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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 13.12.2023
Judgment pronounced on: 08.01.2024

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W.P.(C) 9304/2021

UNION OF INDIA & ORS.

..... Petitioners

Through: Mr Subhash Tanwar, CGSC with Mr
Sandeep Mishra and Mr Ashish
Chaudhary, Advs.

versus

SUNEEL KUMAR

..... Respondent

Through: Mr A.K. Trivedi, Adv.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****GIRISH KATHPALIA, J.:****CM APPL. 52768/2022 in W.P.(C) 9304/2021**

1. Respondent has brought this application under Section 151, Civil Procedure Code, seeking modification in para 23 (b) of the judgment dated 06.10.2021 and has sought directions to the petitioners to exempt him from running in the Physical Efficiency Test (PET). On notice, petitioners entered appearance through counsel and filed reply, opposing the application. We heard learned counsel for both sides.

2. Briefly stated, circumstances leading to this application are as follows.



2.1 The petitioners initiated a recruitment process by way of Public Notice dated 30.12.2013 in order to fill up 5679 vacancies of Khalasi, a Group 'D' post with Grade Pay of Rs.1800/-. The mode of selection consisted of two stage process, whereby after clearing the written examination, the successful candidates had to undergo PET. The origins of the writ action lie in Clause 10.7 of the instructions pertaining to the invalid applications, which *inter alia* laid down that applications without signatures or with signatures in capital letters or with different signatures at different places would be rejected.

2.2 The respondent applied for the said post of Khalasi and appeared in the written examination, but was not named in the list of successful candidates shortlisted for PET for the reason that his signatures were in different style and format on application form initially submitted by him and on the OMR sheet filled during the written examination.

2.3 Against the said rejection, the respondent approached the Central Administrative Tribunal ("the Tribunal") by way of Original Application and the same was allowed vide order dated 16.03.2021, thereby directing the present petitioners to treat the respondent as a candidate who did not suffer any disqualification and proceed to consider the issuance of appointment order on the basis of merit secured by him in the written test.

2.4 The said order of the Tribunal was challenged by the petitioners by way of the present writ petition. Before the predecessor bench, to which one of us [Rajiv Shakdher, J.] was a member, the petitioners assailed the



order dated 16.03.2021 of the Tribunal on three grounds, namely, that the Original Application filed by the respondent before the Tribunal was hopelessly time barred; that the petitioners had rightly rejected the candidature of the respondent as his signatures on the OMR sheet differed from those on his application form; and that the Tribunal had ordered appointment of the respondent, ignoring that after clearing the written examination, the respondent had also to undergo PET followed by verification of his documents.

2.5 By way of detailed judgment dated 06.10.2021, writ petition of the petitioners was disposed of with following modifications:

“Hence, we modify the directions passed by learned CAT as under:

(a) The respondent shall be treated as having been qualified in the written examination as he had secured 89.33 marks and the last candidate selected in the SC category had secured 77.30 marks.

(b) The petitioner shall arrange to conduct PET for the respondent, and carry out verification of his original documents and also have him subjected to medical examination within 4 weeks from the date of this order.

(c) If the respondent passes through all the above stages, only then he will be offered the appointment on the post of Khallasi (Group 'D') with the petitioners.

(d) Needless state that the respondent will not to be entitled to any back wages but he shall be assigned his due seniority on the basis of his rank in the selection list.”

3. After disposal of the writ petition, the present application for modification of the directions dated 06.10.2021 was filed by the respondent. It is submitted on behalf of the respondent (*applicant herein*) that vide letter dated 23.03.2022, the writ petitioners (*non-applicants*



therein) conveyed to the applicant that PET shall include ability of the applicant to run for 1000 meters in 04 minutes 15 seconds in one chance; that thereafter, vide letter dated 08.04.2022, the applicant was called upon to appear for PET on 12.04.2022; that since he had suffered a fracture in leg, the applicant submitted application dated 09.04.2022 with medical record issued by the Railway Hospital and requested the non applicants to conduct the PET after 15-20 days, but the non applicants rejected his request and conducted PET on 12.04.2022, when on account of leg injury he could not run for 1000 meters in 04 minutes 15 seconds and was declared disqualified; that vide order dated 13.04.2022, the non applicants rejected claim of the applicant for appointment to the post of Khalasi; that the applicant approached the Tribunal with a Contempt Petition, in which the Tribunal observed that *prima facie* direction of the Tribunal read with the order of this court had not been complied with in spirit. Thereafter, the applicant filed the present application seeking modification of directions as aforesaid.

4. In the course of first effective hearing dated 15.09.2023 held on the application under consideration it was informed that the Contempt Petition was listed before Tribunal on 19.09.2023; and learned counsel for the non-applicants sought adjournment to take instructions, so the matter was adjourned. After taking an adjournment, learned counsel for the non-applicants stated that he had instructions to resist this application, so the application was listed for arguments.

5. During arguments, learned counsel for applicant took us through the



abovementioned record and submitted that it is a fit case to modify the directions, thereby dispensing with the PET for recruitment of the applicant. On the other hand, learned counsel for non-applicants contended that clearing PET is mandatory for recruitment. It was further submitted on behalf of non-applicants that job profile of Khalasi pertains to safety category in which maximum indulgence for smooth and safe running of train operations is included and for that purpose physical standards of the candidates have to be adhered to. It was also disclosed on behalf of non-applicants that in compliance with order dated 06.10.2021 of this court, they had organized PET for the applicant on 12.04.2022 but he could run merely 200 meters after which he sat on the ground and could not stand up for 05 minutes.

6. Despite specific and repeated queries, as also indicated in order dated 06.12.2023, the non-applicants did not disclose before this court the nexus between the job profile of Khalasi and ability to run 1000 meters in 04 minutes and 15 seconds. Of course, we are not oblivious that the applicant did not challenge the criterion for recruitment. But the issue involves another perspective, much larger in scope.

7. Significantly, the applicant had participated in the recruitment process for the post of Khalasi by taking written examination almost 10 years ago on the basis of advertisement/public notice dated 30.12.2013. It cannot be disputed that a span of 10 years is too long to expect no diminishing of physical stamina. Day to day wear and tear of muscles across a period of 10 years causes severe impact on the physical capacity of



every human being. Had the applicant not been eliminated in the first round in the year 2014, he would have perhaps been able to qualify PET running criterion. Expecting same bodily strength today after 10 years that too after the applicant suffered fracture of leg, would not be fair.

8. As reflected from records, candidature of the applicant was cancelled subsequent to his having passed the written examination. The reason for cancellation of candidature of the applicant was that while appending his signatures in English on OMR sheet, he used capital letters; and that there was difference in his English signatures appended on the OMR sheet and the application form. The Tribunal found, as a matter of fact, that in the relevant documents i.e., the OMR sheet and the application form, the applicant had also affixed his thumb impressions at relevant places and that there was no discrepancy in his signatures appended in Hindi. It is keeping in mind these factors that the Tribunal arrived at a conclusion that candidature of the applicant ought not to have been cancelled. Most importantly, as recorded by the Tribunal, the applicant had secured 89.33 marks in the written examination, which was well above 77.30 marks secured by the last candidate who had been selected. The predecessor coordinate bench vide order dated 01.09.2021 took a clear view that merely because the applicant had used capital letters while appending his signatures in English on the OMR sheet, his candidature could not have been cancelled.

9. The Tribunal, while examining the factual matrix, so aptly observed that the very purpose of multiple methods qua identification of candidates is



to ensure a perfect and fool proof comparison; that the safest method is to compare the finger-prints on the application form with the finger-prints on the OMR sheet, for which help of forensics could be availed if comparison with naked eye was difficult; and that the Hindi signatures of the applicant on both documents are so identical that even a naked eye can confirm that. The Tribunal so aptly observed that the benefit of meritorious position secured by the applicant with the dint of hard work cannot be denied to him on account of such unverified circumstances.

10. Thence, we have no doubt that candidature of the applicant was wrongly and unjustifiably rejected. That being so, we have no reason not to believe that the PET running, which is being expected from the applicant today would have been successfully achieved by him 10 years ago had his candidature not been wrongly cancelled. It would be extreme travesty of justice if now after 10 years of bodily wear and tear the applicant is expected to achieve same physical status as was 10 years ago.

11. It also would be important to note that the applicant was given hardly four days to prepare himself before taking PET, which in itself could be a factor for his having failed to clear PET.

12. We are also not impressed by the argument of learned counsel for non-applicants that if the applicant is allowed exemption from PET, it would be violation of Article 14 of the Constitution of India insofar as the remaining incumbents to the Group D post came after clearing PET. To our mind, treating unequals as equals in itself would be violation of Article



14 of the Constitution. Those incumbents cleared PET 10 years ago and unlike the applicant, they did not have the misfortune of having suffered bodily wear and tear besides a fractured leg across those 10 years, that too on account of faulty cancellation of his candidature.

13. There is another aspect. The job title “Khalasi” is used for a worker or helper often in the context of manual labour or transportation. A Khalasi is attached with a fitter, carpenter, blacksmith, mason, or plumber deployed for maintenance of station buildings, staff quarters, approach roads, bridge and sewage etc. *Prima facie*, we are unable to fathom any reasonable nexus between the said duties of a Khalasi and expectation to run 1000 meters in 4 minutes 15 seconds. But we also cautiously clarify that since in the present proceedings, validity and *vires* of the recruitment rules and/or advertisement have not been challenged, we have examined this aspect only to the limited extent of considering if the requirement contained in PET calling upon the applicant to run a distance of 1000 metres in 4 minutes 15 seconds can be dispensed with.

14. Clauses 4 and 7.8 of the Recruitment Notice publicized by the Northern Railway (*Annexure A3 to the writ petition*) clearly stipulate that for the post of Khalasi also, the persons suffering with disabilities including orthopaedic disability can be exempted from appearing in PET. For ready reference, the relevant portions of the Recruitment Notice are extracted below:

*“4. PERSONS WITH DISABILITES (PWD)
PWD Candidates will be valid only if the disability form is issued on
Annexure 4.*



Definitions of Disabilities in detail has been uploaded on website. Concerned candidates are requested to please go through it before filling up their application form.

<i>Name of post</i>	<i>Department</i>	<i>Categories of disabled who could apply for the jobs</i>
<i>Khalasi Helper (Ctg No. 3,7,11)</i>	<i>Civil Engg, Electrical, Mechanical, S&T, Store</i>	<i>UV, OA, BL, OL, HH</i>

Posts reserved for PWD

*7.8 The persons with disabilities are **Exempted** from appearing in PET.”*

This also shows that a person unable to run 1000 meters in 4 minutes 15 seconds need not necessarily be unfit for the job of Khalasi.

15. In view of the aforesaid peculiar circumstances of this case, we consider it fit and proper to modify the directions contained in para 23(b) of the judgment dated 06.10.2021, as sought by the applicant. The application is accordingly allowed, thereby modifying the directions contained in para 23(b) of the judgment dated 06.10.2021 to the extent that the applicant shall not be called upon to run a distance of 1000 metres in the stipulated timeframe i.e., 4 minutes and 15 seconds.

**GIRISH KATHPALIA
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

JANUARY 08, 2024/as