



2024:DHC:7896



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 30th September, 2024

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W.P.(C) 13068/2018, CM APPL. 50765/2018 and 41113/2024

PRAGATI KESHARWANI

.....Petitioner

Through: Mr. Rajan Mani, Advocate

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Dev P. Bhardwaj, CGSC with
Mr. Ujjwal Chaudhary and Mr. Vishal Sharma,
Advocates for R-1/UOI.Mr. Akshay Amritanshu and Mr. Samyak Jain,
Advocates for R-2 and R-3.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This writ petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking quashing of decision of Respondent No.3/Oil & Natural Gas Corporation Ltd., Corporate Establishment, Tel Bhawan, Dehradun (hereinafter referred to as 'ONGC'), communicated vide letter dated 07.09.2018, whereby ONGC has not accepted the recommendation of the Chief Commissioner for Persons with Disabilities (Divyangjan) (hereinafter referred to as 'Commissioner Disability'), rendered vide order dated 29.06.2018.

2. Shorn of unnecessary details, facts to the extent relevant and emerging from the writ petition are that Petitioner is a person with 45% locomotor disability. Petitioner's educational qualifications include degrees in B.Tech. (Electronics) and M.Tech. and she has qualified GATE-2017



with All India Rank of 9748 and has internships at BHEL, Jhansi and Research, Design and Standard Organization, Lucknow to her credit.

3. Genesis of this writ petition lies in non-appointment of the Petitioner to the post of Assistant Executive Engineer ('AEE') (Electronics) pursuant to an Advertisement No.3/2017 (R&P), whereby ONGC invited applications from candidates who had cleared GATE-2017 and possessed requisite educational qualifications for appointments to various posts including the post of AEE (Electronics), which was declared suitable for persons with disability OH-OL (orthopedically handicapped, one leg) and HH (hearing impairment). Petitioner applied for the post of AEE (Electronics) under OH-OL category and appeared in the interview on 23.05.2017, in which she scored 12 marks out of 15. Result was declared by ONGC on 19.06.2017 and Petitioner's name was in the list of selected candidates. Appointment was offered to the Petitioner vide letter dated 24.07.2017, which she accepted vide email dated 27.07.2017 and reported to the concerned officer for joining at Hazira Plant on 09.08.2017.

4. Petitioner was asked to furnish another medical certificate after getting herself medically examined by Dr. Maloy Sarkar, Medical Officer, ONGC, who in turn asked the Petitioner to get a report from Dr. Bhupatani, an eye specialist. Petitioner got herself examined from the eye specialist and thereafter from Dr. Mange, a retina specialist, who opined that Petitioner had a condition of 'old inferior attachment in right eye' but she could work comfortably on a computer and basis this report, Dr. Sarkar also opined that her case be referred to the higher authority for consideration, looking at her long standing eye condition and the fact that she had done well in academics.



5. It is averred that Department of Ophthalmology, Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow certified that Petitioner was fit to do a computer based job. On 21.08.2017, Petitioner was assured by concerned officer in ONGC that her case will be sent to the Head Office for approval, however, on 12.10.2017 an email was received informing the Petitioner that her offer of appointment had been cancelled on medical grounds but there were no reasons in support thereof. Petitioner sent representations to various authorities including a complaint to the Commissioner Disability.

6. Petitioner states that ONGC filed a reply before the Commissioner Disability stating that post of AEE (Electronics) was suitable and identified for category of OH-OL/HH and Petitioner did fall in the former category but having so admitted, took an erroneous stand that she was disqualified for appointment in view of her eye condition discovered during medical examination conducted in consonance with Clause 6(m) of the advertisement as per Oil and Natural Gas Corporation Limited Medical Examination of Employees Rules, 1996 (hereinafter referred to as '1996 Rules'). The Commissioner Disability passed a detailed order on 29.06.2018 holding that there was violation of provisions of Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as '2016 Act') by ONGC in not appointing the Petitioner and directed ONGC to facilitate Petitioner's joining within 06 weeks and submit a compliance report. Instead of reinstating the Petitioner, ONGC submitted a compliance report dated 07.09.2018 informing the Commissioner Disability that his recommendation was not acceptable to ONGC. Petitioner thereafter filed the present writ petition in 2018 seeking appointment and challenging the impugned letter of



ONGC, declining to accept the recommendation of the Commissioner Disability.

7. Learned counsel for the Petitioner contended that Petitioner has all through been a bright student and possesses both B.Tech. and M.Tech. degrees and has also cleared GATE-2017. Her eye condition has never been an impediment in her day-to-day activities including her participation in strenuous sports. Even otherwise, going by the medical report of Dr. Sarkar, who is an employee of ONGC and not any outsider, Petitioner can comfortably work on computers. At the time of the interview, Petitioner had shown her Disability Certificate and disclosed her eye condition and aware of that, the interview Board had proceeded to interview her and awarded 12 out of 15 marks. As per the medical opinion taken from several Specialists, Petitioner has normal vision of 6/6 in her left eye with a decreased visual acuity of 6/60 in her right eye due to a long standing partial retinal detachment but the Medical Officers did not declare the Petitioner medically unfit and instead Dr. Sarkar noted that despite her long standing retinal detachment, Petitioner had done well in academics and her case be considered accordingly.

8. It was argued that in complete departure from the reports and *dehors* the applicable 1996 Rules, ONGC arbitrarily referred Petitioner's case to the office of Chief Medical Services, ONGC, where wrong comments were given that Petitioner was medically unfit and thereafter again Petitioner was referred for examination by a Medical Board constituted at Ram Manohar Hospital, where she was examined by the Board on 07.03.2018 and declared temporarily unfit on account of 'Old inferior Retinal Detachment', in complete violation of 1996 Rules which provide that



persons with disabilities are not to be subjected to usual medical examination and must be referred to a Medical Board attached to Vocational Rehabilitation Centres ('VRCs'), for evaluation of their functional capabilities.

9. Learned counsel further argued that ONGC completely overlooked the medical literature that any treatment of old inferior retinal detachment in an eye has an uncertain outcome and there was substantial risk that the vision in her eye would deteriorate if surgical procedure was undertaken, for which reason Petitioner decided not to undergo any further treatment. *Albeit* ONGC failed to refer the Petitioner for medical evaluation at VRC, Ahmedabad or Vadodara as per Rule, she got herself examined by VRC Kanpur, which certified that Petitioner was capable of doing both electronics and computer based work. Learned counsel also placed reliance on information received under the Right to Information Act, 2005 from ONGC, Rajahmundry and Jorhat, Assam wherein it is stated that binocular vision is not needed in the work of AEE (Electronics) and contended that the insistence of ONGC that in the absence of a binocular vision Petitioner cannot be appointed, is misconceived.

10. It was also contended that Petitioner is a person with locomotor disability and ONGC was legally obliged to extend to her measures of reasonable accommodation as provided in Sections 3(5) and 20(2) of 2016 Act and make necessary adjustments in the job profile, so as to accommodate her *qua* the locomotor disability and if required, also overlook reduction in binocular vision, if the same was disabling. Therefore, in light of the opinion of Dr. Sarkar and report of National Career Service Centre for the Disabled, Kanpur, (erstwhile VRC), ONGC ought to have adjusted the



Petitioner in a job assignment which involved office work with the help of computers, where her disability of reduced binocular vision was not an impediment. Petitioner urges that these National Centres have been established under the Ministry of Labour and Employment and play a key role in vocational rehabilitation of persons with disabilities and their report should not be ignored and in fact in ONGC many employees with disabilities have been invariably posted to do office jobs instead of field postings and work is allocated keeping in mind the physical/movement constraints and hence there is no reason why the same treatment be not meted out to the Petitioner and she be appointed to do computer based work in an office.

11. Petitioner contended that ONGC emphasizes much on the medical standards and the 1996 Rules overlooking that medical standards do not apply *mutatis mutandis* to persons with disabilities, as for instance, ONGC has identified post of AEE (Marketing)/AEE (Electronics) as suitable for visually impaired/hearing impaired persons, who are accordingly exempted from the requirement of having normal vision and hearing.

12. It was also urged that impugned letter violates Section 3(1) of 2016 Act which provides that appropriate Government shall ensure that persons with disabilities enjoy the right of equality, life with dignity and respect for his or her integrity equally with others. ONGC has arbitrarily cancelled Petitioner's offer of appointment and not even given due credence to the detailed order passed by Commissioner Disability, who is the Competent Authority in the field and has the necessary expertise to recommend appointment. ONGC has also violated Section 3(3) of the 2016 Act which provides that no person with disability shall be discriminated on ground of



disability. As per the Disability Certificate issued at Lucknow, physical requirement of the post of AEE (Electronics) is SE or seeing and Petitioner is capable of performing all duties which require 'seeing' and thus her candidature cannot be lawfully cancelled. Reliance was placed by counsel for the Petitioner on the judgments of the Supreme Court in ***Union of India and Another v. National Federation of the Blind and Others, (2013) 10 SCC 772*** and ***Vikash Kumar v. Union Public Service Commission and Others, (2021) 5 SCC 370***.

13. Learned counsel for ONGC strenuously opposed the writ petition and contended that denial of appointment to the Petitioner on the post of AEE (Electronics) is based on statutory provisions, rules and regulations governing ONGC. As a preliminary submission, it was argued that Petitioner has attempted to mislead the Court by giving an impression as if denial of appointment relates to reservation in the category of persons with disabilities, contrary to the fact that Petitioner was not appointed being otherwise medically unfit to be appointed to the post in question, on account of her eye condition/vision, which has no relation to her locomotive disability.

14. It was brought out that Ministry of Social Justice and Empowerment, Government of India, constituted an expert Committee on 30.12.2010 under Section 32 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to *inter alia* identify the list of posts suitable for persons with disabilities, which submitted its report on 24.01.2012 to the Government of India and Government published a Notification on 29.07.2013 with a list of posts in Groups 'A', 'B', 'C' and 'D', identified as suitable for persons with disabilities and from the



notification, it is evident that post of Electronics Engineer is suitable for persons with disabilities falling in OL-OH/HH categories only, meaning thereby that if any person has any other disability/suffers from any other medical ailment, he/she will be unsuitable for the post and cannot claim appointment. Based on this notification, the available vacancies were advertised by ONGC and for the post of AEE (Electronics), two vacancies were reserved in Orthopaedically Impaired (OH-OL) category and one post was reserved in the Hearing Impaired (HH) category. The job description was also stipulated in the advertisement looking at the onerous nature of duties to be performed by an Electronics Engineer in ONGC along with a clear stipulation in clause 6(m) that all candidates were required to undergo medical examination, if offered appointment and the terms of advertisement were binding on all those applied.

15. It was further submitted that Petitioner was offered appointment after she cleared the interview on 24.07.2017, subject to production of certificate of physical fitness from Medical Officer of ONGC Clinic/Hospital. As per para 23 of DoPT O.M. dated 29.12.2005, reinforced as paragraph 12 of O.M. dated 15.01.2018, every new entrant is required to undergo medical examination and produce a medical certificate from the competent authority. Petitioner underwent a pre-employment medical examination conducted by Dr. Sarkar on 21.08.2017, who referred her to an Eye Surgeon and a Vitreo Retinal Surgeon and as per the reports admittedly, Petitioner is an old case of retinal detachment in her right eye and does not have a binocular vision. On her request, Petitioner's case was examined by office of Chief Medical Services, ONGC, who declared her medically unfit for the post of AEE (Electronics), whereafter Petitioner was informed vide e-mail dated



12.10.2017 that she was medically unfit and her offer of appointment stood cancelled.

16. Learned counsel placed reliance on the 1996 Rules which provide that a candidate's eye vision cannot be worse than 6/9 or 6/12 and must have a good binocular vision. For regular appointment, one eyed persons are unfit except in case of erstwhile non-technical Class-IV posts. Despite knowing that Petitioner was medically unfit, ONGC gave her ample opportunities to produce medical certificates showing her fitness and also granted her six months time to take treatment for curing her retinal detachment, but since Petitioner could not come up to the required medical standards, there was no option but to cancel her candidature.

17. It was argued that appointing the Petitioner with her present eye condition will neither be in the interest of ONGC nor in her own interest considering the onerous duties required to be performed by an Electronics Engineer. The job description, which is undisputed *inter alia* requires the Petitioner to work inside as well as in open environment in onshore and offshore installations/rigs, where the workplace is characterized by noise hazards on account of moving-rotating-vibrating heavy equipment and machines. The operating voltages in the fields are high; engineer may be required to isolate equipment before undertaking repair and maintenance and many a times may require to work alone. Moreover, the equipment forms part of units handling hydrocarbon, which are highly susceptible to fire hazards. In the absence of binocular vision and with a detached retina, Petitioner will be unable to carry out these duties and would risk her life each single day. Pre-employment medical examination is a part of every selection process and Petitioner cannot be given any exemption or



preferential treatment for appointment overlooking this important stage of the selection process.

18. It was urged that ONGC has rightly declined to accept the recommendation of the Commissioner Disability and has indicated the reasons in the impugned letter dated 07.09.2018 to do so. The basis of rejecting the candidature of the Petitioner is her visual acuity in the right eye as 6/60 and inferior retinal detachment right eye and it was not for the Commissioner Disability to substitute his opinion for the medical authorities or the terms of advertisement. Moreover, the recommendation of the Commissioner Disability is not binding on ONGC. Section 76 of the 2016 Act provides that necessary action should be taken on the recommendation of the Commissioner Disability but the Proviso thereto stipulates that if any authority does not accept the recommendation, it is only required to inform the Commissioner Disability and the aggrieved person. The Supreme Court in *State Bank of Patiala And Others v. Vinesh Kumar Bhasin, (2010) 4 SCC 368*, has held that Commissioner has no power or jurisdiction to issue any mandatory or prohibitory injunction or any other interim direction to the employer.

19. Lastly, it was urged that conscious of the fact that Petitioner is not entitled for appointment to the post of AEE (Electronics), during the pendency of the writ petition, though no relief is sought in the writ petition for an alternate appointment, Petitioner is asserting a right on a computer based job, whereas the advertisement was for an electronics engineer, who could perform the job as per specified job description. It is a settled principle of law that Court cannot grant a relief not asked for by a party as held by the Supreme Court in *Trojan And Company v. RM. N.N. Nagappa Chettiar*,



(1953) 1 SCC 456 and moreover, ONGC can only fill-up advertised vacancies with specific job profile and cannot set a precedent where a candidate being disqualified for the advertised post seeks and is appointed to perform a different job.

20. Heard learned counsels for the parties and examined their respective contentions.

21. The grievance of the Petitioner in the present writ petition arises from rejection of her candidature to the post of AEE (Electronics), advertised by ONGC through Advertisement No.3/2017. It is brought forth by ONGC, that Ministry of Social Justice and Empowerment, Government of India, constituted an expert Committee on 30.12.2010 as required under Section 32 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to *inter alia* identify the posts suitable for persons with benchmark disabilities and after receiving the report on 24.01.2012, Government of India published a Notification on 29.07.2013 containing a list of disabilities which were suitable for different posts in Groups 'A', 'B', 'C' and 'D'. From the notification it is evident that post of Electronics Engineer has been identified as suitable for persons in OH-OL/HH categories only and this clearly implies that a candidate having any of the two benchmark disabilities will be eligible for reservation in the PwD category but if he has any other disability or is otherwise medically unfit, he will be ineligible for appointment to the post in question. In the present case, it is an undisputed fact that for the post of AEE (Electronics), 02 posts were reserved in the PwD category i.e. Orthopaedically Impaired (OH-OL) and 01 post was reserved in the Hearing Impaired (HH) category and the job description was mentioned in the advertisement.



22. The selection process involved shortlisting candidates for personal interview in the respective disciplines based on their GATE-2017 Scores. It was stipulated in the advertisement in Clause 6(m) that appointment of candidates will be subject to their passing the medical examination as per standards and rules laid down under 1996 Rules. Petitioner applied under OH-OL category and annexed a disability certificate dated 13.04.2016 issued by CMO, Lucknow, wherein her disability was assessed at 45% as locomotive disability in her left leg. After the interview, Petitioner was informed vide letter dated 24.07.2017 that she was being offered appointment subject to production of certificate of physical fitness from the Medical Officer of ONGC clinic/hospital, in consonance with paragraph 23 of DoPT O.M dated 29.12.2005 and the advertisement. Petitioner underwent the pre-employment medical examination on 21.08.2017 conducted by Dr. Maloy Sarkar, DCMO-I/C Medical Services, ONGC, who, on the basis of opinion of eye specialist and retinal surgeon, opined that *albeit* Petitioner's case did not confirm to guidelines of physical examination as the visual acuity in right eye was 6/60 and she did not have binocular vision, yet having been selected under PwD category and having done well in academics, her case be referred to higher authority for consideration. Based on this report, Petitioner was not found medically fit to be appointed as AEE (Electronics) and no fault can be found with the decision of ONGC to cancel her offer of appointment, which confirmed to the 1996 Rules stipulating minimum vision requirement of the post in question.

23. Petitioner knew that she was medically unfit, yet vide letter dated 24.08.2017 she requested to consider her case for the post of AEE



(Electronics) and in view of this, her case was sent to the office of Chief Medical Services, ONGC for examination and comments. It was confirmed that Petitioner was medically unfit for the post of AEE (Electronics) and the offer was cancelled. ONGC, in its pursuit to offer another opportunity to the Petitioner, referred her to RML hospital, where she was examined on 07.03.2018 and again found temporarily unfit on account of retinal detachment. Despite this, Petitioner was given a chance to undergo treatment and come back for re-examination within 06 months, which admittedly she never undertook. In these facts, it can be held that ONGC made all efforts to facilitate the Petitioner in getting a job but her vision and consequent medical fitness became an impediment and any direction to appoint her would be against Rule 2.1 of 1996 Rules, which provides that every candidate/fresh entrant in order to be eligible for appointment will be required to undergo a medical examination by the Medical Authority specified in sub-Rule 3(e) and produce a certificate of fitness. The required medical standard for 'eyes' is prescribed in Annexure-V, ONGC:MER-V, appended to the 1996 Rules and is as follows:

***"INSTRUCTIONS TO THE COMPETENT MEDICAL AUTHORITY
REGARDING PHYSICAL EXAMINATION OF CANDIDATES FOR
APPOINTMENT IN OIL AND NATURAL GAS CORPORATION
LIMITED.***

.....

V. EYES: *The candidate's eyes will be examined in detail in accordance with the following rules. The result of each test will be recorded.*

a) Acuity of vision : The naked eye vision of the candidate shall be recorded, as it will furnish the basic information in regard to the condition of the eyes.

The standards for distant and near vision with or without glasses shall be as follows:-



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Distant Vision		Near Vision	
Better eye	Worse eye	Better eye	Worse eye
(1)	(2)	(3)	(4)
6/9	OR 6/9	0.6	0.8
6/6	6/12		

.....
NOTE:

.....
iii) *The candidate should have good Binocular Vision. For regular appointment one-eyed persons are to be regarded as unfit except in case of the erstwhile non-technical Class-IV posts.*

.....
(c) *Field of vision: Appointees having grossly affected field of vision or where it is likely to deteriorate further will be considered disqualified for all categories."*

24. Paragraph 23 of DoPT O.M is also to the same effect and mandates medical examination of every new entrant on initial appointment and provides that every new entrant on initial appointment is required to produce a medical certificate issued by a competent authority and in case of medical examination of a person with disability for appointment to a post identified as suitable to be held by a person suffering from a particular kind of disability, the concerned Medical Officer or Board shall be informed beforehand that the post is identified suitable to be held by persons with disability of the relevant category and the candidate shall then be examined medically keeping this fact in view.

25. It is pertinent to mention that since Petitioner was contesting the applicability of the aforesaid provisions and insisting that she was required to be examined at VRCs being a candidate under PwD category, during the pendency of this petition, on direction of this Court passed on 08.02.2024,



ONGC, Medical Board was constituted by CMO, Kanpur and in its report dated 16.04.2024, the Board opined that Petitioner was fit to do computer based job but did not answer the main question framed by the Court i.e. whether her fitness would interfere with or impair her work of AEE (Electronics). Therefore, the dispute that Petitioner was not initially examined at VRC is also put to rest, *albeit* it is debatable whether the said examination for the disability for which the post is identified or general medical examination.

26. From a conjoint reading of all the medical opinions, it is evident that there is unanimity in the opinion that visual acuity in Petitioner's right eye is 6/60 and she does not have binocular vision as also that she suffers from a long standing partial retinal detachment in right eye with a vision of finger counting at a distance of 5 meters and significantly, while there is some medical opinion to suggest that Petitioner can perform computer based job, there is none which recommends that she will be able to carry out the onerous duties of an Engineer in Electronics as advertised. The job description of the post of AEE (Electronics) was specified in the advertisement and required an Engineer to work inside as well as in open environment in onshore and offshore installations/rigs where the workplace is characterized by noise hazards on account of moving-rotating-vibrating heavy equipment and machines. Even today, it is the case of ONGC that the job description is crucial and it is asseverated that job profile will include operating on high voltages in the fields; isolating equipments before undertaking repair and maintenance and many a times may require the engineer to work alone. Moreover, the equipment forms part of units handling hydrocarbon, which are highly susceptible to fire hazards. In the



absence of a binocular vision and with a detached retina, Petitioner will be unable to carry out these duties and would also risk her life each single day. In this light, the primordial argument of the Petitioner that she can 'see' with reduced visual acuity in her right eye has no merit. It is explained on behalf of ONGC that since the visual acuity in Petitioner's right eye is 6/60, she does not confirm to the guidelines contained in Para V(a) of 1996 Rules and moreover, paragraph 4 of sub-para V Note (iii) of Instructions regarding physical examination of a candidate for appointment provides that the candidate must have good Binocular vision and one-eyed persons will be regarded as unfit. This was the reason why ONGC did not accept the recommendation of the Commissioner Disability.

27. Accepting this argument would amount to changing the conditions of the advertisement, 1996 Rules and requirements of the post of AEE (Electronics) and risking her life as well as jeopardising the interest of the organisation. Petitioner's argument is premised on her own understanding and claim that she was selected to be posted in Information and Telecommunication Department of ONGC and would be able to perform her duties using a computer and thus ONGC be directed to make necessary adjustments in furtherance of Sections 2(y), 3(5) and 20(2) of 2016 Act, which is wholly misconceived. Advertisement was for fresh recruitment to the given post and cannot be changed, especially when Petitioner has not been denied benefit of having applied in PwD category and non-appointment is on account of medical unfitness due to her vision.

28. Pre-employment medical examination is a part of the selection process and Petitioner cannot be given any exemption or preferential treatment for appointment overlooking this important stage of the selection



process. It was stipulated in Clause 6(m) of the advertisement itself that appointment of selected candidates will be subject to their passing the Company's Medical Examination as per standards laid down under 1996 Rules, details of which were available on ONGC's website. It is a settled position of law that it is the employer's prerogative to decide the job description of a post as also he is best suited to perform the job and it is open to an appointing authority to prescribe both eligibility conditions as well as medical standards keeping in mind the onerous duties of the post in question. Prescription of medical standards as well as qualifications for the post is undoubtedly a policy decision of the employer and is legitimately taken bearing in mind several features including nature and functionality of the job so that on appointment the employee discharges his duties efficiently. *Albeit* in the context of essential qualifications required for appointment to a post, the Supreme Court in ***Maharashtra Public Service Commission Through its Secretary v. Sandeep Shriram Warade and Others, (2019) 6 SCC 362***, held as follows:

"9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same."



29. The Supreme Court has from time to time propounded that when an eligibility condition or a qualification is set out in an advertisement, the same can neither be whittled down by the Courts and nor can the Courts direct prescription of any other eligibility condition and on this analogy, Courts cannot direct alteration of the requisite medical standards. It is no part of the role or function of a Court in judicial review to expand upon the ambit of prescribed qualifications or medical standards in the advertisement or determine what should be the medical criteria to judge the medical fitness of the aspiring candidates for appointment/selection to a post. Being matters of policy decision, judicial review must tread warily. As noted above, Ministry of Social Justice has identified posts suitable for different categories of disabilities and physical requirements for performing different jobs, which have been identified as suitable for different categories of disabilities and post of AEE (Electronics) has not been identified as suitable for persons suffering from disability of vision as 'seeing' an essential feature of the job which involves hazards of high voltage current and it is not the domain of this Court to substitute the functional requirement of a post. In this context, I may refer to passages from the judgment of a Division Bench of this Court in ***Rathod Anil v. Union of India, 2023 SCC OnLine Del 8114***, as follows:-

"22. 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.



23. 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.

24. 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.

25. 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.

26. 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.

27. 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)

xxx

xxx

xxx

29. *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)

xxx

xxx

xxx

31. *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’.*



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

33. 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.

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

xxx

xxx

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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.”

30. In **Dr. Rahul Kumar v. Union of India & Ors., 2018 SCC OnLine Del 10717**, this Court has held as follows:-

“10. We have heard learned counsel for the parties and considered their rival submissions. It is not in dispute that pursuant to an advertisement published by respondent no. 2/IOC, the appellant had applied for the post of Quality Control Officer in the General Category. The appellant appeared in the written test, Group Discussion/Group Task and interview and was declared successful therein. Thereafter an offer of appointment was issued to him on 17.12.2014. Before grant of final letter in terms of the advertisement, the appellant had to undergo a fitness/medical test. Initially, the appellant was found medically fit and was also issued a



certificate dated 6.1.2015 but before he could join the Department, the concerned medical officer, as per his note dated 12.1.2015, reported that the appellant was medically unfit on account of vision of his left eye, being 6/36. The appellant underwent another medical examination and he was found to be medically unfit because his distant vision in the left eye was found to be 6/18(P) whereas the standard requirement is that the vision in one of the eyes cannot be less than 6/12.

11. As regards to the submission made by counsel for the appellant that Clause 2.2 of the Guidelines would not apply to the engineers/officers and, thus, the rejection letter is liable to be quashed, we find no force in this submission made by learned counsel for the appellant. It has been submitted before us that the medical criteria have been uniformly applied to all the employees and, thus, it is not for this Court to substitute its opinion with regard to medical standards, which would be required for the employment. Although Clause 2.2 does require that the same would not apply to officers and engineers but a medical examination for selected candidates across the Board in almost all organisations is a pre-requisite. Thus, it cannot be held that for a particular category, no medical examination or no standard of medical examination would be prescribed. This aspect gains importance especially when the advertisement and the post applied for by the appellant made it clear that a person would have to satisfy the prescribed medical criteria."

31. In **Karanti Goyal v. Ministry of Environment Forests Climate Change and Another, 2023 SCC OnLine Del 708**, Division Bench of this Court further emphasised 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. Relevant passages are as under:-

*"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 v. State of Jammu & Kashmir, (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.”

20. 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.

21. *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."*

32. In view of the above, no infirmity can be found with the decision of ONGC in rejecting the candidature of the Petitioner. Petitioner has not been denied the benefit of reservation in the PwD category and thus there is no violation of 2016 Act. Petitioner has sought to contend that being a PwD candidate she ought to have been subjected to a special medical examination by the VRCs. *Albeit* it is debatable whether this special medical examination has to be qua the disability or a general examination, this issue need not detain this Court as during the pendency of the writ petition and pursuant to the order of this Court, the exercise has been undertaken and report from VRC, Kanpur has been received but even the said report does not further the case of the Petitioner as the only conclusion in the report is that Petitioner can perform a computer based job.

33. It is pertinent to note that when the writ petition was filed in the year 2017, Petitioner had laid a limited challenge to the order/letter dated 07.09.2018, wherein ONGC had declined to accept the recommendation of Commissioner Disability to appoint the Petitioner as AEE (Electronics). There is no challenge to the decision of ONGC cancelling the candidature of the Petitioner nor is there a prayer for adjusting on a job which is computer



based. With the passage of time, Petitioner has placed on record documents obtained under Right to Information Act, 2005 and relies on them to urge that in many offices of ONGC engineers are not working on high voltages and in some binocular vision is not required. Relying on medical reports and the information received under RTI Act, Petitioner contends that in furtherance of principle of reasonable accommodation under the 2016 Act and judgment of the Supreme Court in *Vikash Kumar (supra)*, she should be appointed and necessary adjustments shall be made to her job assignments so as to accommodate not only her locomotive disability but reduction in her binocular vision and place her in a computer based job, which will neither adversely impact her work nor cause undue burden on the organisation.

34. In my considered view, this argument is untenable in law. ONGC had advertised for the post of AEE (Electronics) stipulating the medical and physical criteria tailormade to suit the job description mentioned in the advertisement itself. Requirement was of an electronic engineer who was medically fit to carry out the onerous duties specified and the post was suitable only for the notified disabilities and no other medical/physical disability. Consciously, the post was not notified for visually impaired. This Court cannot be called upon to change the job description by directing ONGC to appoint the Petitioner on a computer assignment as that is not for which the post was advertised nor can the Court change the notified disability for which the post was found suitable taking into account the functional requirement of the post. Reasonable accommodation cannot extend to changing and altering the terms and requirements of an advertisement, more particularly, in view of the consistent stand of ONGC



that the job profile of the post in question will require handling high voltages etc. for which vision is an important aspect and thus the need to have strict medical examination at the time of recruitment.

35. Documents relied upon by the Petitioner do not further her case. The certificate issued by VRC, Kanpur does not refer to her vision and is only certifying the locomotive disability. Similarly other document obtained under RTI Act cannot aid her as these are responses from some offices bringing forth the job profiles of the engineers in those offices but cannot alter the terms of the advertisement, wherein the post of AEE (Electronics) was identified for persons with disabilities in OL-OH/HH categories. Offer of appointment was also given to the Petitioner in OL-OH category and only because she was found medically unfit, she cannot claim appointment predicated on posting to a computer based job. It is thus immaterial and irrelevant if some departments have informed her that the job descriptions of engineers are different. There is no gainsaying that many candidates may have been disqualified as they were declared medically unfit though falling in the same categories i.e. OH-OL/HH and no special exemption can be given to the Petitioner.

36. The judgment in **Vikash Kumar (supra)** is inapplicable as the case related to a request of the petitioner therein for providing a scribe for the examination, which 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



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was only available to persons with benchmark disability, unmindful of the discretion vested in it. Quite apart, in the present case, Petitioner seeks appointment overlooking the advertisement terms and requirements of the employer i.e. ONGC to appoint an Engineer for a specified job profile and description. Insofar as the recommendation of Commissioner Disability is concerned, Section 76 of 2016 Act provides that necessary action should be taken on his recommendation, however, Proviso thereto stipulates that if any authority does not accept the recommendation, it should inform the Commissioner Disability and the aggrieved person of its decision. In the facts of this case where the post of AEE (Electronics) was not identified for visually impaired and the job description was specific and technical, no fault can be found with the decision of ONGC in not accepting the recommendation of the Commissioner Disability to appoint the Petitioner to the post of AEE (Electronics).

37. There is thus no merit in the writ petition and the same is accordingly dismissed. Pending applications also stand disposed of.

JYOTI SINGH, J

SEPTEMBER 30, 2024/DU