

Central Administrative Tribunal - Delhi

Ms. Ira Singhal vs Department Of Personnel And ... on 25 February, 2014

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
OA 2543/2012

New Delhi this the 25th day of February, 2014

Hon ble Mr. Sudhir Kumar, Member (A)

Hon ble Mr. A.K.Bhardwaj, Member (J)

Ms. Ira Singhal, Age 28 Yrs

Flat No. 302, Brindavan Apts,

92/4 Krishna Nagar,

Safdarjung Enclave, New Delhi.

Applicant

(By Advocate Mrs. Jyoti Singh, senior advocate with Shri Dinesh Padey and Ms.Nidhi Mehrotra)

VERSUS

1. Department of Personnel and Training  
Through its Secretary,  
Ministry of Personnel, Public Grievance and Pensions,  
North Block, New Delhi-110001
2. Union of India  
Through the Secretary,  
Ministry of Social Justice and Welfare,  
Shastri Bhawan, New Delhi.
3. Union Public Service Commission,  
Through its Chairman, Dholpur House,  
Shahajahan Road, New Delhi-110069
4. Department of Revenue,  
Through its Secretary,  
Ministry of Finance, Govt. of India,  
North Block, New Delhi.
5. Mr. Karthik Manickam M  
Roll No.-11231 Rank-833  
#2, PWD Drivers Quarters  
TOD Hunter Nagar, Saidapet,  
Chennai, Tamilnadu-600015.
6. Mr. Jitender Singh,  
Roll No-200489 Rank-840  
41-Nirman Vihar-II  
(Opp Shekhawati Hospital)

Sec II, Vidyadhar Nagar  
Jaipur, Rajasthan-302023

7. Mr. Azhar Jamal  
Roll No.-117036 Rank-859  
Vill Bilaspur P.Tola  
PO-Bhikhampur, PS-Bhagwanpur  
(HAT), Dist-Siwan,  
Bihar-841408
  
8. Mr. Bhopal Singh Mehta  
Roll No.-27561 Rank-866  
Jerthiyon Ki Bari, Outside  
Bhahmpoli, Ambamata,  
Udaipur, Rajasthan-313001
  
9. Mr. Likesh Singla  
Roll No.-11380 Rank-872  
S/o Sh Sarat Chander, H.No.251,  
Post Office Street,  
Near Govt. Girls School,  
Mansa (PB)-151505
  
10. Mr. Harikumar N  
Roll No.-276943 Rank-891  
C/o N.Kumar,  
T.P. No.326, 3-145-8A-14-4,  
2nd Main Prasanth Nagar,  
Madanpalle, Chittoor (Dist),  
Andhra Pradesh

. Respondents

(By Advocates Shri R.N.Singh, Shri Amit Anand, Shri D.S.Mahendru, Shri Narender Hooda, senior a

O R D E R

Hon ble Mr. A.K.Bhardwaj, Member (J):

In the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has questioned the order dated 26.04.2012 passed by respondent No.1 cancelling her candidature for allocation of service on the basis of CSE-2010; Notification No.16-70/2004-DD.III dated 18.01.2007; examination notice dated 02.01.2010 to the extent it provides that the benefit under the Persons with Disabilities ( Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is extended on the basis of functional classification and has prayed for issuance of direction to respondents to allocate her appropriate service in accordance with the merit in the CSE-2010. Ms. Jyoti Singh, learned senior counsel appeared for the applicant and submitted:-

In view of OM No.16-10/2011-DD-III dated 14.12.2011 issued by the Ministry of Social Justice and Empowerment in the event of meeting the requirement of lifting the prescribed load or waiving off of the same, DoP&T could allocate her IRS (C&CE) and mild impairment due to polio, injury,

weakness of muscles etc. as far as the functional capacity of person is concerned need to be distinguished from the disability due to amputation or severe impairment in the limbs.

In view of the aforementioned OM even Shri Bhopal Singh Mehta (Rank 866) who had 88% locomotor disability due to impairment in both the upper limbs and both the lower limbs is recommended to be allocated IDAS by dispensing with the additional physical requirement of the post, i.e. W, ST, BN and Shri Lokesh Singla (Rank 872) is recommended to be allocated IRAS.

(iii). Vide Office Memorandum No.13015/7/2011-AIS-1 (Pt.) dated 21.12.2011, the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) requested the Department of Revenue (Ministry of Finance) North Block, New Delhi to indicate as to how much minimum weight was expected to be lifted by an IRS (C&CE) officer with one hand, as per physical requirements /functional classification prescribed for the service and whether the requirement of lifting can be waived off in view of comments of Ministry of Social Justice and Empowerment in the OM dated 14.12.2011 (ibid). The DoP&T also sent separate letter no. 13015/7/2011-AIS. I(Pt.) dated 21.12.2011 to the Chairman, Medical Board, Old Skin Building, Near Accounts Section, Safdarjung Hospital, New Delhi requesting to make arrangement for medical re-examination of the applicant to ascertain as to how much weight she could exactly lift with her one hand.

(iv) On being re-examined by the Chairman, Central Standing Medical Board, Safdarjung Hospital, New Delhi, it could be reported that the applicant

(v) Vide communication F.No.A.12025/03/2009-Ad.II dated

24.01.2013, Ministry of Finance, Department of Revenue (Central Board of Excise & Customs), North Block with reference to DoP&T D.O letter No.13015/7/2011-AIS. I (Pt.) dated 16.02.2012 clarified that the Department had no objection to allocation of IRS (C&CE) cadre to applicant on the basis of Civil Services Examination-2010. Thus, once the Cadre Controlling Authority (user department) had no objection, the respondents ought to have allocated her IRS (C&CE) (keeping in view her merit).

2. In view of the submissions put forth on behalf of applicant and the OM F.No.A.12025/03/2009-Ad.II dated 24.01.2013,(ibid), we desired to know the criteria adopted by Sub-Committee for Orthopadically handicapped candidates constituted by the expert Committee, met on 12.05.2005 and 7.7.2005 in identifying the posts in Group A and B suitable for persons with disabilities. In this regard, we asked Mr.Rajinder Nischal, counsel for respondent No.2 to produce the file relating to the meeting of the Committee constituted as above. For easy reference, order dated 11.09.2013 passed by us is reproduced hereinbelow:-

Heard the matter once again at some length. We seek assistance of the leaned counsel for respondent No.2, Ministry of Social Justice & Empowerment to produce the file relating to the meeting of the Committee constituted through Annexure A-2 order dated 18.01.2007, in which the working conditions were examined and the remarks were made thereupon in column-6 of the table, in respect of various posts, and also to further clarify as to which category was prescribed for a person disabled in both arms. He is directed to bring the authority behind the table of services

identified to be suitable for persons with different physically disability categories, as mentioned in Civil Service Examination Notice dated 02.01.2010 in a tabular form, which has been produced at pages 97-99 of the paper book of the OA. Call on 20.09.2013.

3. On 20.09.2013, learned proxy counsel for respondent No.2 submitted that since the stand of the Ministry of Finance (Department of Revenue) was at variance with that of Ministry of Social Justice & Empowerment, he would not be in a position to represent both the Ministries. In the circumstances, Shri Amit Anand, learned counsel for Union of India who was present in Court was directed to take instructions in the matter from the Ministry of Social Justice & Empowerment and present their stand. After taking a couple of adjournments, finally on 10.12.2013, Mr. Amit Anand, learned counsel could only submit that the file in which the minutes of the meeting dated 23.11.2007 were recorded was not traceable. We could only express our dismay on the stand taken by the Ministry of Social Justice and Empowerment before the Court. We could not have kept the original application filed by a physically challenged female candidate pending indefinitely, thus, we proceeded to hear the counsels for the respective parties.

4. At the end, learned senior counsel for the applicant relied upon the following judicial precedents:

- (i). K.V. Ramana Vs. O/o Director General of Audit (Defence Services) and Ors (2005 (3) SLJ 61 (CAT)
  - (ii). N.Manjushree V. Union of India ( 2012 (2)SLJ 1 (CAT)
  - (iii) M.Dinesan v. State Bank of India, Bhubaneswar, Orissa (ILR 1999 KAR 341)
- (iv). Government of India and Anr. Vs. Ravi Prakash and Anr. ( 2010) 7 SCC 626
  - (v). Ravi Kumar Arora vs. Union of India and Anr ( 2004 (111) DLT 126)
  - (vi). Satish Rawat V.Union of India (2002)7 SCC 29)

5. Mr. Narinder Hooda, learned senior counsel for respondent No.6 submitted:-

Once the applicant participated in the Civil Services Examination-2010 conducted in terms of the Notification dated 02.01.2010, she was bound by all the conditions of the said Notification and when in view of the provisions contained in para 21 thereof, she did not fulfill the functional classification for the post of IRS (C&CE), it was not open to her to question non allocation of said service.

(ii). A candidate affected with both arms is eligible only for Indian Administrative Service and not any other service, including IRS (C&CE). Since, admitted

(iii). The applicant was medically examined on 26.04.2011 and

was found suffering from physical disability related to both the arms.

(iv). She does not even fulfil the physical requirement for the service in question i.e. IRS (C&CE), as she cannot perform the work by pulling/ pushing and lifting.

(v). The second medical board also viewed that the applicant does not satisfy the physical requirement of pulling/pushing and lifting.

(vi). The sudden change in the stand of Department of Revenue (Ministry of Finance) was biased and based on extraneous consideration.

(vii). Finally, he relied upon the judgment of Hon ble Supreme Court in Manish Kumar Shahi Vs. State of Bihar & Ors (2010) 12 SCC 576).

6. In the counter reply filed by it, the respondent no.1 has stated that its role confined to

service depends upon the rank of candidates, his/her preference for service, finding of medical examination, availability of vacancy in his/her category, physical requirement and functional classification for the service etc. Having stated so, the said respondent reproduced various provisions of relevant rules including Rule 22 in its reply. In para 7 of reply of respondent No. 1, service-wise vacancies under disability category (CSE-2010) have been extracted. For easy reference, Rule 22 reproduced in para 4.3 of the reply of respondent No.1 and para 7 to 10 thereof are extracted hereinbelow:-

Rule (22): The eligibility for availing reservation against the vacancies reserved for the physically disabled persons shall be the same as prescribed in The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 .

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

The physical requirement and functional classification can, for example, be one or more of the following:-

Code Physical Requirements MF 1 Work performed by manipulation by fingers.

PP 2 Work performed by pulling and pushing.

L 3 Work performed by lifting KC 4 Work performed by kneeling and crouching.

BN 5 Work performed by bending S 6 Work performed by sitting ( on bench or chair) ST 7 Work performed by standing W 8 Work performed by walking SE 9 Work performed by seeing H 10 Work performed by hearing/speaking.

RW 11 Work performed by reading and writing C 12 Communication Code Classification Bl 1 Both legs affected but not arms.

BA 2 Both arms affected-

Impaired reach.

Weakness of grip.

Ataxic BLA 3 Both legs and both arms affected.

OL 4 One leg affected ( R or L) Impaired reach.

Weakness of grip Ataxic OA 5 One arm affected (R or L)

a)Impaired reach.

Weakness of grip Ataxic OAL 6 One arm and one leg affected.

MW 7 Muscular weakness.

B 8 Blind LV 9 Low Vision.

H 10 Hearing.

\*\*\*\*\* Note: The above list is subject to revision.

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7. The details of service-wise vacancy reserved for PH candidates for CSE-2010 ( as received f

Service-wise Vacancies under disabled category (CSE-2010)

S.

No.	Service Disability Category	Number of Vacancies	Functional Classification	Physical requirement
1	IAS	1	Blindness or Low Vision	PB F, PP, L. KC, B, ST, W, H, RW
		2	Hearing impairment	PD F, PP, L, KC, B, ST, W, SE, RW
		1	Locomotor Disability or Cerebral Palsy (LDCP)	S, ST, W, SE,H, RW
2	IP&TAFS	1	OR Low Vision Locomotor	PB F, PP, L, KC, B, S, ST, W, SE, RW, C
3.	IA&AS	1	Disability or Cerebral Palsy	OL, OAL, OA B, S, ST, W, SE, H, RW,

4.	IRS (C&CE)	Hearing Impairment	2	PD, FD	F, L, B, S, ST, W, SE, H, RW, C
		Locomotor Disability or Cerebral Palsy	2		OL, OA F, L, B, S, ST, W, SE,
5	IDAS	Disability or Cerebral Palsy	1	OL, BLA, OAL,	BL, OA B, S, ST ,W, SE
6.	IRS (IT)	Hearing Impairment	2	PD, FD	S, ST, W, SE, RW, C
		Locomotor Disability or cerebral Palsy	3		OL, OAL, BL, OA S, ST, W, SE, H,
7.	IRTS	Locomotor Disability or Cerebral Palsy	2		OA, OL S, ST, W, SE, H, RW, C
8	IRAS	Hearing impairment	1	PD, FD	S, ST, W, SE, H, RW, C
		Locomotor Disability or Cerebral Palsy	1		OL, BL, OAL, OA S, ST, W, SE, H,
9	IRPS	Blindness or Low Vision	1	PB, FB	B, S, ST, W, SE, H, RW, C
		Hearing Impairment	1	PD, FD	B, S, ST, W, SE, H, RW, C
		Locomotor Disability or Cerebral Palsy	1		OA, OL B, S, ST, W, SE, H, RW,
10.	IIS	Hearing Impairment	1	PD, FD	S, ST, W, SE, H, RW, C
11	ICLS	Blindness or Low Vision	1	PB	B, S, ST, SE, H, RW
12.	AFHQ	Blindness or low vision	1	PB	F, B, S, ST, W, SE, H, RW, C
		Locomotor Disability or Cerebral Palsy	1		OA, OL F, B, S, ST, W, SE, H,
13	DANIPS	Locomotor Disability or Cerebral Palsy	1		
	OL	F, B, S, ST, W, SE, H, RW, C			

Vacancies.

7.1. It may be seen from the above table that there was only one vacancy in IAS for Locomotor Disability or Cerebral Palsy (LDCP) sub-category of PH where BA (Both Arms affected) are allowed. Thus, out of 13 services in which vacancies for PH existed for CSE-2010, only in one service i.e. in IAS, persons affected in both arms, were permitted.

7.2. Ms. Ira Singhal appeared in CSE-2010 under Locomotor Disability or Cerebral Palsy (LDCP) sub-category of PH and at the time of filling up Detailed Application Form (DAF) for appearing in Main Examination-2010, furnished a Disability Certificate certifying that she is Both Arms affected (BA) and meets the following Physical Requirements for discharge of duties:-

F, KC, B, S, ST, W, SE, H, RW (Para 3.4 may be referred) As per instruction contained in Rule 21 and 22 of CSE Rules, her medical examination was held at Safdarjung Hospital, New Delhi. The medical report of the Safdarjung Hospital confirmed that she is Both Arms affected (Annexure-4). It was also certified in the report that she meets the following physical Requirements for discharge of duties:-

F, KC, B, S, ST, W, SE, H, RW It may be seen that there was no mismatch in Functional Classification and Physical Requirements claimed by the applicant and declared by the Medical Board of Safdarjung Hospital. Hence, the candidate was not given a chance of appeal against the findings of Medical Board. However, In light of the advice/comment of M/o Social Justice & Empowerment, Safdarjung Hospital, New Delhi was requested for making arrangement for medical re-examination of the applicant. The medical re-examination of Ms. Singhal was conducted on 23.01.2012 at Safdarjung Hospital. The Medical Board reiterated the findings of earlier board. Further, they stated that she can lift 10 (ten) kg of weight in one hand. (Annexure-5).

## Prayer of the applicant

### 8. The applicant has made the following prayer:-

Set aside the order dated 26.04.2012 passed by the Respondent No.1 i.e. DoP&T being null and void and to further direct the Respondent to allocate the appropriate service as per the merit of the Applicant (Rank 4 under the locomotor disability category) by giving the benefit to the applicant under PWD Act, 1995 with all consequential benefit.

Quash Notification No. 16-70/2004 dated 18.01.2007 issued by the Ministry of Social Justice & Empowerment, Government of India being null and void and arbitrary.

Quash and set aside the examination notice dated 2.1.2010 to the extent whereby it provides that the benefit under the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 is extended on the basis of functional classification (Sub-categorization) of locomotor disability.

## Contentions of the applicant

9. The applicant herein has filed the instant original application with the basic contention that she should be allocated a service on the basis of CSE-2010.

## Reply to the contentions of the applicant

10. It is submitted that the vacancy position in each of the service is calculated and reported directly by the concerned Cadre Controlling Authority (CCA) to the UPSC for filling up through Civil Services Examination. This Department is the CCA for IAS. The UPSC after declaration of result of a Civil Services Examination, forwards to this department the list of successful candidates and also the category of each candidate equal to the total number of vacancies to be filled up in the relevant Civil Services Examination for allocation to various services to the extent vacancies reported by Cadre Controlling Authorities to UPSC taking into account candidates merit, preferences expressed by them for various services, their medical status fulfilling special eligibility criteria in terms of Physical requirement/Functional classification (abilities/disabilities) consistent with requirement of identified posts and vacancies in the categories i.e. SC,ST,OBC and General category (subject to vacancies in PH categories). UPSC declares the category of each candidate as to whether one belongs to SC, ST, OBC or General. The role of this department is confined to allocation of service to the candidates declared successful and whose dossiers have been sent by the UPSC to this respondent. Service Allocation to the candidates recommended by UPSC is done based on their merit, preferences expressed by them for various services, their medical status and vacancies in the categories i.e. SC, ST, OBC and General category besides number of vacancies reserved for physically handicapped, declaration of general merit candidates by UPSC etc. Once candidates are allocated service their dossiers are sent to the respective Cadre Controlling Authorities for completing the remaining formalities including issuing of formal appointment letter to the candidates.



7. In the counter reply dated Nil filed by respondent No 9, it has been stated that only if the Tribunal comes to a conclusion that DoP&T has done anything wrong while allocating IRS to him, he would have a right to defend his position. The stand taken by the said respondent in his reply is quite bizarre. In judicial proceedings, one needs to put forth his defence against the claim of plaintiff/applicant and not against the decision/conclusion arrived at by the Court.

8. In the reply of respondent No.10 filed through Mr.A. Chandra Mohan, Advocate, it is stated:-

(i) that the OA is barred by laches;

(ii) no cause of action has arisen to applicant to file the present OA;

(iii) since no service for a person affected in both arms (BA) is available, the applicant is correctly denied the allocation of service and there is no infirmity in cancellation her candidature;

(iv) the view of the applicant about her physical efficiency/disability cannot over ride the view of the medical experts.

9. In the short reply filed on behalf of the UPSC through Mr.D.S.Mahendru, advocate, it is stated that the candidature of the applicant has not been cancelled by the Commission and its role is limited to conduct the examination and recommend candidates in accordance with the various provisions of the rules notified by Government. For easy reference, relevant excerpt of para 4 of the reply of UPSC is extracted hereinbelow:-

It may be mentioned here that the role of the Commission is limited to conducting the examination and thereafter based on the final merit list recommended candidates in accordance with the various provisions of the rules notified by Government. The role of the Commission ceases after the list of finally qualified candidates are forwarded to the DoP&T for allocation of services. DoP&T allocates Service based on various provisions under the rules and for physically disabled candidates, subject to the fulfillment of physical requirement and functional classifications of a post reserved for that particular category of P.H. in a service by a candidate.

10. We have heard learned counsel available for parties and perused the record. The plea of delay raised in the reply filed by R-10 is noted to be rejected only, as the OA filed against the order dated 26.04.2012 on 2.08.2012 is within limitation. In sum and substance, the short issue arises to be determined by us on merits is that, even when the applicant does not satisfy the functional classification for the IRS (C&CE), as mentioned in CSE-2010, whether on the basis of subsequent view of the Ministry of Finance (Department of Revenue), she needs to be allocated to IRS (C&CE). As has been captioned in the judgment dated 7.07.2010 in Govt. of India through Secretary and Anr. Vs. Ravi Prakash Gupta and Anr (2010) 7 SCC 626, reservation had been made by the Government of India for physically handicapped persons in Group 'C' and 'D' posts from 1977 and in order to consider the growing demand from the visually handicapped persons, a meeting for identification of jobs in various Ministries/Departments was scheduled in 1985 and 416 such posts were identified in Group 'A' and 'B'. In 1986, an Office Memorandum was issued by the Department of Personnel &

Training (DOP&T) providing for preference to be given to physically disabled persons in appointment. In 1988, another Office Memorandum was issued by the Government of India indicating that the identification done in the year 1986 would remain valid till modified. As mentioned in the judgment of Hon'ble Delhi High Court dated 15.04.2004 in Ravi Kumar Arora Vs. Union of India and Anr (C.W.P No.5706/2002), in December, 1992, a meeting to launch the Asian and Pacific Decade of Disabled Person 1993-2002 was convened by the Economic and Social Commission for Asian and Pacific Region in Beijing. It resulted in adoption of proclamation on the full participation and equality of people with disabilities in Asia and Pacific Region. India was a signatory to the said proclamation. The issue of providing friendly environment to persons with disability soon found part of the judicial pronouncement by the Hon'ble Supreme Court in National Federation of Blind v. Union Public Service Commission & Ors (1993) II LLJ 452 SC). The judgment gave right to visually handicapped persons to compete on equal footing for job opportunity and the Government of India and the Union Public Service Commission were directed to permit blind and partially blind eligible candidates to compete and write the civil services examination in Braille-script or with the help of scribe. The relevant excerpt of the directions issued by Hon'ble Supreme Court as reproduced by Hon'ble Delhi High Court in its judgment dated 15.04.2004 (ibid) read as under:-

. The issue of providing friendly environment to persons with disability soon found part of the judicial pronouncements by the Hon'ble Supreme Court in National Federation of Blind v. Union Public Service Commission & Ors.. The judgment gave the right to visually handicapped persons to compete on equal footing for job opportunities and the Government of India and Union Public Service Commission ( in short, 'UPSC' ) were directed to permit blind and partially blind eligible candidates to compete and write the civil services examination in Braille-script or with the help of scribe. The matter did not rest at this since further directions were issued to the Government of India to decide the question of providing preference / reservation to the visually handicapped persons in Group 'A' and 'B' posts in the Government and public sector undertakings expeditiously. The Supreme Court noted that the visually handicapped constitute the significant section of our society and as such it is necessary to encourage their participation in every walk of life. Some reservation had been provided by the Central Government for vacancies in Group 'C' and 'D' posts, but in order to consider the growing demand from the visually handicapped persons, the Ministry of Welfare, Government of India had directed Standing Committee for identification of jobs in various Ministries / Departments for such persons by an order dated 30.12.1985. The report was submitted by the Committee on October 31, 1986. The Committee prepared a comprehensive list of 416 categories in Group 'A' and 'B' posts. An office memorandum was issued on 25.11.1986 by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training ( in short, 'DOPT' ) providing for preference to be given to the handicapped persons for these posts. This memorandum, however, remained on paper and even when the matter in National Federation of Blind's case (supra) was argued, it was pointed out that this office memorandum for 7 years had remained unimplemented. It is of importance to mention that the Committee had specified that the visually handicapped ( blind and partially blind ) are suitable for appointment for certain categories of Group 'A' and 'B' posts, which are mentioned in para 6 of the judgment. Towards the conclusion of the judgment, there were certain meaningful directions issued by the Supreme Court and it is best to set out the same by reproducing the paragraphs :-

"12. The list of Category 'A' and 'B' posts, identified as suitable for the visually handicapped by the committee, includes number of posts which are filled as a result of the civil services examinations. When there are posts to which blind and partially blind can be appointed, we see no ground to deprive them of their right to compete for those posts along with other candidates belonging to general category.

13. Mr. V.K. Cherian, Under Secretary to Government of India, Ministry of Personnel in his affidavit dated March 10, 1992 filed before this Court has stated as under :-

"If there were Group 'A' and 'B' jobs, which could be filled up by the blind, the same should also be identified. Once the jobs were identified, they could be filled up from among the blind and also other handicapped persons such as deaf and orthopaedically handicapped ... Going by the report of the committee and the posts identified by it, the Union Public Service Commission made the observation that the posts identified as suitable to be held by the physically handicapped persons, particularly those identified for the blind are not such which are required to be filled on the basis of competitive examination conducted by the Commission."

The observations of the Union Public Service Commission as projected by Mr. V.K. Cherian in his above-quoted affidavit do not seem to be correct. After going through the list of the posts identified as suitable for visually handicapped (blind and partially blind) it is obvious that there are number of posts which are required to be filled through the civil services examination and other competitive examinations conducted by the Commission Group 'A' and 'B' posts in the category of Administrative Officers (Secretarial - Senior) and Administrative Officer (Secretarial - Junior) are necessarily to be filled as a result of civil services examination by the Union Public Service Commission. If some of the posts in the India Administrative Service and other Allied Services, as identified by the committee, can be filled from amongst the visually handicapped persons then we see no reason why they should not be permitted to sit and write the civil services examination. We make it clear that once recruited to the lowest level of the service the visually handicapped persons shall not be entitled to claim promotion to the higher posts in the service irrespective of the physical requirements of the jobs. If in the hierarchy of promotional posts it is found by the Government that a particular post is not suitable for the visually handicapped person he shall not have any right to claim the said post.

14. In the light of the above discussion we partly allow the writ petition and direct the Government of India and the Union Public Service Commission to permit the visually handicapped (blind and partially blind) eligible candidates to compete and write the civil services examination which is ordinarily held yearly by the Union Public Service Commission. We further direct that they shall be permitted to write the examination in Braille-script or with the help of a Scribe. There shall be no orders as to costs."

As noticed by the Hon ble Delhi High Court, the aforementioned observations were a precursor for the enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), though foundation for the same was laid in the year 1992. Finally, after a series of judicial pronouncements, for the first time in 2005, the posts of IAS were

identified in compliance with the provisions of Section 33 of the Disabilities Act, 1995 and pursuant to such identification the vacancies / posts were reserved and filled up. In Section 33 of the Disabilities Act, 1995, it is specifically provided that the appropriate Government may having regard to the type of work carried on in any department or establishment, by notification, subject to such condition, if any, as may be specified in such notification, exempt any establishment from the provisions of the Section. Section 32 provided that the Government would identify posts in the establishment which can be reserved for the persons with disability and at periodical intervals, not exceeding three years, review the list of posts identified and upgrade the same taking into consideration the developments in the technology. Thus, it is the intent of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, that the reservation for the persons suffering from the disability mentioned in Section 33 should be with due regard to the functional classification and physical requirement of the posts. It is in this backdrop that in Rule 22 of CSE-2010, the functional classification/physical requirement for various services to which the recruitment is made on the basis of Civil Services Examination is mentioned. In note 3 of the CSE notification, the services identified suitable for physically disabled category and number of vacancies reserved therein was mentioned in detail. The Indian Revenue Service (Customs & Central Excise) is identified for the locomotor disability and hearing impairment. The functional classification of the posts is mentioned as OL, OA & HH. The physical requirement for it as mentioned in the note is S, ST, W, BN, L, SE, MF, RW, H, C. In order to appreciate the abbreviations, we may refer to the list of posts identified by the Ministry of Social Justice & Empowerment vide Notification dated 18.01.2007 for being held by persons with disabilities (OH, including CP, LC, VH and HH (in Group A). For easy reference, the abbreviations used and explained in the said notification read as under:-

ABBREVIATIONS USED: S-Sitting, BN= Bending, SE=Seeing, RW=Reading & Writing, C= Communication, MF= Manipulation by fingers, PP= Pulling & Pushing, L=lifting, KC=kneeling and Crutching, ST=Standing, W=Walking, BLA= Both Legs & Arms, BA=Both Arms, OL=One leg, BL=Both Leg, OA=One Arm, OAL=One Arm and One Leg, B=Blind, LV=Low Vision, H=Hearing OH=Physically Handicapped, CP=Cerebral Palsy, LC= Leprosy Cured, VH= Visually Handicapped, HH=Hearing Handicapped. Thus, the physical requirement for IRS (C&CE) in the aforementioned note is sitting, standing, walking (W), bending, lifting, seeing, manipulation by fingers, reading, writing, hearing and communication. In other words, if the applicant is capable to involve in aforementioned activities, she can be said to have fulfilled the physical requirement for the service in question. Like wise, a person with one leg one arm and hearing is considered fulfilling the functional requirement for the service. Since the applicant is suffering from the disability of both the arms, she is considered fulfilling functional classification and physical requirement for IAS alone. Civil Services Examination 2010 was notified vide examination notice No.04/2010-CSP dated 02.01.2010. The applicant applied for the examination in the category of Physically Handicapped (OC) and appeared in the preliminary examination on 23.05.2010. On qualifying the PE, she applied for main examination and was assigned roll No. 186128. The main examination was held between 29.10.2003-3.11.2010. As a result of main examination (CSE-2010), the UPSC issued letter dated 29.03.2011, inviting the applicant to present herself at the Commission Office, Dholpur House, Shahjahan Road for personality test on 20.04.2011 at 13.15 hours. After the interview, the Government of India, Ministry of Public Grievances and Pensions (DoP&T) issued letter



concerned, we find that in the note mentioned in the CSE notification dated 2.01.2010, it is categorically mentioned that the functional classification for the service in question (IRS) (C&CE) is one leg one arm and hearing and physical requirement is sitting, standing, walking, bending, lifting, seeing, manipulation by fingers, reading & writing, hearing and communication. For easy reference relevant excerpt of the note is extracted hereinbelow:-

Sl.No. Name of the Service Category (s) for which identified Functional Classification Physical requirements No of reserved vacancy

3. Indian Revenue Service (Customs & Central Excise, Gr.A ) (i)Locomotor disability.

(ii) Hearing impairment OL, OA, HH S,ST, W, BN, L, SE, MF, RW, H, C 2 As per the said classification and requirement, the applicant being unable to do the job of lifting and being suffering from physical infirmity of both the arms was correctly not allocated the said service. In such circumstances, we agree with the learned senior counsel for respondent No. 6 that a valuable right had accrued in favour of the said respondent and he cannot be deprived of the same in view of the subsequent developments, such as the stand taken by the Ministry of Finance in its letter dated 24.01.2013 which reads as under:

F.No.A.12025/03/2009-Ad.II Government of India Ministry of Finance  
Department of Revenue (Central Board of Excise & Customs) North Block, New Delhi  
Dated the 24th January, 2013 OFFICE MEMORANDUM Subject: Service allocation  
of Ms. Ira Singhal on the basis of CSE-2010- Clarification-reg.

The under signed is directed to refer to the DOP&T D.O letter No. 13015/7/2011-AIS. I (Pt.) dated 16th February, 2012 on the subject mentioned above and in continuation of this department's O.M. of even number dated 26th March,2012 to say that this department has no objection to the allocation of Ms. Ira Singhal to the IRS (C&CE) cadre on the basis of CCSE-2010 Examination.

2. This is for information and further necessary action in the matter. It is true that before issuance of the above letter, the Department of Revenue had earlier viewed on 30.01.2012, as also on 14.02.2012, and again on 26.03.2012, that a person having BA (both arms) disability cannot be considered as fit for the IRS (C&CE) In OM No.F.No.A-12025/3/2009-Ad.II dated 26.03.2012, it could also be emphasized that once a disability has been considered fulfilling the physical requirement for a particular service, the actual capability of an individual to lift a particular quantity of weight may not be so material. Though we were also surprised to see the sudden change in the stand of Department of Revenue regarding the candidature of the applicant on three different occasions, nevertheless, we see that the response given by the Department of Revenue on 24.01.2013 is also with reference to D.O letters dated 16.02.2012 and 26.03.2012 of DoP&T, which were already responded in terms of OM dated 26.03.2012. Though it is not clear from the response of either of the respondents as to what persuaded Department of Revenue to change its view regarding the suitability of the applicant, particularly when the OM dated 14.12.2011 issued by the Ministry of Social Justice and Empowerment was available on all the three occasions when the Department of Revenue took its stand earlier, nevertheless, if the user department which is the Cadre Controlling

Authority for a particular service chooses to take a further view regarding actual fitness of a physically disabled candidate, we find no reason to disregard the same. It is not pleaded by the Department of Personnel and Training that the Department of Revenue changed its decision for extraneous reasons/considerations. Could it be the view of Department of Revenue only that the applicant now be allocated to IRS (C&CE), we could not have attached much importance to it. But we also have the OM dated 14.12.2011 issued by Ministry of Social Justice and Empowerment before us, wherein the actual consideration of a physically disabled candidate for allocation of a particular service is commented upon. It is the Ministry of Social Justice and Empowerment alone which could prescribe the functional classification and physical requirement for various services. When the same Ministry has issued a clarificatory Memo, it needs to be given due weightage to it. As far as allegation of bias made on behalf of respondent No.6 is concerned, his interest in making such allegation would be limited only to the extent that his own candidature/appointment should not be affected. We have already expressed our view hereinabove that the said respondent had acquired a right to allocation for a particular service as per the Scheme of the Examination, and if subsequently Ministry of Finance (Department of Revenue), which is the Cadre Controlling Authority for the service in question, could express its no objection to appointment of a particular candidate (physically disabled person) in view of her actual physical State, the policy decision, or the Scheme of the Examination, cannot be held to have been vitiated and as a result, the appointment of the candidates on the basis of such Scheme cannot be adversely affected. For the confusion in the Ministry of Finance regarding functional classification/physical requirement/actual fitness of the applicant for IRS (C&CE) the individuals may not be subjected to persecution. Even if a candidate could secure employment in view of the scheme of examination and general policy of identification of posts reserved for physically handicapped, a disabled person who is actually considered suitable for a post may not be put to disadvantageous position merely because in view of general classification/requirement, she is not considered fulfilling the functional classification/physically requirement of the posts in question. In the present case, we find that the PP (pulling and pushing) is not one of the physical requirement mentioned for IRS (C&CE). Nevertheless L (lifting) is one of such physical requirement and the medical Board could find that the applicant is not satisfying such requirement. However, in the subsequent report, the medical Board could view that the applicant is capable to lift 10 Kg.of the weight by one hand. In the general physical requirement, no specific standard/ capability of lifting is mentioned. Though, in view of the report of the medical board, i.e. the applicant is capable to lift 10 kg of weight by one hand, there should be no doubt about her fulfillment of requirement for the service in question, but since we do not know about the standard of capability of lifting required for the post, we cannot comment upon suitability of the applicant. Nevertheless, as has been noticed hereinabove, the Government of India, Ministry of Finance, Department of Revenue (Central Board of Excise & Customs) itself has viewed that the department had no objection to allocation of Ms. Ira Singhal (applicant herein) to the IRS (C&CE) cadre on the basis of CSE-2010. It is not in dispute that the Ministry of Finance (CB& EC) is the Cadre Controlling Authority of IRS (C&CE). Regarding suitability of a candidate for the service, the user department is the best judge and the view of the Cadre Controlling Authority cannot be lightly ignored. Besides, we find that in OM No. 16010/2011-DD (III) dated 14.12.2011, Ministry of Social Justice and Empowerment which has issued notification identifying the posts against which reservation may be made also viewed that in case the applicant meets the requirement of lifting the prescribed load, the general physical requirement mentioned for the post can be waived off and the

DoP&T may consider allocating her to IRS (C&CE). It is also viewed by the said Ministry that there is need to distinguish between the disability due to amputation or severe impairment in the limbs and mild impairment due to polio, injury, weakness of muscles etc. as far as the functional capacity of the person is concerned. For easy reference, the OM dated 14.12.2011 issued by the Ministry of Social Justice and Empowerment (ibid) is reproduced hereinbelow:-

Subject: Allocation of service to the candidates recommended by UPSC from Civil Services Examination 2010.

The undersigned is directed to refer to Department of Personnel & Training (DOPT) OM No.13015/07/2011-IS-1 dated 6.09.2011 on the subject mentioned above and to say that the comments of this Ministry on each of the three candidates under consideration for allocation of services based on Civil Services Examination 2010 are as under:-

(1) Ms. Ira Singhal (Rank 815)

(i) As per the medical certificate No. 44493 dated 26.04.2011 issued by Safdarjung Hospital, she has 62% locomotor disability. Her both the arms and the spine are affected. Based on her rank, she can be allocated IRS (C&CE) which is identified for OL, OA and HH. However, since the service is not identified for both the arms affected persons (BA), DoP&T are not sure whether she can be allocated that service.

(ii) As per the minutes of the meeting held to discuss rationalization/standardization of physical requirement/ functional classification in respect of services participation in the CSEs, IRS (C&CE) is identified for OL, OA and HH. The physical requirements for the services are S, ST, W, BN, L, SE, MF, RW, H, C. As per the medical report Ms. Ira Singhal meets all the physical requirements except work performed by lifting (L). However, it is not clear as to how much load an IRS officer should be able to lift with one hand. Since the percentage of locomotor disability on account of impairment in two arms as well as the spine is only 62%, it may be ascertained as to how much load can she lift. It may also be ascertained whether the requirement of lifting can be dispensed with as an IRS officer would be accompanied by other staff during raids/inspectors when there may be need to lift certain load. In case she meets the requirement of lifting the prescribed load or the same can be waived off, DoP&T may consider allocating her IRS (C&CE)

(iii) There is also a need to distinguish between the disability due to amputation or severe impairment in the limbs and mild impairment due to polio, injury, weakness of muscles etc. as far as the functional capacity of a person is concerned.

(2) Shri Bhopal Singh Mehta (Rank 866)

(i) He has 88% locomotor disability due to impairment in both the upper limbs and both the lower limbs. He is already working as Tehsildar in Government of Rajasthan. As per his merit he can be allocated IDAS which is identified for OA, OL, OAL, BL, LV and HH



(ii) The physical requirements for IDAS are S, ST, W, BN, SE, RW and C, it is observed that Indian P&T Accounts and Finance Service is also identified for the same category of disabilities i.e. OA, OL, OAL, BL, LV and HH as IDAS.

However, the physical requirements of IP&T Accounts and Finance Service are S, W, SE, RW and C. Standing, walking and bending are not necessary.

Shri Bhopal Singh Mehta can, however, meet the functional requirements with assistive devices and human assistance such as wheel chair, office attendant/peon for P&T Accounts & Finance Service whose job profile, is same as that of IDAS. These are part of reasonable accommodation. Unless such accommodations are

(iii) provided, persons on wheel chair will be rendered unfit for almost all the jobs even as they can perform those jobs.

(iv) It is also observed that for various Group A posts in Accounts stream including the posts of Assistant Controller of Accounts, Additional Comptroller and Auditor General of India/Pr.CGA (Sl.Nos.16 & 19 of Notification dated 18.01.2007), the physical requirements are S, BN, SE, RW and C. Walking and standing are not among the physical requirements for those posts. It has also been mentioned against those posts that persons with VH category may be considered in the organizations having fully computerized system though the VH is not one of the identified categories for those posts. This indicates that if a person meets the functional requirements and the environmental barriers are removed, a person with disability should be considered for such a post.

(v) In view of the above, the Cadre Controlling Authority for IDAS may be requested to dispense with the additional physical requirements of W, ST and BN, as Shri Bhopal Singh Mehta is already performing the duties of Tehsildar which involves even the field work.

(3) Shri Lokesh Singla (Rank 872)

(i) He has 50% locomotor disability due to impairment in both the lower limbs. He uses single cane.

(ii) As per his rank, he can be allocated IRTS, but IRTS is not shown as one of the identified services in the annexure to the minutes. As IRAS is an identified service for his category of disability, he may be allocated IRAS. Candidates below him may be allocated other services.

Office of the Chief Commissioner of Persons with Disabilities has also been consulted in the matter.

12. In K.V.Ramana Vs. The Director, O/O Director General of Audit (Defence Services) and Ors. (2005 (3) SLJ 61 (CAT) decided on 30.06.2004), relied upon by the learned counsel for applicant, a Division Bench of this Tribunal viewed that the sub-categorization of the posts reserved for physically handicapped person distributing them to various branch offices is not permissible. In the said case, it was not so that the sub categorization of the posts had been done on the basis of any

functional disability for discharging duties of the post of Peon and the post was identified as suitable for being filled up by persons belonging to any of the three categories of physically handicapped persons. In such circumstances, this Tribunal found that there was no justification for further demarcating the posts meant for Orthopaedic disability as relating to leg and as relating to arm. It could be viewed by the Tribunal that all the Orthopaedic disabled persons, whether with arm or leg, are entitled to be considered for appointment to the posts of Peon. For easy reference, para 10 of the judgment is extracted hereinbelow:-

o. The respondents also relied upon the judgment and order in Case No. 2225/02 passed by the Court of the Chief Commissioner for Persons with Disabilities, Noida, U.P. a copy of which is produced as Annexure R-XIII along with the reply statement, in this regard, in support of their contention that the said sub-categorization is upheld in the said decision. But on a perusal of the said judgment, it is found that the said authority has not considered the question whether the said sub-categorization of the post is permissible under the provisions of Section 33 read with Rule 38 of the Rules, 1996. On the other hand, the authority only considered the limited question as to whether the required percentage of the posts are reserved for Physically Handicapped persons as required under the provisions of Section 33 of the Act. We, therefore, find that the official respondents are not entitled to justify their action on the basis of the judgment rendered by the said authority in Case No. 2225/2002. It is also not the case of the respondents that the said sub-categorization of the post has been done on the basis of any functional disability for discharging duties of the said post of Peon. On the other hand, the said post of Peon is identified as being suitable for being filled up by the persons belonging to any of the 3 categories of the Physically Handicapped persons and 5 vacancies are reserved for filling up the said posts from the said 3 categories under the orders issued by the 1st respondent. Therefore, we find that there is no justification for further dividing the posts meant for Orthopaedic disability as relating to Leg and as relating to Arm. All the Orthopaedic disabled persons whether Arm or Leg are entitled to be considered for appointment to the said posts of Peon. We, therefore, find that reserving the post notified by the 3rd respondent exclusively to be filled up by the PH-OA, PH-OL is not permissible under law and the impugned circular instructions issued under Annexures R-1 to R-3 from the office of the 1st respondent are liable to be quashed on the ground that they are discriminatory and violative of Articles 14 and 16 of the Constitution of India and the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the rules framed thereunder. We do not find any relevance of the aforementioned order of the Tribunal to the present case.

13. In N.Manjushree Ms) Vs. Union of India & Ors ( 2012 (2)SLJ (CAT) decided on 03.06.2011), the Tribunal could view that that in order to be suitable for one of the service to which appointment is made on the basis of CSE, one needs to fulfil either of the functional classification or physical requirement and not both. For easy reference, para 7 of the order is extracted hereinbelow:-

. The grounds on which the said reliefs sought are:

(i) A bare look at Clause 22 of the notification dated 5.12.2008 based on which the present examination i.e., the Civil Services Examination 2009 was conducted would in unmistakable terms indicate that the concept of reservation and vacancies for physically disabled persons would be in

terms of the Statute i.e., the persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and it is stated that 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.

(ii) A person to claim reservation under the seats reserved for physically disabled persons will have to meet the special eligibility criteria as prescribed in terms of physical requirements/functional classification. 'Salsh' bifurcates physical requirements and functional classification which means to say that it has to be read only as functional classification 'or' physical requirements and by no stretch of imagination be treated or read as physical requirements 'and' functional classification. In common parlance 'slash' is being used only for the word 'or' and not for the word 'and'. An applicant need not have to fulfil both the physical requirements and functional classification. This is also in conformity with the Act and the Government orders issued by the Central Government from time to time. In the light of the above clause regarding special eligibility criteria in the notification and identified service, physical disability of the applicant is required to be seen. The applicant who has secured 65th rank in the Civil Services Examination, 2009 is at all times eligible to be allotted to Indian Administrative Service. She suffers from loco motor disability and meets physical requirement in its entirety. Since the applicant is 'BL' (both legs affected but not arms) which is orthopedic disability she does not meet the functional classification which the applicant submits is of no consequence and the notification which is in terms of the Act says that a candidate should meet either functional classification or physical requirement and not both.

(iii) The posts for which the applicant is a candidate are non-technical posts which can be performed by the applicant without any impediment. In fact, the applicant has been performing the said duties after her selection by the Karnataka Public Service Commission for the last 5 years. However, the first respondent by communication dated 19th August, 2010 (Annexure-A5) has directed the applicant to report compulsorily to the Director, RCVP Noronha Academy of Administration & Management, Bhopal on or before 30th August, 2010 to undergo the training for Indian Revenue Service (Income tax).

(iv) The communication dated 7.9.2010 at Annexure-A9 is in response to a representation made by the applicant as per the directions of this Tribunal dated 19.8.2010. The representation has been summarily rejected by respondent No. 1 quoting Paragraph 22 of the Civil Services Examination Rules and further stating that as per the said paragraph, a candidate who wants to claim benefit under physical disability quota will have to satisfy both "physical requirement." and "functional classification".

(v) The Hon'ble Supreme Court in the case of Government of India through Secretary v. Ravi Prakash Gupta, [S.L.P. (Civil) No. 14880 of 2009 decided on 7.7.2001] reported in MANU/SC/0445/2010 : (2010) 7 SCC 626 was pleased to direct the 1st respondent to allow service of IAS to a person who was declared visually handicapped to the tune of 100%. The law laid down by the Delhi High Court was affirmed by the Hon'ble Supreme Court after noticing that the candidate therein obviously did not possess both physical requirement and functional classification in as much as 100% blindness would be a disability under functional classification and what is found in the

functional classification is partial blindness and not complete blindness. The Hon'ble Supreme Court in the above case had directed allotment of IAS to a person who is 100% blind which means to say that a candidate claiming a seat under the quota reserved for physical disability will have to satisfy either physical requirement or functional classification and not both.

(vi) The category wise distribution of vacancies for IAS as per Annexure-A10 shows that 4 vacancies are allotted to outsiders quota of Karnataka cadre. The applicant states:

"If regard is had to the fact that the applicant is and was at all times entitled to be considered for IAS, she would definitely be one of the persons to be filled in the vacancy existing in the State of Karnataka".

(vii) The applicant was on the same score selected by the Karnataka Public Service Commission as a Group - B officer and has been performing her duties in the administrative capacity of being Assistant Director, NREGA in the Rural Development and Panchayat Raj Department, Government of Karnataka which clearly indicates that the applicant is able to perform duties in the administrative capacity of physical requirement which is the purport of the Statute also. The action of the respondents in allotting Indian Revenue Service to the applicant and Indian Administrative Service to the 3rd respondent is contrary to the notification issued by the first respondent dated 5.12.2008 and also contrary to the concept of merit .

In the said case, it could also be viewed by the Tribunal that once a candidate fulfilled the disability of both the legs, it has to be presumed that he fulfils the requirement of disability of one leg, thus could not be denied allocation to IAS. For easy reference, para 15 to 18 of the judgment are extracted hereinbelow:-

5. Before we discuss of functional classifications/physical requirements, we would like to note that the respondents have wrongly titled the "physical classification" as the "physical requirements" required for each service in all their communications including the Gazette notification. Both, legs affected (BA) one leg affected (OA) etc., are categories of physical handicap (Locomotor handicap) and the right title for the same should be "physical classification". Similarly, for the identified jobs that have been reserved in each service, the functions that are required to be performed are the "functional requirements", like work performed by Sitting (S), work performed by Standing (ST), work performed by walking (W) etc. and not "functional classification". In accordance with the provisions contained in "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 respondent No. 1 had issued instructions regarding reservation of vacancies in Group 'A', 'B' 'C' and 'D' posts by a memorandum of Department of Personnel and Training O.M. No. 36035/3/ 2004-Estt. (Res) dated 29.12.2005. Para 8 of the O.M. defines disabilities for the purpose of the O.M.

"8.(iii)(a) Locomotor disability: "Locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy".

Degree of disability for reservation is given in Paragraph-9 which states that "only such persons would be eligible for reservation in services/posts who suffer from not less than 40 per cent of the relevant disability. A person who wants to avail of benefit of reservation would have to submit a Disability Certificate issued by a Competent Authority in the format given in Annexure I".

16. The applicant has produced Annexure-A1 to support her disability of more than 40% of the relevant disability i.e., Locomotor disability. At the Bar it was mentioned that the disability certificate produced by the applicant has been accepted by the respondents and there is no further dispute about the same. As the certificate issued by the Victoria Hospital shows that left lower limb was affected, it was felt by us that the applicant had the disability only of the left leg i.e., her physical classification is 'OL' and not 'BL' as stated by the respondent. The learned Senior Central Government Standing Counsel appearing for respondent No. 1 submitted that the applicant was further subjected to medical examination at Safdarjung Hospital, New Delhi. As per the Safdarjung Hospital report both legs are affected as has been stated in Para-6 of the reply statement. We had, therefore, directed respondent No. 2 to produce the medical report given by Safdarjung Hospital which has been filed by the learned Senior Standing Counsel along with a memo dated 15.2.2011. In the said report, the disability has been mentioned against column No. 10 as "weakness of (Lt) lower limb with shortening and sensory deficit following surgery for spine Bifida." The percentage of disability has been assessed as 56%. The certificate shows that one Dr. Diganta Borah has certified that the applicant's both legs are affected but not arms. Further, for the discharge of duties the following requirements (though mentioned as "physical requirement" we opine that the word used should have been "functional requirement") are satisfied:- JF, S, ST, W, SE, H, RW. As per Annexure -A7, the 'physical requirement' (which should be read-as "functional requirements") are F, S, ST, W, SC, H, RW. Here we mention that no requirement as 'RWT' has been defined in the Gazette notification by respondent No. 1 or the notification for examination issued by respondent No. 2. The functional requirement is only shown as 'RW'. Thus, the applicant satisfies seven of the eleven functional requirements, prescribed in the Gazette notification. The applicant, in fact satisfies all the 6 functional requirements specified for availing reservation for selection to Indian Administrative Service as mentioned in Annexure-A7. ('JF' - work performed by manipulating as in the Medical Board's certificate is shown as 'F' in Annexure-A7).

17. We are not able to agree with the arguments put forth by the applicant that a physically handicapped person has to satisfy only one of the two conditions of functional requirement/physical classification. In Paragraph 22 of the notification it is specified that the physical requirement and functional classification (we again disagree with the words - it should be physical classification and functional requirement) can be one or more of the classification/requirement. There can be cases where a person may be having 40% or more of a particular handicap of a category (locomotor, hearing, etc.), but does not fulfill the "functional requirement". In such a case the person will not be suitable for the service for which the functional requirements have been identified/ defined. In fact, the applicant has admitted that a candidate has to necessarily meet the job requirements of the identified post.

18. 'BL' (both the Legs are affected) can be a case that one leg is completely affected by Polio and there may be loss of one toe in the other leg. Thus, in the Locomotor handicap of 'BL' mere loss of

one toe cannot come in the way of a person performing all the jobs that can be performed by a person with all the toes in tact, (specially with reference to the "functional requirement" enumerated in the notification). Will the respondent disqualify a person who has got a locomotor disability of more than 40% whose left leg is affected by Polio and who has lost one toe in the right leg only for the reason that the physical classification is 'BL'. 'OL' is a subset of 'BL' and the minimum disability of 'OL' for reservation is more than satisfied by 'BL'. Regarding the physical classification to avail the reservation, the candidate should satisfy at least one of the physical classifications, that is to say that the candidates can have more than one of the disabilities mentioned under the functional (read as physical) classification as long as the candidates fulfill the minimum functional requirement specified for the job. As we have already mentioned, the applicant satisfies all the functional requirements for IAS. (Even though only 6 of the 11 requirements for a Civil Service - non-technical post - are sufficient to avail reservation to the IAS the applicant satisfies one more requirement). Thus functional requirement satisfaction is more than what is required. The argument put forth by the learned Counsel for the applicant is that when the applicant satisfies the functional requirement for holding a post in the IAS (even though it is one of the reserved posts) she cannot be denied allotment to the IAS as per the ratio of the decision in *Dinesan v. State Bank of India*, ILR 1999 Kar. 3411 rendered by the Hon'ble High Court of Karnataka. Though the facts of the case are entirely different, the following observations of the Hon'ble High Court lays down a rule/law that is to be followed wherever the rule becomes applicable.

".....The relevant test is not whether the person is free from defects and deformities, but whether the person has any defect of impediment which will interfere with the normal or efficient functioning of the person in performance of the duties attached to the post".

In the said case also the respondent, i.e., State Bank of India had laid down policy and guide lines regarding medical examination of candidates to be selected for the post of Law Officer. The aim of medical examination has been explained as follows by their Lordships:-

"17. "The Aim of Medical Examination:

The Medical Examiner is expected to ensure that a candidate in his/her existing state of health will be able to render uninterrupted service to the Bank. Hence Medical Examiner must give a thorough medical check up. To be passed as fit for appointment, candidate must be a good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties of his/her appointment".

.....What is medical fitness? It may include physical fitness and mental fitness. In so far as physical fitness is concerned, what is the requirement? Is it physical appearance, physical health, absence of physical defects, absence of physical disability or absence of physical handicap? The terms 'physical handicap' and 'physical disability, normally refer to a problem or condition which makes functioning by such a person more difficult, than persons without such problem or condition in other words, if a person lacks one or more physical abilities either fully or partially, then it would be a physical disability or handicap. The term physical defect refers to a physical impairment. In some situations a physical defect may lead to a physical disability or physical handicap. There may be several

instances where a physical defect will have absolutely no effect on the discharge of functions of any post/job or at least, some posts/jobs. Therefore, if there is some physical defect which has absolutely no bearing on the functioning of the person, in relation to the post to which he is appointed, such physical defect cannot be said to have any relevance for ascertaining the physical or mental fitness for the post. When a person is medically examined to consider whether he is medically fit, as provided in the guidelines; the intention is to point out whether the person has any defect which is likely to interfere with the efficient performance of the duties of the post to which he is to be appointed".

(Emphasis supplied).

In the instant case the applicant may be 'both legs affected', but she is able to perform all the six functions mentioned at Annexure-A7 which are the requirements for IAS (S, ST, W, SE, H, RWT).

Though the above judgment was pronounced after the enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and after its coming into force, the said Act has not been referred to in the judgment and hence the question of reservation for physically handicapped has not been dealt with in the judgment. Thus, even when there is no reservation for a post, the Hon'ble High Court stated that:

"Where interference with normal or efficient functioning is not likely on account of such defect and medical examination and opinion does not say so, existence of a mere physical defect or deformity by itself cannot be termed as unfitness for a job".

In our view the functional classification mentioned in the note of CSE Notification dated 2.01.2010 is not the category of disability for which the service is identified, but is classification of functional capability of physically handicapped persons to discharge the functions of the service. Nevertheless in the said case, the Tribunal could also view that IAS was not a Technical service and the applicant who could secure high in the merit could not be denied allocation of the same. The view taken by the Tribunal in Paras 20 and 22 to 24 of the judgment read as under:-

o. The Medical Board has not passed any adverse remark against the said column which implies that there is nothing in the health of the applicant which is likely to render her unfit for discharging of her duties for the service for which she was a candidate. The applicant has been a candidate for IAS which was her first preference and as per the medical report from the Medical Board she satisfies 7 of the functional requirements out of 11, though only 6 of the said 7 are required to be fulfilled for selection to the IAS. (Under Reservation Quota for physically handicapped). As per the principles laid down by the Hon'ble High Court of Karnataka in Dinesh's case, there was nothing in the medical report that would have rendered the applicant ineligible for selection to the IAS against one of the reserved vacancies. The respondents have admitted that 4 vacancies were reserved for the physically handicapped (Locomotor disability, Visual impairment and Hearing impairment) but the categories have not been finalized at the time of notification. Nothing is mentioned in the reply whether all the reserved vacancies have been filled up by the physically handicapped. By the words "filling reserved vacancies", we mean filling the post by relaxation of the general standard, specially

merit. Of course, respondent No. 3 has been allotted to IAS on relaxation of the general standards as it would appear that only the candidates upto the rank of 70 have been allotted to IAS under the General quota as can be seen from Annexure-A4. Annexure-A10 shows that there were a total of 66 vacancies for the 'general candidates' out of 131 vacancies. The applicant had secured the 65th rank and a candidate with rank 70 is shown as selected to the IAS (under the general quota). The Medical Board has not pointed out anything in the health of the applicant that is likely to render her unfit for efficient discharge of the duties in the service for which she was a candidate and she satisfies the functional requirements for IAS.

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22. The applicant has also stated that she is an officer of the Karnataka Administrative Service

conclude, a person can be both legs affected and even both arms ('BL', 'BA') affected but if the functional requirements required for a particular service are fulfilled, the candidate can avail the benefit of reservation for the post for which the said requirements have been laid down.

23. As we have already stated, the respondents have not stated in their reply that all the 4 reserved vacancies have been filled up. It would appear that respondent No. 3 was the last person who has been selected under reserved quota for the IAS, for, if persons lower than him in merit were selected, the applicant would have made the said persons also respondents in the O.A., as their selection would be the first to be affected if the O.A. is allowed. The respondents have not bothered to indicate in the Service Allocation List of 2009 whether respondent No. 3 is an orthopedically handicapped person as already admitted. In the service allocation list for the year 2008, as can be seen from Annexure-A5 against the name of respondent No. 3, (O) is mentioned indicating that he is orthopedically handicapped. In fact, we noticed that in Annexure-A4 which is the Service Allocation list for the year 2009, the names of persons with 9th rank and 60th rank are missing (above the applicant's rank which is 65). In any case, a candidate with rank of 70 (under general category) has been allotted to IAS. The applicant's rank being 65, she gets preference over candidates with ranks 66 to 70 for allotment to IAS. By this we do not mean that the person with 70th rank should be denied selection to the IAS, for, including the candidate with 70th rank, i.e., Ms. Monika Rani only 65 candidates have been selected for IAS whereas the total general vacancies for general candidates is shown as 66 in Annexure-A10.

24. The respondents have stated that the decision of the Hon'ble Supreme Court in Ravi Prakash Gupta's case was specific only to the said applicant. Even accepting this argument, without any reference to the said decision, the applicant is eligible for selection to the IAS based on her own merit as discussed above. In fact, when reserved vacancies are filled up for OBC, SC/ST, the candidates who have come up for selection on their own merit are excluded. The principle applied in the case for reservations for OBC, SC and ST should be applicable for physically handicapped as well, and the applicant has to be shown as selected under general quota. Hence even if the applicant had secured a rank below 70 but above 216, the applicant should have been selected under the reserved quota. The fact that she is eligible to be selected under general quota and the fact that 4 vacancies have been identified as can be performed by persons with locomotor disabilities leads to deciding that the applicant has to be allotted Indian Administrative Service without affecting the selection of respondent No. 3 who has been allotted IAS on relaxation of merit. In the O.A. the



applicant has prayed for quashing the allotment of IAS to respondent No. 3. As per our discussions above, even without quashing the allotment of IAS to respondent No. 3 (who has been ex parte in this case) the applicant has to get allotted to Indian Administrative Service. We therefore order:

1. The service allocation list under Annexure-A4 dated 12th August, 2008 is quashed as far as allotment of India Administrative Service to the applicant is concerned.
2. We direct the first respondent to allot the applicant Indian Administrative Service with the appropriate rank as per the rank list at Annexure-A3.
3. The communication dated 7th September, 2010, Annexure-A9 from the first respondent is quashed and set aside and respondent No. 1 is directed to grant all consequential benefits to the applicant.

The O.A. is allowed as above. In the circumstances of the case there shall be no order as to costs.

14. In *M.Dinesan Vs. State Bank of Inda, Bhubaneshwar, Orissa* ( ILR 1999 Karnataka 3411), it could be held that in order to assess the functional suitability of a disabled person to discharge the functions of service, we should not go by the general guidelines but due credence should be given to his actual physical condition. In the said case, Hon ble High Court of Karnataka at Bangalore found a person with one eye suitable for the supervisory post in the bank. For easy reference, paras 12, 15, 16, 20 and 21 of the judgment are extracted hereinbelow:-

2. The Staff Circular No. 66, dated 21-1-1997, issued by the Bank is based on the decision of the Executive Committee of the Central Board of the Bank at its meeting held on 17-9-1996. The earlier circular (No. 27 of 1995-96) stated that one eyed candidates are unfit for appointments and promotions to Supervisory Cadre. The guidelines to be followed by the Medical Examiner also clearly stated that one eyed candidates are unfit for appointments/promotions to supervisory cadre. The Circular dated 21-1-1997, made a relaxation to a limited extent and provided that candidates having only one eye with normal vision (6/6 without glasses) could be considered medically fit for the purpose of promotion. Thus, the bar relating to one eyed candidates now applies only to direct recruitments. The question is whether the bank can validly adopt different norms for direct recruits and promotees. The tests regarding classification is now well-settled. There is no bar in regard to the reasonable classification. When any provision is assailed on the ground that it contravened Article 14 of the Constitution, its validity can be sustained if two tests are satisfied. The first test is classification on which it is founded must be based on an intelligible differentia which distinguishes the persons or things grouped together from others left out of the group. The second is that such intelligible differentia should have a reasonable connection to the object sought to be achieved by the provision - *D.S. Nakara and Others v Union of India*.

15. There is no statutory prohibition for recruitment of one eyed person for supervisory posts, in particular, the post of Law Officer (SMG-Scale IV). The bank relied on the guidelines formulated by the bank (contained in Chapter 84 of Reference Book on service conditions and its Circular No. 27 of 1995-96), which provides that one eyed candidates are unfit for appointment or promotion to

supervisory cadre. In view of the subsequent Circular No, 66 of 1996-97, dated 21-1-1997, one eyed persons with normal vision (6/6 without glasses) are now considered medically fit for promotion to supervisory cadre. The present position as per the medical guidelines and circulars of the Bank is that one eyed candidates are not fit only for direct recruitment to supervisory cadre. The respondent-Bank contends that the said guidelines and the circular contain a policy decision of the bank not to make fresh appointment of one eyed persona to supervisory cadre and the policy decision should not be interfered with by this Court in exercise of its writ jurisdiction. The bank contended that as the employer, it has absolute discretion in fixing the standards of physical fitness and related matters for appointment to ensure that the candidates selected are physically fit and mentally alert to discharge the duties connected with the post to which they are selected.

16. Strong reliance is placed by both sides on the decisions of the Supreme Court in Kumari Shrilekha Vidyarthi v State of Uttar Pradesh, G.B. Mahajan and Others v Jalgaon Municipal Council and Others and Krishnan Kakkanth v Government of Kerala and Others. Let me refer to the relevant passages from those decisions.

16.1 In Jalgaon Municipal Council's case, supra, the Supreme Court cited with approval the following passages from the Article of Sir Gerard Brennan's "The Purpose and Scope of Judicial Review contained in Judicial Review of Administrative Action in the 1980s' published by the Oxford University Press;

"The Courts are kept out of the lush field of administrative policy, except when policy is inconsistent with the express or implied provisions of a statute which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power acting reasonably and in good faith, could not have made it. In the latter case, 'something overwhelming' must appear before the Court will intervene. That is, and ought to be, a difficult onus for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds, The Courts' view of the range of policies open under the statute or of what is unreasonably policy has not won public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism.

In the world of politics, the Court's opinions on policy are naturally less likely to reflect the popular view than the policies of a democratically elected Government or of expert administrators. ....".

"The considerations by reference to which the reasonableness of a policy may be determined are rarely judicially manageable....".

(emphasis supplied) 16.2 In Krishnan Kakkanth's case, supra, the Supreme Court observed:

"To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is

demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public-policy in the context of illegality and unconstitutionally, Court should avoid embarking on uncharted ocean of public policy".

16.3 On the other hand in *Shrilekha Vidyarthi's* case, *supra*, the Supreme Court held that:

"It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional".

". . . . However, where no plausible reason or principle is indicated nor is it discernible and the impugned State action, therefore, appears to be *ex facie* arbitrary, the initial burden to prove the arbitrariness is discharged shifting onus on the State to justify its action as fair and reasonable. If the State is unable to produce material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness must be held to be discharged. The scope of judicial review is limited as indicated in *Dwarkadas Marfatia* case to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases, it is not for the Courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case....".

". . . . Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all power must be for public good instead of being an abuse of the power".

16.4 Thus, though the Courts may not normally interfere in matters of policy, it may do so, if it is shown that the policy is arbitrary or capricious or not informed by any reason whatsoever or where it suffers from vice of discrimination.

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20. A physical defect or deformity which in no way interferes with the normal or efficient functioning should not be considered as an absolute bar to public employment, in regard to posts not associated with physical activity. There can be no doubt that a person with only one eye can be rejected if on medical examination he is found to be unfit to discharge the functions normally associated with a supervisory personnel or managerial personnel. Similarly such a person may also be rejected for the post of a Driver of a vehicle. But, where interference with normal or efficient functioning is not likely, on account of such defect, and medical examination and opinion does not say so, existence of a mere physical defect or deformity by itself cannot be termed as unfitness for a

job. The bank is not a private employer. It is an instrumentality of the State. It cannot act arbitrarily, unreasonably and high-handedly or practice discrimination. It owes a public duty to act fairly and reasonably and all its actions must be informed with reason. Therefore, either to formulate or enforce a policy not to consider any person who is having only one eye, for employment, irrespective of whether he is medically unfit or fit, is nothing short of arbitrariness and shows a baseless prejudice against such persons. No authority can formulate a policy relating to appointment, with such arbitrariness. The Courts will not interfere with the standards fixed by an employer (Authority) to ascertain medical fitness of a person for employment. But Courts will interfere with an arbitrary prohibition to appointment in absolute terms, merely on a physical defect or disformity, which is not shown to have any effect on the normal and efficient functioning of the person in the post. There can be no doubt that different standards of fitness may be required for different types of posts. For example, as noticed by the Division Bench in Gururaj Rao's case, supra, in regard to military service or police force, a minimum height may be prescribed and a minimum weight may be prescribed and a minimum physical fitness may strictly be insisted upon. But, for a post of Law Officer a minimum height has no relevance. What is required is mental alertness and mental capability and physical fitness which will ensure efficient discharge of his functions. So long as the defect or disformity has no effect on the efficient and normal functioning of the person, the defect by itself cannot be a ground to disentitle the person for being considered for the post.

21. In this case, the petitioner has been found to be medically unfit not because on medical examination any defect is found in his eyesight, which was likely to interfere in the efficient discharge of the duties of a Law Officer, but because of the policy of the Bank not to employ persons with only one eye. The medical examiner's opinion that petitioner is unfit is based on the guideline that one eyed persons are unfit for selection, even though he found that eyesight was normal. The policy of the Bank that all one eyed persons are wholly unacceptable for employment to supervisory cadres (by direct recruitment) irrespective of the fact that they may be medically and physically fit to discharge efficiently the functions attached to the post, renders the policy and guideline arbitrary, capricious and unreasonable. When statutes and being enacted to provide equal opportunities to disabled and handicapped, to have a policy which treats a physical defect nor having any effect on efficient functioning as a disability and bar for employment is a retrograde step, not expected of an Authority required to act reasonably. The third point is therefore answered in the negative .

15. In the present case also, while assessing the suitability of the applicant for IRS (C&CE), the respondents have gone by the identification of the post by the Ministry of Social Justice and Empowerment. The said Ministry itself has taken a view that if the applicant is actually suitable for a service, the general condition may be waived of.

16. In Ravi Kumar Arora Vs. Union of India and Anr ( 2004 ) ILR 1 Delhi 592, the Hon ble Delhi High Court took a view that a person cannot be deprived allocation of the service on the ground that he is medically unfit and also that he is not visually handicapped. On facts, the judgment is not applicable to the proposition in the present case. The judgment of the Hon ble Supreme Court in Satish Rawat Vs. Union of India and Others ( 2002 ) 7 SCC 29) is relied upon by learned counsel for applicant to take a stand that even if the selection of private respondents is not to be disturbed, the applicant should be adjusted by creating a supernumerary post. Para 5 of the judgment reads as

under:-

. In the circumstances of the case we think that the appointment of Respondent 3 as directed by the Tribunal should not be disturbed. However, in the peculiar facts of the case as arise now, it would be proper for the Department to provide a post to the appellant and such post if not available shall be created on supernumerary basis to be absorbed when a regular vacancy arises. However, the appellant shall not be entitled to any monetary benefits for the period he had not worked. He be appointed in the post on the basis that he had been originally appointed in 1992 and due benefits of increments be given to him and his pay scale should be appropriately fixed on the basis of the last pay drawn at the time of his discharge from service. In view of the judgment of Hon ble High Court of Karnataka at Bangalore in M. Dinesan Vs. State Bank of India, Bhubaneswar, Orissa (ibid) and the view taken by Ministry of Finance as also by the Ministry of Social Justice and Empowerment, we are of the view that the applicant to whose allocation to IRS (C&CE) the two Ministries have no serious objection and who stood sufficiently high in merit (Rank 815) should not be deprived of consideration for allocation to the service for which she is actually considered suitable by the Cadre Controlling Authority. We have taken such view only in view of the actual physical condition of the applicant, i.e. it is not so that her both arms are disabled due to amputation or severe impairment in the limbs but her impairment is only on account of weakness of muscles only.

17. As far as the respondent No. 6 (the only private respondent who is represented through counsel) is concerned, he is allocated to IRS (IT) and not IRS (C&E). Besides, his right to appointment is materialized on the basis of the Scheme of the examination and functional classification/physical requirement for different services, thus merely because subsequently the Cadre Controlling Authority found the applicant suitable for a particular service, his right cannot be abrogated. Like wise the rights of the other persons materialized in view of the Scheme/policy decision can also be not adversely affected. Thus, to administer justice to a physically handicapped female candidate and being guided by the judgment of Hon ble Supreme Court in Satish Rawat Vs. Union of India and Ors (2002 (7 SCC 29), we quash order dated 26.04.2012 with direction to respondents to give the applicant the benefit of OM No.A.12025/03/2009-Ad.II dated 24.01.2013 (ibid) and consider allocating her IRS (C&CE) in view of her position in merit in CSE-2010 against a future available vacancy by treating the same as supernumerary post for the examination in question as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. The selection of respondent Nos 5 to 10 is not interfered.

OA stands disposed of. No costs.

( A.K.Bhardwaj )  
Member (J)

( Sudhir Kumar )  
Member (A)

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