



2025:DHC:8178-DB



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

Date of decision: 3rd SEPTEMBER, 2025

IN THE MATTER OF:

+ **LPA 549/2025 & CM APPL. 53340-43/2025**

SHALENDRA HOODAAppellant

Through: Mr. Abhijit Anand, Advocate

versus

CHAIRMAN AND MANAGING DIRECTOR, FOOD
CORPORATION OF INDIA & ORS.Respondents

Through: Mr. Manoj, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

1. By way of the instant appeal, the Appellant seeks to challenge the Order dated 13.05.2025 passed by the learned Single Judge in W.P.(C) 8264/2023 dismissing the writ petition.
2. By way of the said writ petition, the Appellant has challenged the recruitment process conducted by the Respondent/Food Corporation of India pursuant to the Advertisement dated 23.02.2019.
3. By the said Advertisement, the Respondent had invited applications for recruitment in different posts in various zones. It is stated that the Appellant had applied for the post of Assistant Grade-III (Accounts) in the North Zone of the Food Corporation of India (FCI) under the Disabled Ex-Servicemen (ESM) category and had submitted the application in the



specified form by online mode for the said post.

4. It is stated that results were declared on 09.01.2020 and a list of 'selected candidates' and a list of 'waiting candidates' was published by the Respondent for the post of Assistant Grade-III (Accounts) in the North Zone. It is stated that the Appellant was placed at 35th rank in the 'waiting list' prepared for the said post of Assistant Grade-III (Accounts).

5. It is the case of the Appellant that the Respondent had not provided for 4.5% of vacancies reserved for disabled ESM and dependents of service personnel killed in action, which were required to be reserved for the said post under the ESM category.

6. It is pertinent to mention that the Petitioner had given representations to the Respondent stating that since the Respondent had not reserved seats for candidates under the disabled ESM category and dependents of service personnel killed in action under the ESM category, the entire recruitment process is illegal, unlawful, malafide and serious violation of statutory rules. It was also stated that the Appellant being the only disabled ESM candidate, he should have been placed at 1st rank in the waiting list as out of 41 ESM category candidates for the said post as none of the candidates belongs to disabled ESM category or dependents of service personnel killed in action.

7. Dissatisfied by the inaction on the part of the Respondent, the Petitioner thereafter filed W.P.(C) 15206/2022 challenging the Advertisement dated 23.02.2019 for not providing 4.5% vacancies reserved for disabled ESM and dependents of service personnel killed in action under the ESM category. It is pertinent to mention that the Petitioner had also given a representation which was pending with the Respondent.

8. The said writ petition was disposed of by directing the Respondent to consider the representation dated 23.01.2020 made by the Appellant herein



and take a decision thereon.

9. In compliance of the Order dated 01.02.2023 passed by this Court in W.P.(C) 15206/2022, the representation was considered and rejected by the Respondent *vide* Order dated 21.03.2023. The relevant portion of the order reads as under:-

“6. The grievance of the petitioner as per his representation dated 23.01.2020 and 23.06.2020 is that a recruitment process was initiated by Food Corporation of India (FCI) through an Advertisement dated 23.02.2019 for filling up various posts in different Zones of FCI including the post of AG-III (Accounts) for North Zone, however, the respondents have not reserved 4.5% vacancies for disabled' Ex- Servicemen (ESM) and dependent of Service Personnel killed in action under the BSM category, which has resulted in depriving the petitioner of appointment to the post of Assistant Grade-III (Accounts) for North Zone.

7. The petitioner is claiming for reservation under Disabled Ex-serviceman i.e. 4.5% out of total 14.5% horizontal reservation. FCI has given 14.5% reservation for ESM candidates. Disability condition mentioned by him i.e. Leprosy Cured is not one of the specified disability in respect of ESM candidate.

8. Following definition of Disabled Ex-serviceman is provided in MHA Notification No.39016/10/79-Estt. (C) dated 15.12.1979:

(a) “Armed Forces of the Union” means the naval, military and air forces of the Union.

(b) “Disabled Ex-serviceman” means an Ex-serviceman who while serving in the armed forces of the Union was disabled in operations against the enemy or in disturbed area.



Above definition does not cover leprosy cured cases, therefore his claim for reservation for Disabled Ex-serviceman is not tenable.

9. Food Corporation of India published the vacancies of AG-III (Accounts) vide Advertisement No. 01/2019 FCI Category-III. The total vacancies i.e. 287 were advertised in Accounts Cadre for (SC/ST/OBC/EWS/UR/PwBD& ESM). Out of which total 41 vacancies were reserved for ESM as per DoP&T OM No. 25(01)/2010/D (Res-I) dated 22.01.2019. In the aforesaid OM dated 22.01.2019, it is mentioned that “refer to Ex Serviceman (Re-employment in Central Civil Services and posts) Rules, 1979 as amended, the last amendment have been made by DOP&T OM dated 04.10.2012, as per which 10% of the vacancies in posts upto the level of Asstt. Commandant in all para military forces, 10% of the vacancies in Group C posts, and 20% of vacancies in Group D posts, including permanent vacancies filled initially on a temporary basis and temporary vacancies which are likely to continue for 3 months and more, to be filled by direct recruitment in every year shall be reserved for being filled by ESM. As per MoF (BPE) OM No. 6/55/79- BPE (GM I) dated 13.03.1980, 14.5% vacancies in group C posts are reserved for ESM” (including 4.5% or disabled ESM/dependents of servicemen killed in action in CPSUs.)

10. The 14.5% reservation given to Ex. Serviceman including 4.5% reservation for Disabled Ex. Serviceman was also as per above mentioned DOP&T OM dated 22.01.2019. The disease Leprosy Cured is not covered in the case of disabled Ex. Servicemen.

11. It is pertinent to mention here that the 2nd waitlist was operated on 16.03.2022 and the last candidate selected under ESM was Shri Kamal Dev at Waitlist No.20. The applicant was not selected because he was placed at far lower Waitlist No. 35 (ESM).



12. No further waitlist was operated as per the instructions mentioned in the FCI Circular No. EP-01-2019-35 dated 13.12.2019 which states that "The waitlist/reserve panel list of direct recruitment for category-III and IV posts shall remain valid only upto the initiation of process for next recruitment i.e. notification of next recruitment"

10. Aggrieved by the dismissal of the said representation, the Appellant approached this Court by filing W.P.(C) 8264/2023. The learned Single Judge by the impugned Order has held that the reason given by the Respondent in rejecting the case of the Appellant on the ground that the disability claimed by him, i.e., leprosy cured, does not fall within the category of disability eligible for the ESM category, cannot be found fault with. The learned Single Judge also held that in any event, the Appellant had applied for the very same post under the same category in a subsequent advertisement in the year 2022 and he has already been selected and appointed. It has been observed in the impugned Order that the Appellant has not disclosed this fact in the writ petition. The learned Single Judge has observed that a reading of the writ petition and the rejoinder are misleading. The learned Single Judge therefore declined to entertain the writ petition at the instance of a candidate who had subsequently been recruited in the same post in the Respondent organization and particularly one who chose not to disclose this fact in the writ petition that he had been selected and had filed four applications premised on the deprivation of livelihood. It is the said Order which is under challenge in the instant writ petition.

11. Heard learned Counsel for the parties and perused the material on record.

12. The Petitioner claims that the entire recruitment process which had



been conducted pursuant to the Advertisement dated 23.02.2019 has to be set aside as it had not provided for reservation for disabled ESM and dependents of service personnel killed in action under the ESM category, i.e., 4.5% out of the total 14.5% horizontal reservation.

13. In the counter affidavit, the Respondent has stated that the Appellant was given reservation under the ESM category and was placed at 35th rank in waiting list category but the Appellant did not get the benefit of reservation under the category of Persons with Benchmark Disability (PwBD) as this benefit of the reservation was afforded to persons upto the age of 37 years (after relaxation of 10 years) whereas the Petitioner was aged 43 years at the relevant time. Further, the Appellant did not get the appointment because the waiting list category operated till Serial No.20.

14. Material on record also reveals that the next recruitment process had already commenced and that the waiting list was valid only for a period upto the initiation of the next recruitment process and since the next recruitment process had already been initiated, the validity of the said waiting list expired.

15. The Appellant is suffering from the benchmark disability of "*leprosy cured*" and comes in category C, i.e, Degree of Disability at 40% and above, and is eligible for applying for 1% seats are reserved in such category.

16. A perusal of the Advertisement also shows that for the Assistant Grade-III (Accounts) in the North Zone, there are 41 seats reserved under the ESM category and two seats are reserved for PwBD.

17. It is the case of the Respondent that reservation under the disabled ESM category is only applicable to such of those persons who while serving in the armed forces were disabled in operations against the enemy or in disturbed area. Since the Petitioner has not been disabled in the operations



against the enemy or in disturbed area, he is not entitled to the reservation under the disabled ESM category. People having disability “*leprosy cured*” were entitled to be considered for reservation under the PwBD category and not under the disabled ESM category. The Petitioner having chosen to apply under the ESM category was not entitled to be considered under the disability “*leprosy cured*”. The Petitioner therefore being an Ex-Servicemen was considered under the ESM category but not under the disabled ESM category which the Petitioner herein claims.

18. Further, as stated by the learned Single Judge, the Appellant has already been selected in the subsequent recruitment process, a fact which has not been disclosed in the writ petition and therefore the conclusion arrived at by the learned Single Judge that since the remedy under writ is purely discretionary and the Petitioner has concealed material facts, he is not entitled to the discretionary remedy under Article 226 of the Constitution of India, would not require any interference. Resultantly, the conclusion arrived at by the learned Single Judge does not warrant any interference.

19. The appeal is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

SEPTEMBER 3, 2025

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