joseph*, (2021) 9 SCC 208 and *Siddaraju v. State of Karnataka and Others*, 2020 SCC OnLine SC 45.

10. On the other hand, the stand of the respondents as per the reply filed before the Tribunal is that Engineering Services Examination (ESE) is held



annually by UPSC for recruitment to the Engineering Services posts in various disciplines, and Railways also participates in the same. Further, the final recommendation of the candidates to a service/post is based on their eligibility for the examination and the candidates are medically examined as per Regulations relating to physical examination of candidates given in Appendix II of ESE Rules. As regards PwBD candidates, a list of services/posts identified suitable for physically disabled category along with physical requirements/functional classification is given in Annexure 1 of ESE Rules. In terms of the same, there are no services/posts identified for PwBDs with both legs affected. Also, vide Note-V of para 5 of ESE Rules, PwBD candidates are advised to ensure that they are entitled to reservation/relaxation benefits available for PwBD candidates as per eligibility prescribed in the Rules and the certificate should be dated earlier than the closing date of the application.

11. It is further the stand of the respondents that the disability certificate dated May 25, 2009 obtained by the petitioner itself mentions (disability in both lower limbs) which shows that the petitioner was in prior knowledge that he does not qualify as per Annexure-I of the Rules. The case of the petitioner is further stated to have been considered in the light of report of Primary and Appellate Medical Board which declared the petitioner unfit for all services on account of disabilities of both lower limbs (BL), for which PwBD vacancies are not identified as per Annexure-I of ESE Rules, 2018. The subsequently obtained certificates privately got conducted at different hospital are stated to be of little value.

12. It may be observed that the learned Tribunal relying upon the certificate dated October 30, 2018 obtained by the petitioner from District



Orthopaedic Surgeon-cum-Medical Superintendent, District Hospital Bidar, was of the opinion that the petitioner could not disown the said certificate relied by him, which reflected the disability of 50-55% with PPRP of both lower limbs. Further, taking note of the findings recorded by the Railway Medical Board, which was conveyed through a speaking order, Tribunal was of the opinion that once the disability is on both legs and is not included in the permissible categories of disability, it is difficult to interfere with the impugned order of the Railway Board as well as certification made by Primary and Appellate Medical Boards.

13. We have given considered thought to the contentions raised.

The findings as conveyed to the petitioner vide letter dated December 21, 2018 by the Railway Board are relevant to be noticed and may be reproduced for reference:

“Shri Rathod Anil with ESE Rank No.136, with Roll No.1013417, a candidate of ESE 2018 directed for Medical Examination by Railway Board vide ref. No.2018/E(GR)1/7/1 Dated 15/11/2018 Under PH-Category. For being considered against the vacancies reserved for them, the physically disabled persons should have disability of forty percent (40%) or more. The functional classification in their case shall be consistent with the requirement of the concerned services/posts as detailed in Annexure-I of Engineering Service Examination Rules, 2018 (copy enclosed) vide Extraordinary Gazette published by the Gazette of India Dated: 27/09/2017, Physically Disabled Category identified person with a functional classification of Sub-category of One Arm affected (OA) and One Leg affected (OL) and Hearing Impaired (IH)/Partially Deaf (PD) are eligible for appointment.

This candidate has submitted disability certificate issued from District Hospital, Bidar dated 25/05/2009 duly mentioning, he is a case of PPRP Both lower limbs with deformity with shortening with disability percentage of 50 to 55%. The disability assessment done at CH/UBL comes to 100%.



This disability of PPRP Both Lower Limbs with Deformity with Shortening with Disability percentage of 100% is not extended for appointment in all services in ESE of Physically Disabled Category posts as per Annexure-I of Engineering Service Examination Rules, 2018 vide Extraordinary Gazette published by the Gazette of India Dated: 27/09/2017.

Accordingly, the Medical Board recommends Shri Rathod Anil with ESE Rank No.136, with Roll No.1013417, a candidate of ESE 2018, is UNFIT for ALL Services.”

14. Admittedly, as per the petitioner, the Engineering Services Rules, 2018 (ESE Rules) notified for the conduct of ESE, 2018 for the purpose of filling vacancies in the services/posts notified therein as well as the Exam Notice contained reference to the relevant provisions. Further, para 11 of Exam Notice as well as Rule 19 of ESE Rules provide that for being considered against the vacancies reserved for physically disabled, the persons with disability are required to meet the following criteria:

- a. *They should have disability of 40% or more.*
- b. *The functional classification shall be consistent with the requirements of the concerned services/posts as detailed in Annexure-I.*
- c. *They should meet the physical requirements/abilities as detailed in Annexure-I.*
- d. *They had to submit Disability Certificate in the prescribed format as detailed in Annexure-III.*

15. It may further be observed that Annexure-I to the ESE Rules and Exam Notice prescribe a list of services/posts identified suitable for Physically Disabled Category along with the physical requirements and functional classification and the requirement for relevant category i.e. Mechanical Engineering for which petitioner was recommended is as under:

“Annexure-I

A list of Services/Posts identified suitable for Physically Disabled Category along with the physical requirements and functional classifications *



Sl. No	Name of Services	Functional Classification	Physical Requirements
Category-II Mechanical Engineering			
1	Indian Railway Service of Mechanical Engineers	OA or OL	S,ST,BN,W,SE,ME,C,R,W&RW
2	Indian Railway Store Service	OA or OL or HI	S,ST,BN,W,SE,ME,C,R,W&RW
3	Central Water Engineering Service Gr.'A'	OA or OL	S,ST,BN,W,SE,MF,C,R,W&RW
4	Central Power Engg. Service Gr. A&B (Mech. Engg. Branch)	OL	ST,S,SE,MF,BN,KC,H&C
5	Indian Ordnance Factories Service (Mech. Engg. Branch)	HI(PD) or OA or OL	B,SE,H&W
6	Indian Naval Armament Service	OL	S,SE,H&RW
7	Assistant Executive Engr. in the corps of EME	PD	F,PP,L,KC,B,S,ST,W,SE&RW
8	Asstt. Naval Store Officer in Indian Navy	OL	S,SE,H&RW
9	Central Electrical & Mechanical Engineering Service	OL or HI	As per MOSJ&E instructions
10	Geological Survey of India Engineering Service Gr.'A'	PD	KC
11	Indian Defence Service of Engineers (Mech. Engg.)	PD or OA	B,S,ST,B,W,SE,H&RW
12	Central Engineering Service (Roads) Group 'A' (Mechanical Engg. Post)	OA or OL or PD/HI	B,S,ST,W,SE,H,RW,D,&W
13	Assistant Executive Engineer Group 'A' (Electrical & Mechanical) (Mechanical Engineering Post) in Border Roads Engineering service Gr.'A'	OA	B,S,ST,W,SE,H&RW
14	Indian Skill Development Service	OA or OL	As per MOSJ & E instructions

The abbreviations used (indicated as below) are as per the specification in Ministry of Social Justice and Empowerment's Notification No. 16-15/2010-DDIII dated 29.07.2013

OA=One Arm affected, OL=One Leg affected, HI=hearing Impaired, PD=partially Deaf, MW=Muscular Weakness S=Sitting, BN=Bending, SE=Seeing, RW=Reading & Writing, C=Communication, MF=Manipulation by Fingers, PP=Pulling & Pushing, L=Lifting, KC=Kneeling & crouching, ST=Standing, W=Walking, H=Hearing.

OH=Orthopaedically Handicapped, LD=Locomotor Disability, CP=Cerebral Palsy.



NOTE (I): To avoid inconvenience later PH candidates should ensure that their sub-category of disabilities is identified for providing reservation.

NOTE (II) : Also please note that Temporary Disability Certificate does not confer upon the candidates, the benefit of being considered against the vacancies reserved under PH quota.

NOTE (III) : Please ensure submission of Disability Certificate in the prescribed format as detailed at Annexure-III.”

16. The eligibility conditions in the Exam Notice [para 3(IV) and 3(V)] and the ESE Rules (Rule 18) are included in the conditions of medical examination and physical standards. Candidates finally recommended by the UPSC on the basis of the examination are required to undergo medical examination by the Respondent (Ministry of Railways/Railway Board), to be conducted at various Railway Hospitals, as per Appendix-II of the ESE Rules. The candidates are further required to be physically fit according to physical standards as per guidelines given in Appendix-II of the ESE Rules. Rule 18 of the ESE Rules in this regard provides as under:

“18. To be passed as fit for appointment, a candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties as an officer of the service. A candidate who after such medical examination as Government or the appointing authority, as the case may be prescribe is found not to satisfy these requirements will not be appointed. A candidate who has been left out on account of medical fitness for limited services and no vacancy being available at his turn cannot be allocated to any service for which he is not fit and where vacancies exists. Candidates declared medically unfit as per medical standards specified in Appendix-II will be left out from the allocation process.

THE ATTENTION OF THE CANDIDATES IS INVITED TO THE REGULATION RELATING TO THE PHYSICAL EXAMINATION PUBLISHED HEREWITH. IT WILL BE SEEN THEREFROM THAT THE PHYSICAL STANDARDS PRESCRIBED VARY FOR DIFFERENT SERVICES. THE CANDIDATES ARE THEREFORE ADVISED TO KEEP THESE STANDARDS IN VIEW WITH SPECIFIC REFERENCE TO SERVICES FOR WHICH THEY HAVE



**COMPETED/EXPRESSED PREFERENCES TO THE UNION
PUBLIC SERVICE COMMISSION.**

“Candidates finally recommended by Commission on the basis of Engineering Services Examination, 2018 shall be required to undergo medical examination.

The candidates may also please note that :

(i) Every candidate, on being finally recommended by Commission will be required to undergo medical examination as and when so decided by Ministry of Railways (Railway Board) irrespective of the fact that he/she has appeared for such medical examination in the past and found fit or unfit on the basis of earlier examination.

(ii) The medical examination will be conducted at various Railway Hospitals under Ministry of Railways (Railway Board) and other additional instructions for candidates listed at Annexure-II. The findings of the Railway Medical Board will be taken as final and binding for all allotment purposes;

(iii)

(iv)

(v) The fact that a candidate has been physically examined will not mean or imply that he will be considered for appointment.

Note.— In order to prevent disappointment, candidates are advised to have themselves examined by a Government Medical Officer of the standing of a Civil Surgeon, before applying for admission to the examination.

Particulars of the nature of the medical test to which candidates will be subjected before appointment and of the standards required are given in Appendix II. For the disabled/Ex-Defence Services personnel the standards will be relaxed consistent with requirements of each service.”

17. In the present case, the initial disability certificate dated May 25, 2009 issued by Directorate for the Empowerment of Differently Abled and Senior Citizens, Bangalore to the petitioner reflects the nature of disability as **‘PPRP both lower limbs with deformity with shortening’**. Further, the percentage of disability is classified as 50 to 55% of lower limbs. There cannot be any reason to overlook the aforesaid certificate produced by the



petitioner himself which is valid for ten years from the date of issue i.e. May 25, 2009. The certificate No.08/08 dated January 08, 2019 again got issued by the petitioner from the Directorate of Empowerment of Differently Abled and Senior Citizens, Bangalore after the first medical examination by Railway Board, does not reflect in case the same was issued after taking into consideration the initial certificate dated May 25, 2009 obtained by the petitioner and which is at variance.

The certificates thereafter obtained by the petitioner dated December 06, 2018 as well as December 27, 2018 from Matoshree Neurosciences Centre cannot be given much credence overlooking the initial certificate dated May 25, 2009 as it does not reflect in case the certificate dated May 25, 2009 or medical report by Railway Board were brought to the notice of Dr.T.Umesh, Matoshree Neurosciences Centre.

The aforesaid certificates appear to have been obtained by the petitioner after undergoing the medical examination before the primary Medical Board on November 26, 2018. Similarly, the certificate obtained from National Career Service Centre for Differently Abled, Bangalore does not further the case of the petitioner in any manner as the certificate merely refers to physical and psychological evaluation with reference to suitability of petitioner for Mechanical Engineering jobs and mentions that his disability does not hamper his work without co-relating it to the requirements which have been specified for the Mechanical Engineering Services in terms of the advertisement. The certificate dated February 15, 2020 obtained by the petitioner from National Institute of Mental Health and Neuro Sciences (NIMHANS) summarizing current condition of the petitioner also does not reflect the consideration of the initial medical



certificate dated May 25, 2009 got issued by the petitioner along with reference to the reports of the officially constituted Medical Boards by the respondents. Similarly, the Unique Disability Identity Certificate (UDID) dated 08.02.2020 relied by the petitioner is of little consequence as it simply records the percentage of the disability as 50% (locomotor disability) without any details of examination.

18. This Court in *Sh. Pritam v. Delhi Subordinate Services Selection Board and Another*, W.P.(C) 9104/2023 delivered on August 11, 2023 in the context of medical certificates obtained by petitioner therein without referring to the medical reports of the officially constituted Medical Boards has held as under:

“It needs to be kept in perspective that no malafides or error can be attributed to the medical experts, who were best suited to form an opinion as to the medical fitness of the candidate. Medical check-ups undertaken by the petitioner at his personal level at different hospitals without disclosing the complete factual background and the findings of ‘unfitness’ by competent Medical Board, do not inspire confidence. Such medical examination undertaken by the petitioner on his own, cannot be given much credence unless some plausible reason for error by Medical Board is manifest. Also, the rigors of the post to which an individual is to be posted are unknown to the medical specialist while an individual undertakes medical examination on his own at OPD. Even, it remains doubtful, in case, the identity of the concerned person is checked by the Doctors in the OPD, as the examination is undertaken in routine as per disclosure made by an individual. There is absolutely no reference in the medical reports obtained by the petitioner, if the findings of the competent Medical Board could be erroneous. It may further be noticed that there is no discrepancy in the findings of the two Medical Boards (i.e. initial Medical Board and Review Board) which were officially constituted. As such, there does not appear to be any plausible ground for further seeking a third medical opinion, at this stage.

There has to be a finality for such medical examination in justice delivery system and the process cannot be kept open-ended, until and unless exceptional circumstances can be shown that the medical opinion rendered by the competent Medical Boards could be



erroneous.”

19. A contention has also been raised on behalf of the petitioner in the alternative that even assuming that the petitioner may be having physical disability in both the lower limbs instead of one limb but in case he satisfies the functional requirements of work performance by ‘sitting, standing, walking etc.’ as required by the job, he cannot be considered to be unsuitable for the service since he meets the functional requirements of the identified post. It is urged that the relevant test is not one leg or two legs but the consideration is whether a person has any impediment which will interfere with a normal and efficient functioning of the person in performance of the duties attached to the post.

Reference is also made to the functional requirements of the concerned job for which the petitioner was recommended as (i) S (sitting), (ii) ST (standing), (iii) BN (bending), (iv) W (walking), (v) SE (seeing), (vi) MF (manipulation by fingers), (vii) C (communication) and (viii) RW (reading & writing) and the petitioner fulfilled all the requirements except ‘kneeling and crouching’ as observed by the Appellate Medical Board.

20. The contention raised on behalf of the petitioner that where interference with normal or efficient functioning is not likely on account of such defect or disability, the same may not be termed as unfitness for a job, in the first blush appears to be convincing.

However, it cannot be ignored that the functional requirement for ‘administrative’ and ‘technical’ jobs is generally differently provided. The jobs are identified keeping in consideration that the disability is not likely to interfere with the efficient performance of the duties to the identified post. It may be noticed that in terms of ESE Rules and advertisement, the identified



post is only reserved for PH candidates with locomotor disability in OL and accepting the said contention would be creating an exception subsequent to result in favour of the petitioner and ignoring the other candidates who have not been considered to be eligible.

21. The contention may be further analyzed with reference to the reports of the Medical Boards, to consider if the petitioner satisfies both the physical as well as functional requirements in terms of ESE Rules, as contended.

The report of the first/primary Medical Board constituted by respondents reveals under the relevant columns as under:

“13. Is there anything in the health of the candidate likely to render him unfit for efficient discharge of his duties in the service for which he is a candidate:

Post polio residual paralysis both lower limbs with deformity (enclosed disability assessment).

14. Services for which the candidate has been found qualified for the efficient and continuous discharge of duties may please be indicated clearly by ✓ and services/posts for which he/she is considered unfit if any may also please be indicated clearly by x:-

i).....

xxxx

viii).....

.....

NOTE: The Board should record their findings strictly in the following certificate.

CERTIFICATE

Shri Rathod Anil roll No.1013417 a candidate of ESE-2018 who has appeared for his first medical examination/re-examination on.....(date) is found to be

(i)

(ii) ✓ Unfit on account of **disability of both lower limbs (BL) for which vacancies are not identified. (Speaking order enclosed).**

(iii)

Further, as per Annexure-2, following observations were made by the primary Medical Board:-



NOT NO. 10/34/1997-2019

Annexure-II

Report of Medical Board on verification of disability in respect of ESE candidates recommended against PH vacancies (as claimed in their disability certificate).

Shri/Smt/Km. Rathod Anil age 24 years sex M, identification mark(s) 4 Black mol.
on right side of neck.
 son/wife/daughter of Shri. Deekant has been examined by the Medical Board constituted for verifying the disability of the candidate and he/she is found to be suffering from permanent disability of following category:-

A. Locomotor or cerebral palsy#:

- ☒ (i) BL-Both legs affected but not arms.
 (ii) BA-Both arms affected (a) Impaired reach
 (b) Weakness of grip
 (ii) BLA- Both legs and both arms affected.
 (iv) OL-One leg affected (right or left) (a) Impaired reach
 (b) Weakness of grip
 (c) Ataxic
 (v) OA-One arm affected (a) Impaired reach
 (b) Weakness of grip
 (c) Ataxic
 (vi) BH-Stiff back and hips (Cannot sit or stoop)
 (vii) MW-Muscular weakness and limited physical endurance.

B. Hearing impairment#:

- (i) D-Deaf
 (ii) PD-Partially Deaf
 (Delete the category, whichever is not applicable)

2. This condition is progressive/non-progressive/likely to improve/not likely to improve. Re-assessment of this case is not recommended/is recommended after a period of _____ years _____ months #.

3. Percentage of disability in his/her case is 100 percent (79.66 + 96.66)

4. Sh./Smt./Kum. Rathod Anil meets the following physical requirements for discharge of his/her duties.

1	F	can perform work by manipulating with fingers	☒ Yes	☒ No
2	PP	can perform work by pulling and pushing	☒ Yes	☒ No
3	L	can perform work by lifting	☒ Yes	☒ No
4	KC	can perform work by kneeling and crouching	☒ Yes	☒ No
5	B	can perform work by bending	☒ Yes	☒ No
6	S	can perform work by sitting	☒ Yes	☒ No
7	ST	can perform work by standing	☒ Yes	☒ No
8	W	can perform work by walking	☒ Yes	☒ No
9	SE	can perform work by seeing	☒ Yes	☒ No
10	H	can perform work by hearing/speaking	☒ Yes	☒ No
11	RW	can perform work by reading and writing	☒ Yes	☒ No

5. Any other observation by Medical Board

22. Thereafter, the Appellate Medical Board after re-examination of the petitioner rendered the following observations under the relevant columns:

"3. The report of Appellate Medical Board on the area appealed against is as under:

-
 1. Post polio residual palsy of both lower limbs.
 2. Equinus deformity of left ankle.
 3. Shortening and wasting of muscles of left lower ..
 4. Weakness of quadriceps muscle (Rt) side."

-
 5. NOTE: The Board should record their findings strictly in the following certificate.
CERTIFICATE



Shri Rathod Anil, Roll No.1013417 a candidate of ese-2018 who has appeared for his first medical examination/re-examination on 30.01.2019 (date) is found to be

- (i)
 (ii) ✓ Unfit on account of **BL (Both legs affected)**
 (ii)

23. Further, vide Annexure-II, following observations were made by the Appellate Medical Board:

Roll No.1013417.....(ESE 2018)

Annexure -II

Report of Medical Board on verification of disability in respect of ESE candidates recommended against PH vacancies (as claimed in their disability certificate).

Shri/Smt/Km. Rathod Anil age 24 years sex (M) F Identification mark(s) mole over (Rt) shi upper chest - now

son/wife/daughter of Shri Natikan has been examined by the Medical Board constituted for verifying the disability of the candidate and he/she is found to be suffering from permanent disability of following category:-

A. Locomotor or cerebral palsy:

(i) ✓ BL-Both legs affected but not arms. (a) Impaired reach (b) Weakness of grip

(ii) BA-Both arms affected

(iii) BLA- Both legs and both arms affected.

(iv) OL-One leg affected (right or left) (a) Impaired reach (b) Weakness of grip (c) Ataxic

(v) OA-One arm affected (a) Impaired reach (b) Weakness of grip (c) Ataxic

(vi) BH-Stiff back and hips (Cannot sit or stoop)

(vii) MW-Muscular weakness and limited physical endurance.

B. Hearing impairment: N/A

(i) D-Deaf

(ii) PD-Partially Deaf

(Delete the category, whichever is not applicable)

2. This condition is progressive/non-progressive/likely to improve/not likely to improve. Re-assessment of this case is not recommended/is recommended after a period of 10 years 10 months if.

3. Percentage of disability in his/her case is 100 percent.

4. Sh./Smt./Km. Rathod Anil meets the following physical requirements for discharge of his/her duties.

1	F	can perform work by manipulating with fingers	Yes	No
2	PP	can perform work by pulling and pushing	Yes	No
3	L	can perform work by lifting	Yes	No
4	KC	can perform work by kneeling and crouching	Yes	No
5	B	can perform work by bending	Yes	No
6	S	can perform work by sitting	Yes	No
7	ST	can perform work by standing	Yes	No
8	W	can perform work by walking	Yes	No
9	SE	can perform work by seeing	Yes	No
10	H	can perform work by hearing/speaking	Yes	No
11	RW	can perform work by reading and writing	Yes	No

5. Any other observation by Medical Board

24. On the face of record, as per the report of the primary Medical Board as well as the Appellate Medical Board, the petitioner is unfit for discharging the duties for identified post, for which he was recommended as the percentage of disability is 100% and both legs are affected. Further, the



petitioner as per Appellate Medical Board is unable to satisfy the criteria of performance of work by ‘**kneeling and crouching**’.

In view of above, we do not find any merits in the aforesaid contentions raised by the petitioner.

25. Learned counsel for the petitioner also submits that respondents could not have undertaken a fresh medical examination for purpose of re-certifying the disability, since the disability certificate obtained by the petitioner under the Rights of Persons with Disabilities Act, 2016 is valid across the country. Relying upon the judgments in support of the contentions, it is further submitted that supernumerary post can also be directed to be created in case the vacancies against the handicapped quota already stand filled by the respondents.

26. The judgments referred to and relied upon by the petitioner in this regard may be briefly noticed:

I. In *Dr.Raman Khanna v. University of Delhi & Ors.* (supra), the challenge was to the decision of the Delhi University to extend the statutory benefit only to the extent of one per cent (1%) to candidates suffering from locomotor disability. Petitioner therein suffered from partial locomotory problems pertaining to the upper limbs and MCI declared him to be disentitled to enjoy any preference for admission even at the post-graduate stage. The petitioner had a Medical Handicapped Certificate issued from LNJP hospital which was empowered to issue certificates by the Government of NCT of Delhi, Health and Family Welfare Department, New Delhi in terms of Order dated 8.8.2002. One of the issues for consideration before the Court was whether the Delhi University or any other Institution who is to give



effect to the reservation for the physically handicapped, is legally authorised to insist that candidates should appear before a Medical Board constituted by them. The learned Single Judge came to a conclusion that on a conjoint reading of Section 58 of the Disabilities Act, 1995 read with Rule 4 of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996, it will be crystal clear that individual Universities, Institutions or Establishments have no alternative but to accept a certificate issued by the Medical Boards constituted by the Central or State Governments, as the case may be. Further, since the said Rules had not been challenged, it must be given effect to, though it was observed that there may be some substance in the University's stand that it is quite possible that some Medical Boards may be lenient in the manner and extent of their certification when compared with others. However, since in the cases before the Court, all the candidates were from Delhi and the certificate in case of Dr.Raman Khanna (petitioner) had been issued by the specifically empowered Hospital in terms of order dated August 08, 2002 of Health & Family Welfare Department, it was observed that Delhi University did not have power to insist that persons who have produced Medical Handicapped Certificate from any of the nine Hospitals mentioned in the Order dated August 08, 2002, should nevertheless appear before a Medical Board constituted by the University.

We are of the considered opinion that the aforesaid authority is distinguishable since the recruitment in the present case is governed by ESE Rules, 2018 and each of the selected candidates on all India basis,



having medical disability certificate from any institution is required to undergo the medical examination. Further, even the medical certificate dated May 25, 2009 as relied and produced by the petitioner renders him ineligible for consideration to the recommended post.

II. In *Railway Board v. Prashant Kumar* (supra), respondent applied for a position notified by an advertisement issued by UPSC, relying upon a certificate issued by the C.M.O. and Civil Surgeon, District Vaishali, Bihar with 40% disability in his left leg and was declared successful. However, the medical board found that there was weakness in left arm of the respondent as well and, hence, found him to be unfit for the position. Respondent challenged the action of appellant before the learned single judge wherein the act of declaring the respondent unfit was held to be untenable and the appellant was directed to allocate appropriate service to the respondent within 30 days from the receipt of the copy of the order. Appellant challenged the order of Learned Single Judge. The Division Bench relying upon ***Dr.Raman Khanna v. University of Delhi & Ors*** (supra) held that there was no merit in the appeal once the candidate has produced the certificate of disability from the competent authority under the Disabilities Act wherein it has been concluded that the respondent has disability to the extent of 40% of lower limb (left leg only). The case is clearly distinguishable on facts since the petitioner did not meet out the benchmark disability in the present case as per certificate dated May 25, 2009 produced by him.

III. In *Shweta Bansal v. Union of India & Ors.* (supra), petitioner being a differently-abled candidate with locomotor disability cleared Civil Services Examination, 2012 and was one of the selectees recommended



for appointment to the Indian Administrative Service('IAS'), Indian Foreign Service ('IFS'), Indian Police Service ('IPS') and other Central Services (Group A and B). However, at the time of allocation of service, petitioner was not allocated any service since she had opted only 8 services out of 24 in her application form for the CSE-2012 and could not be selected in the said services as an open category candidate or as a physically challenged candidate. The Tribunal directed the respondents to allow the petitioner to choose from any of the services in which unfilled vacancies exist in respect of CSE-2012 or for the 'OL' category in lieu of IFS where the applicant has suffered on account of ambivalence of the applicant and not in respect of the other services where the applicant has not been careful enough in filling up the form. Being dissatisfied by the order of Tribunal, petitioner challenged the same before the High Court praying that she was entitled to allotment of a post in either IAS or IFS. This court held that since the petitioner had given her second preference to the IFS, she should have been allocated to a physically disabled person belonging to locomotor disability in CSE-2012.

IV. In *Manjushree (Ms.) v. Union of India* (supra), decided by Central Administrative Tribunal, the petitioner, a physically handicapped person (orthopaedic) secured 65th rank in Civil Services Examination (CSE for short) and was allotted Indian Revenue Service (Income Tax) though her first preference was IAS. The third respondent therein at 216th rank was allotted IAS, who was also a physically handicapped candidate. The stand of the respondent was that as per the functional classification for the post of IAS, an officer having the disability of both



legs affected is not eligible for appointment and as the petitioner was suffering from disability in both legs, she did not meet the functional requirement for allocation of IAS. Further, as per the option given by the petitioner and on the basis of merit, she was allotted IRS which was her second preference. The Tribunal observed in para 17 that they are unable to agree with the argument put forth by the petitioner that a physically handicapped person has to satisfy one of the conditions of functional requirement/physical qualification. In para 20 of the judgment, it was noticed that the Medical Board had not passed any adverse remarks in the relevant column 13 to indicate if there is anything in the health of the candidate likely to render him/her unfit for the efficient discharge of his/her duties for the services in which she is a candidate. It was further observed that the applicant was a candidate for IAS which was her first preference and as per medical report, she satisfies seven of the functional requirements of eleven, though six of the said seven requirements are to be fulfilled for selection to IAS. It was further considered that Indian Administrative Service for which the applicant is a candidate is a 'non-technical service' and only for 'technical services' there are more stringent standards for examination. Further, the respondents had indirectly laid down that a person with both legs can be promoted to IAS, but cannot be recruited based upon CSE (Direct Recruitment), if the functional requirements required for a particular service are fulfilled. Accordingly in the facts and circumstances of said case, the respondent was directed to allot IAS to the applicant.



On the face of record, it may be noticed that the present case is distinguishable since the candidature of the petitioner is for a 'technical service' and petitioner does not meet out all the functional requirements for identified post.

V. In *Vikash Kumar v. Union Public Service Commission* (supra), the request of the petitioner therein for providing a scribe for the examination was rejected by UPSC on the ground that the scribe could be provided only to blind candidates and the candidates with locomotor disability and cerebral palsy with an impairment of 40%, but the petitioner did not meet the criteria. Allowing the appeal against the order of the High Court and Tribunal which had declined the prayer of the petitioner, it was held that UPSC erred in proceeding on the basis that facility of scribe was only available to persons with benchmark disability, unmindful of the discretion vested in it. **It was further observed that at the heart of this case lies the principle of reasonable accommodation.** Further, the relevant question under the reasonable accommodation, analysis, is not whether complications would be caused by grant of reasonable accommodation but relevant question is whether such accommodation would give rise to disproportionate or undue burden and both the tests are entirely different.

We are of the considered view that there is no dispute to the said proposition of law laid down in the aforesaid case but the factual position in the present case is distinguishable.

VI. In *Satish Rawat v. Union of India* (supra), the Customs Collectorate invited applications for recruitment of Inspectors under sports quota



wherein two posts were earmarked for football category. The appellant and another were selected after undergoing a selection process which comprised of written test, interview and field trials. At the instance of Respondent 3 therein, who had not been selected, the Tribunal quashed the appellant's appointment and directed the Department to examine the records to find out the most meritorious candidate without considering the appellant. Thereafter Respondent 3 was selected and appointed as Inspector. The appellant filed a review petition, stating that the Department had deliberately withheld the relevant records and such omission culminated in an adverse inference which was dismissed by the Tribunal but the Department admitted that the records of selection were available by then.

The perusal of records showcased that the difference between the appellant and Respondent No.3 in securing marks was not much in the written examination. Though there was a big margin in interview, the results of the field test were not very categorical as to the competence of the candidates because the appellant and Respondent 3 fell in two different categories, one as a goalkeeper and the other as a deep defender.

The appellant approached the Hon'ble Supreme Court wherein it was observed that for the mess that arose on the appointment of the appellant and not supporting it properly and for appointment of Respondent No.3, the Department is entirely responsible. Further, given the peculiar circumstances, directions were issued to the Department to provide a post to the appellant and such post, if not



available should be created on ‘supernumerary basis’ to be absorbed when a regular vacancy arises.

VII. In *State of Jammu and Kashmir & Another v. Ravinder Singh and Others* (*supra*), respondents applied to the post of Technician-III advertised by the Jammu and Kashmir Service Selection Board. However, the respondents were not selected on the ground that they had secured lesser marks than what the last selected person had obtained. The last selected candidate had obtained 56.23 marks whereas the contesting respondents had obtained marks ranging from 45.47 to 55.17. The primary contention of the appellants was that there is no vacancy in the cadre of Technician-III for the relevant year for which the advertisement was issued, and persons who have obtained higher marks have been appointed, there was no question of selection or appointment of the respondents herein on the said post. Hon’ble Apex Court noticed that the persons who were holding diploma were not entitled for being considered for the post of Technician III and the respondents were eligible having minimum qualification of Matric with ITI training in concerned discipline and as such directed the appellants herein to create ‘supernumerary posts’ for Respondent Nos. 1 to 6 to be adjusted in the post of Technician-III.

VIII. In *Gaurav Pradhan v. State of Rajasthan* (*supra*), posts of constables and sub-inspector of police were advertised by Rajasthan Public Service Commission. During process of selection, a circular was issued by the State Government providing that candidates of SC/ST/OBC, irrespective of whether they have availed of any concession including relaxation in age, shall be migrated against open category vacancies, if



they had secured more marks than the last candidate of open category. The case of the general category candidates was that those reserved category candidates who have taken concession of relaxation of age in competition for post of Constable/SI of Police cannot be migrated to general category vacancies and the relevant circular for purpose of reservation would be one which is in force at the time of recruitment. The Hon'ble Supreme Court held that the appellant-writ petitioners as per their merit were entitled to be appointed against unreserved vacancies, which were filled up by migration of SC/ST/OBC candidates, who had taken relaxation of age. The State was further directed to make appointments against the existing vacancies, if available, and in case of non-availability of vacancies, the supernumerary posts may be created for adjustment of the appellants.

IX. In *Union of India and Others v. Parul Debnath and Others* (supra), Hon'ble Apex court held that although creation of posts is prerogative of executive but in order to meet special exigencies directions can be issued by the courts for creation of supernumerary posts.

X. In *P.P.C. Rawani (Dr.) and Others v. Union of India and Others* (supra), it was reiterated that Supernumerary posts are non-cadre permanent posts and are created to accommodate the lien of officers who are entitled to hold a lien against regular permanent posts.

XI. In *Govinda Chandra Tiria v. Sibaji Charan Panda and Others* (supra), to avoid demotion of Respondent No.1 despite findings against him, the seniority list was directed to be maintained by creation of a supernumerary post.



XII. In *D.K. Reddy and Another v. Union of India and Others* (supra), Hon'ble Apex Court held that in case promotions of persons were likely to be affected because of review of promotions, their promotions need to be protected by creation of supernumerary posts.

XIII. In *Pushkar Singh and Others v. University of Delhi and Others* (supra), a resolution was issued by Executive Council of University of Delhi in 1994 providing for 3 per cent reservation for blind and Orthopedically Handicapped candidates in teaching posts in the Delhi University and the Colleges affiliated to the University. The grievance of the petitioner therein was that except Dr.Ambedkar College, none of the colleges of the University of Delhi complied with this Resolution, since no disabled person was appointed during the academic year of 1994-1995 despite there being several disabled candidates. Ld. Single Judge of this Court directed the respondents to comply with the aforesaid Resolution and while implementing it, if number of posts were not available, to create supernumerary posts.

XIV. In *State of Kerala and Others v. Leesamma Joseph* (supra), it was held by the Hon'ble Apex Court that the 1995 Disabilities Act does not make a distinction between a person who may have entered service on account of disability and a person who may have acquired disability after having entered the service and therefore the mode of entry in service cannot be a ground to make out a case of discriminatory promotion.

XV. In *Siddaraju v. State of Karnataka and Others* (supra), Hon'ble Apex Court held that denial of statutory benefit of 3% reservation in identified posts to promotees is impermissible and once a post is



identified under section 32 of 1995 Act, it means PwD are capable of discharging functions associated with the said post and the principle of no reservation in promotion as held by Hon'ble Supreme Court in ***Indra Sawhney v. Union of India, 1992 Supp (3) SCC 215*** is not applicable to disabled persons.

27. It may be noticed that Section 3(3) of the Rights of the Persons with Disabilities Act, 2016 provides that no person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is at proportionate means of achieving the legitimate aim. The purpose of directing medical examination for the appointees to a civil post in State/Union is not *per se* to challenge the 'disability certificate' if any, relied by the recommended candidate but to ensure that the recommended candidate meets out the criteria as per the requirements of the identified job. There can be no dispute as to the provision of Section 58(3) of the Rights of the Persons with Disabilities Act, 2016 which provides that the certificate of the disability under this Section shall be valid across the country. Perhaps, the intention set out in Rule 19 of the Rights of the Persons with Disabilities Rules, 2017 is that the certificate of disability issued under Rule 18 shall be for all purposes i.e. for facilities, concessions and benefits admissible for persons with disabilities under the schemes of the government and non-governmental organisations funded by the government. It may be difficult to accept the contention raised on behalf of the petitioner that despite the petitioner not qualifying the requisite parameters of disability in terms of the initial disability certificate dated May 25, 2009, the subsequently obtained disability certificate/medical certificates obtained by him may be considered, overruling the medical reports of both



the Medical Boards constituted by the respondents. The solitary aim under the Persons with Disabilities Act, 2016 also remains that the benefits enure and is availed by the candidates who fulfils the benchmark disability.

28. We are of the considered view as noticed in the previous paragraphs that the authorities relied by the petitioner are distinguishable since the present case is governed by ESE Rules, 2018 and the requirement of the selected candidates to undergo the medical examination was in terms of the advertisement and Rule 18 & 19 of ESE Rules, 2018. The aforesaid Rules were never challenged prior to participating in the examination by the petitioner. The requirement to undergo the medical examination cannot be considered to be violative of the provisions of the Rights of the Persons with Disabilities Act, 2016 considering that the same is uniformly adopted for the purpose of recruitment to civil posts under the State/Union.

29. The petitioner appeared and participated in the said examination without protest but having been disqualified has taken an alternative recourse to challenge the conditions prescribed under the ESE Rules. The challenge to the same appears to be too belated and cannot be permissible in the light of observations in *Madan Lal and Ors. v. State of Jammu & Kashmir and Ors.*, (1995) 3 SCC 486 wherein it was 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.....”

30. We do not find any plausible reasons to overlook the findings by the competent Medical Boards constituted by the respondents since the petitioner does not meet the benchmark disability for the post for which he was recommended. For the foregoing reasons, we are not inclined to interfere in the order passed by the Tribunal. The petition is accordingly dismissed. No order as to costs. Pending applications, if any, also stand disposed of.

**(ANOOP KUMAR MENDIRATTA)
JUDGE**

**(V. KAMESWAR RAO)
JUDGE**

DECEMBER 18, 2023/sd