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

% *Date of decision: 9th September, 2024*

+ W.P.(C) 14573/2022 and CM APPL. 44622/2022

UNION PUBLIC SERVICE COMMISSIONPetitioner

Through: Mr. Naresh Kaushik, Sr. Advocate
with Mr. Ravinder Agarwal and Mr.
Lekh Raj Singh, Advocates.

versus

SHRI RAJENDER SINGH & ORS.Respondents

Through: Mr. A.K. Behera, Sr. Advocate with
Ms. Sonika Gill, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioners seeking setting aside of order dated 30.03.2022 passed by the learned Central Administrative Tribunal ('Tribunal'), New Delhi in OA No. 492/2015 and RP No. 41/2022.
2. Notice issued.
3. Learned counsel appearing on behalf of the respondent accepts notice.
4. With the consent of learned counsel for the parties, the present petition is taken for final disposal.
5. The respondent had preferred O.A. No. 492/2015 before the learned Tribunal pleading that he had appeared in the Engineering Services Examination-2012 conducted by UPSC under Physically Handicapped (PH)



Category and had secured 88th Rank in Electronics and Telecommunication Engineering. He held 4th position in the merit list prepared by the UPSC for 10 candidates for disabilities. He was provisionally allotted Indian Railway Service of Signal Engineers against one vacancy earmarked for Orthopedically Handicapped category of disability. His disability was assessed by the Competent Authority who opined that as 70 % “BL-Both Legs affected but not arms” with remarks that ‘likely to improve’. However, the Competent Authority vide order dated 28.10.2013 decided to conduct Review Medical Board, who vide order dated 16.04.2014 declared him ‘unfit’ for all services on account of weakness of both legs and thereby, his candidature engaged PH vacancy was found not feasible.

6. The respondent No.1 in his OA relied upon the decision of learned Tribunal in O.A. No. 353/2010 dated 03.06.2011, wherein the applicant who had Orthopaedic disability with weakness of lower limb, was allotted the Indian Administrative Service (IAS) with appropriate rank against the vacancies with job requirements which can be performed with such disabilities.

7. The petitioner, before the learned Tribunal, opposed the claims raised by the respondent No.1 pleading that identification of post of PWD is to be done by the Government and the first Medical Board had identified his both legs affected and so, he was not considered ‘fit’ for appointment under PH Category.

8. The learned Tribunal vide judgment dated 30.03.2022 observed and held as under:

“UPSC issued notification dated 10.03.2012 for conducting the ESE - 2012 to the services/posts



under different categories for different Departments/Ministries, with the following functional classifications as mentioned in Para 9 of the notification:-

<i>“Code</i>	<i>Functions</i>
BL 1.	<i>both legs affected but one arms.</i>
BA 2.	<i>Both arms affected.</i> <i>a. impaired reach</i> <i>b. weakness of grip</i>
BLA 3.	<i>both legs and both arms affected</i>
OL 4.	<i>One leg affected</i> <i>(R or L)</i> <i>a. impaired reach</i> <i>b. Weakness of grip</i> <i>c. ataxic</i>
OA 5.	<i>One arm affected</i> <i>(R or L)</i> <i>a. Impaired reach</i> <i>b. Weakness of grip</i> <i>c. ataxic”</i>

10. XXXXXX

11. *The applicant was medically examined by Railway Hospital at Jaipur on 15.07.2013 and provisionally allotted a post in IRSSE by Indian Railway Board. However, when the sub category of the applicant, i.e., weakness in both legs, was not found in conformity with other functional classifications for which vacancies were reserved for various services/posts, a review was directed. It is noted that there was no vacancy reserved for BL category in Electronics and Telecommunication discipline, and the vacancies against sub categories in OA/OL were available. The respondent no.1, in all fairness, again advised the Medical Board to review its decision about the services for which applicant was suitable for the vacancy reserved for PH. Even, on review, the Medical Board found him*



medically unfit on account of weakness of both lower limbs. The respondent no.1 has also shown that the posts in IRSSE against ESE - 2012 were reserved for OA and OL and not for BL category. Since there is no post reserved for BL category in the respondent no.1 department, the Tribunal cannot direct the respondent no.1 to reconsider the case of the applicant.”

9. The Tribunal, thus, held that there being no post reserved for BL Category, a direction cannot be given to consider the case of respondent No.1. However, in view of the fact that the respondent No.1 had qualified ESE-2012, secured 88th rank and 4th position in merit list prepared for PH candidates, directed UPSC to forward his case for allocation of a post engaged PH Category on the basis of ESE-2012.

10. Being aggrieved, the petitioner preferred a review petition before the learned Tribunal highlighting the restricted role of UPSC as well as mandate of Rule 13 (v) of the Rules for Engineering Services Examination-2012.

11. The learned Tribunal vide order dated 13.06.2022 disposed of the said review petition observing that there was no error warranting interference in review jurisdiction.

12. Being aggrieved, the petitioner has preferred the present petition on the ground that the orders passed by the learned Tribunal are against the mandate of UPSC and contrary to Rule 13 (v) of the Rules for Engineering Services Examination-2012. Hence, setting aside of the impugned order dated 30.03.2022 in O.A. No. 492/2015 and order dated 13.06.2022 in R.A. No. 41/2022, is sought by the petitioner-UPSC.

13. Having heard learned counsel appearing for the parties and on perusal of this case, we find that the stand of UPSC before this Court is that the case



of the respondent No.1 has already been forwarded to respondents No.2 & 3 i.e. Ministry of Railways and the allocation has to be done by the concerned Ministry. However, it is not disputed that respondent No. 1 has already initiated the contempt proceedings against the petitioner. In such facts of the case, this Court finds that the decision on respondent's case has to be now taken by respondents No.2 & 3 and the role assigned to the petitioner-UPSC is over once the case has been forwarded to respondents No.2 & 3 in compliance of directions passed by the learned Tribunal.

14. As such, there was no occasion for UPSC to challenge the order dated 30.03.2022, as the final call has to be now taken by respondents No.2 & 3. In our view, nothing survives for consideration in the present petition and accordingly the same is accordingly dismissed.

15. We make it clear that we have not commented upon the contempt proceedings initiated by the respondent against respondents No.2 & 3 and the same shall considered by the Tribunal in accordance with law.

SURESH KUMAR KAIT, J

GIRISH KATHPALIA, J

SEPTEMBER 9, 2024

MR/r