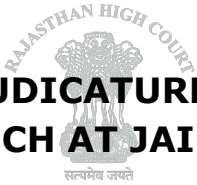




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 4343/2001

Dr. Deva Ram Shivran, aged about 31 years, Son of Shri Laxman Ram Shivran, resident of Raghunandanpura, Post Mundoti, Via Phulera, District Jaipur.

-----Petitioner

Versus

1. The State of Rajasthan through the Secretary to the Government, Department of Personnel, Government Secretariat, Jaipur.
2. S.M.S. Hospital, Jaipur through its Superintendent.

-----Respondents

Connected With

S.B. Civil Writ Petition No. 3500/2006

Dr. Deva Ram Shivran, aged about 36 years, Son of Shri Laxman Ram Shivran, resident of Raghunandanpura, Post Mundoti, Via Jobjer, District Jaipur (Rajasthan).

-----Petitioner

Versus

1. The State of Rajasthan through the Secretary to the Government, Department of Personnel, Government Secretariat, Jaipur.
2. Mr. Hemant Swaroop Mathur through Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Shailesh Prakash Sharma with Mr.Avi Sharma
For Respondent(s)	:	Mr. Archit Bohra, AGC with Mr.Prakhar Jain Mr.Rahul Verma Ms.Anjali Sharma

HON'BLE MR. JUSTICE SAMEER JAIN
Judgment

Reserved On :: 05/03/2025

Pronounced on :: 25/04/2025

REPORTABLE :

"I wish I had been more disabled — then perhaps the system would have seen me."





These words reflect not a wish for greater suffering, but a bitter irony — that in the rigid, checkbox-driven machinery of the State's welfare framework, a person's lived experience of disability may fall through the cracks. In a system meant to uplift the disadvantaged, the petitioner stands at a paradox: disabled, yet not disabled enough to be seen.

1. Considering the interwoven and identical set of facts and legal issues framed and put-forth the present petitions were tagged and are henceforth adjudicated vide this common judgment, with consent of the counsel representing the parties, in both the petitions.

2. Before proceeding to examine the present petitions on their merits, it is imperative to first delineate the foundational facts and the core issues arising therein. A precise appreciation of the factual matrix and procedural background is essential to contextualize the grievances of the petitioners and the legal questions that fall for adjudication. The salient aspects of the petitions are, therefore, summarized as under:

In SBCWP No. 4343/2001 :-

3. The petitioner appeared in the Rajasthan Administrative Services Examination, 1999 (hereinafter referred to as 'RAS' Examination) and secured an overall merit rank of 360. However, during the course of the post-examination formalities, the petitioner was subjected to a medical examination by the competent Medical Board. Upon assessment, the petitioner was declared medically unfit for appointment to the Rajasthan





Administrative Service and its allied services on account of a visual impairment diagnosed as Congenital Nystagmus (CN).

4. Congenital Nystagmus is an ocular motor disorder of uncertain etiology, typically manifesting at birth or in early infancy. It is clinically characterized by involuntary, rhythmic oscillations of the eyes, which may affect visual acuity and ocular stability. Despite the said diagnosis, the petitioner's visual impairment, as assessed, was less than 20%, thereby falling below the minimum threshold required to qualify as a benchmark disability under applicable norms.

5. Specifically, in accordance with the criteria laid down in the relevant notification issued by the Union Public Service Commission (UPSC) for the Civil Services Examination (CSE), the petitioner was classified under Category 0, with corrected visual acuity in the better eye recorded between 6/9 to 6/18, and in the worse eye between 6/24 to 6/36. As such, the petitioner was not considered eligible either under the general category (due to medical unfitness) or under the reserved category for persons with benchmark disabilities (due to non-qualification of the 40% disability threshold).

6. During the pendency and adjudication of the present writ petition, this Court, by way of an interim order dated 03.09.2001, had granted protective relief in favor of the petitioner. Vide the said interim direction, it was ordered that one seat in the Rajasthan Co-operative Subordinate Service — Inspector Grade II be kept reserved and vacant for the petitioner, subject to the final outcome of the writ proceedings.



**In SBCWP No. 3500/2006 :-**

7. The petitioner, pursuant to his candidature in the Rajasthan Administrative Services Examination, 2003, secured an overall merit position at Rank 21. Notwithstanding such commendable performance, the petitioner was appointed to the Rajasthan Accounts Service instead of the Rajasthan Administrative Service (RAS), albeit the fact that both services are categorically classified as non-technical in nature under the prevailing Medical Examination Instructions issued by the Government of Rajasthan in the year 1975.

8. Pursuant to the declaration of results and in accordance with the post-examination protocol, the petitioner was subjected to a medical examination on 14.11.2005. The Medical Board, upon evaluation, declared the petitioner unfit for appointment to the RAS cadre on account of his pre-existing condition of Congenital Nystagmus (CN). Aggrieved by this determination, the petitioner submitted a formal representation seeking reconsideration of the medical opinion. In response, the petitioner was re-examined by the Medical Board on 02.01.2006. However, the subsequent medical opinion merely reiterated the prior conclusion of unfitness without furnishing any cogent reasons or objective justification for the adverse finding.

9. It is pertinent to highlight that notwithstanding the petitioner's superior merit position at Rank 21, the respondents proceeded to appoint the next candidate in order of merit, one Ms. Prabha Gautam, who secured Rank 22, to the Rajasthan Administrative Service cadre. In contrast, the petitioner was



appointed to the Rajasthan Accounts Service. It is a matter of record that the petitioner has, since his appointment, continuously served in the Rajasthan Accounts Service for a period of approximately two decades and has discharged his official duties with utmost diligence, integrity, and to the unqualified satisfaction of his superior officers.

SUBMISSIONS MADE BY THE COUNSEL REPRESENTING THE PETITIONER :-

10. At the outset, learned counsel for the petitioner submitted that the petitioner had consistently demonstrated academic excellence and commitment to public service throughout his educational and professional career. In the year 1989, the petitioner qualified the Senior Secondary Examination with 71.60% marks from the Board of Secondary Education, Rajasthan, Ajmer. Thereafter, in 1993, he completed his graduation from Rajasthan Agricultural University, Bikaner, securing 71.60% marks and attaining the third position in the University merit list. The petitioner further qualified the National Eligibility Test (NET) in his first attempt in 1995 and subsequently completed his M.Sc. in Agriculture (Agronomy) in 1996 from the RAU University, Bikaner with distinction, being awarded a gold medal for his academic performance. Demonstrating his continued dedication to academic pursuits, the petitioner re-qualified the NET examination in the years 1997 and 1998. In 1999, he appeared in the Rajasthan Administrative Services (RAS/RTS) Examination and successfully cleared all stages, securing the 360th rank in the final merit. Subsequently, in the RAS Examination conducted in 2003, the





petitioner improved his performance significantly and secured an overall rank of 21, reflecting his consistent and meritorious academic and competitive examination record.

11. It was further submitted that the petitioner despite being a meritorious candidate, is repeatedly subjected to arbitrary and discriminatory treatment by the respondent authorities, resulting in denial of rightful appointment in the Rajasthan Administrative Service (RAS), despite his better performance and ranking in the merit list. Thence, the petitioner seeks appropriate relief for the infringement of his fundamental and legal rights. It was then apprised to the Court that on 05.07.2001, the petitioner was declared medically unfit for appointment to the RAS on account of the pre-existing condition termed Congenital Nystagmus. Nonetheless, the said declaration was made without affording the petitioner any meaningful opportunity of clarification or recourse. Thereafter, on 31.07.2001, upon the petitioner's request, a re-medical examination was conducted by the duly constituted Medical Board. However, the petitioner was again declared medically unfit. In this regard, it was submitted that the said medical report was not supplied to him despite repeated requests, thereby denying him access to a vital document affecting his career and right to employment.

12. Consequentially, the petitioner was constrained to approach this Court and had filed SB Civil Writ Petition No. 4343/2001 (Dr. Deva Ram Shivram v. State of Rajasthan & Ors.), wherein the petitioner challenged the denial of appointment solely on the basis of medical unfitness *sans* taking note of the merit





scored by the petitioner, which he contended to be arbitrary, without justification, and in violation of the principles of natural justice.

13. It was averred that in the year 2003, the Rajasthan Public Service Commission (RPSC) issued a fresh advertisement for the RAS/RTS Examination, 2003 for filling various posts in the State and sub-ordinate services. The petitioner, determined to serve the State, once again participated in the said competitive examination. The petitioner cleared all the stages of the examination with distinction and secured an overall 21st rank in the general merit category. It is crucial to note that the petitioner did not avail of any benefit of reservation under the physically handicapped category, as he did not possess a disability certificate qualifying him for such classification. Further, vide communication dated 05.07.2003, the office of the Commissioner (Disabilities) informed the petitioner that he had less than 20% disability and hence was ineligible to be issued a disability certificate for availing benefits under the physically handicapped category. The said communication is on record as Annexure-8.

14. Thereafter, the petitioner was once again called for a medical examination on 14.11.2005. However, to the petitioner's grave prejudice, he was yet again declared medically unfit on account of defective vision, without any substantial deviation in the medical opinion or a detailed consideration of the nature of the duties to be performed under the RAS cadre. Being aggrieved, the petitioner submitted a detailed representation dated 10.12.2005 before the then Hon'ble Chief Minister and other competent





authorities seeking review of the adverse medical opinion and consideration for service allocation (Annexure-10 in SBCWP No.3500/2006). In response, a Medical Board was re-constituted and the petitioner underwent a subsequent medical examination on 02.01.2006. However, the outcome of this exercise was once again unfavorable and remained consistent with the previous opinion, without providing the petitioner any benefit of doubt or reasonable accommodation.

15. It was sequentially argued that on 21.04.2006, a candidate namely Ms. Prabha Gautam, who stood 22nd i.e. next in the merit list and a rank lower to the petitioner, was appointed to the RAS cadre service along with other candidates, while the petitioner stood excluded without being provided any valid or reasoned justification. It was further submitted that on the very next day, i.e. on 22.04.2006, the Government, invoking its powers of discretion and purported excellence, appointed the petitioner not to the RAS cadre service, but to the Rajasthan Accounts Service, despite the fact that both the services were classified under the "non-technical category" under the relevant recruitment guidelines framed and issued by the **Government of Rajasthan, Department of Personnel (Group II) in the year 1975 (hereinafter referred to as 'guidelines of 1975')**. Therefore, it can be deduced that this act of appointing the petitioner to a service other than the one earned on merit, and lower in preference, without any objective rationale, is arbitrary, unjustified, and violative of the fundamental rights of the



petitioner as enshrined under the provisions of Articles 14 and 16 of the Constitution of India.

16. It was also apprised to the Court that as per the Instructions for Medical Examination dated 01.01.1975 bearing No. F.15(1)DOP/A-II/74-I while holding that a candidate is not fit according to the norms laid down in those guidelines i.e. Guidelines of 1975, it would be permissible for a Medical Board to recommend to Government of Rajasthan for reasons specifically recorded in writing that the candidate in question may be admitted to the service without any disadvantage to the State government. At the same time, by the said guidelines it was made unambiguous that it is to be noted that the question is one of the likelihood of continuous service and the rejection of a candidate need not be advised on account of the presence of a defect which is only a small proportion of cases, if found to interfere with continuous effect of service.

17. In these circumstances, the petitioner was left with no alternative remedy but to approach this Court once again by filing the a writ petition in 2006 (connected herein), seeking appropriate directions for appointment in the Rajasthan Administrative Service in accordance with his merit, and to set aside the medical unfitness findings as being unreasoned and arbitrary. Nevertheless, the continued exclusion of the petitioner from the RAS cadre service, despite demonstrable merit and in absence of any sustainable medical disqualification, is violative of his fundamental rights and liable to be set.





18. In view of the factual background already submitted before the Court, it was reiterated that the petitioner is an academically distinguished and professionally accomplished individual who has consistently demonstrated merit, competence, and administrative capability throughout his career. Learned counsel submitted that the petitioner is a Gold Medalist in M.Sc. (Agronomy), conferred by a recognized university, and his achievements in academics are reflective of his cognitive and professional abilities. It was submitted that such academic excellence negates any presumptive inference of incapability in discharging administrative duties under the RAS cadre. Nevertheless, the petitioner holds a 'B' Certificate of the National Cadet Corps (NCC) and has qualified the National Eligibility Test (NET), in addition to publishing 15 peer-reviewed research papers and authoring a book titled "Agronomic Terminology", published by the Indian Society of Agronomy, IARI, New Delhi. These accomplishments substantiate the petitioner's intellectual and administrative acumen.

19. Moreover, despite being diagnosed with Congenital Nystagmus, the petitioner has continuously served in various high-responsibility public positions *inter alia*, Treasury Officer, Chief Accounts Officer, Assistant General Manager (Medical Services), Comptroller of Sri Karan Narendra Agricultural University, Officer on Special Duty (Revenue Mobilization), Jaipur Development Authority, Accounts Officer, Tribal Area Development (TAD) Department, Jaipur, Accounts Officer, Jila Parishad Nagaur and has also undergone training at the prestigious Harishchandra





Mathur Rajasthan Institute of Public Administration (HCM RIPA).

At no point the petitioner has faced any impairment which obstructed the efficient performance of his official duties, nor has any adverse report been recorded against him in this regard in the ACRs qua him over the years.

20. In light of the above averred achievements, it was submitted that the petitioner has demonstrated consistent administrative and professional excellence, and any inference drawn solely from a minor physical condition is wholly unjustified, unreasonable, and contrary to established constitutional and statutory safeguards.

21. Unfolding the arguments further, learned counsel had averred that the petitioner has successfully qualified all stages of the RAS Examination 2003 and secured 21st rank in the general category merit list, having undergone the same rigorous competitive process as other candidates. Thus, the denial of appointment despite high merit is a manifest violation of Articles 14 and 16 of the Constitution of India, which guarantee equality of opportunity in public employment. The RAS recruitment process is merit-centric. The petitioner being placed well within the range of selected candidates, ought to be appointed to the RAS cadre. Instead, a lower-ranked candidate (Rank 22) was appointed, thereby evidencing invidious discrimination.

22. Nevertheless, from a rational thinking it can be inferred that the action of respondents defies all logic and reasoning as while a person suffering from 40% benchmark disability is eligible for appointment against the post in question, under the physically





handicapped category, a candidate with a lesser degree of disability, like the case of the petitioner, and is treated as medically unfit. Such a candidate may not be entitled to the benefit of reservation under the physically handicapped category, yet the statutory declaration clearly indicates that the petitioner's condition does not disqualify him.

23. The petitioner was not suffering from a benchmark disability, as defined under Section 2(r) of the **Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the Act of 2016)**, i.e., a disability of 40% or more. In fact, the Disability Commissioner, vide communication dated 05.07.2003, certified that the petitioner had less than 20% disability, thereby disqualifying him from availing any reservation but simultaneously being unreasonably excluded from general selection. For the sake of handiness the said definition is reproduced herein below:

(r) "person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

24. The action of the respondent authorities in denying appointment to the RAS cadre, while offering placement in the Rajasthan Accounts Service (also a non-technical service under the Guidelines of 1975), is arbitrary and irrational, violating the Doctrine of Reasonableness as enunciated under the provisions of Article 14 of the Constitution of India and the fundamental rights of the petitioner as enshrined under Article 21 of the same. Likewise, the denial of service on medical grounds, despite





medical fitness for equivalent posts, amounts to hostile discrimination and violates the spirit and objectives of the Guidelines of 1975, which govern classification of services as technical or non-technical and appointment thereto and Sections 20 and 21, of the Act of 2016 which mandate non-discrimination in public employment and equal opportunities.

25. Subsequently, it was contended that ever since 2005, the Union Public Service Commission and Central Government are appointing physically challenged candidates with benchmark disabilities in the Indian Administrative Service (IAS) cadre. By 2008, the State of Rajasthan itself had implemented similar practices in the RAS cadre; moreover, the Hon'ble Supreme Court and various High Courts have laid down in a catena of decisions that meritorious candidates with lesser or non-benchmark disabilities must not be excluded from appointment solely on medical grounds if they are otherwise capable of discharging the functions required.

26. The petitioner is consistently rated as "Outstanding" or "Very Good" in his Annual Confidential Reports (ACRs) over the last 20 years of government service, his official record further affirms that there is no hindrance or barrier arising from his physical condition. Thus, excluding the petitioner from consideration due to a disability that is less than the threshold for even claiming reservation reflects a flawed system, forcing meritorious persons into an unjust dilemma — to be "more disabled" to qualify for equitable treatment. This ironical and



unjust position violates both human dignity and equal protection under law.

27. In support of the contentions noted hereinabove, and to conclude the stance taken, learned counsel had placed reliance upon the judgment passed by the Division Bench of this Court in **Oil and Natural Gas Corporation Ltd. & Anr. v. Ranjan Tak & Anr., DB Civil Special Appeal (Writ) No. 953/2023**, decided on 29.11.2024, wherein in similar circumstances, the Court directed appointment of a meritorious candidate with 30% disability in recognition of their capabilities and in light of the principles enshrined in the Act of 2016.

SUBMISSIONS MADE BY THE COUNSEL REPRESENTING THE RESPONDENTS :-

28. *Per contra*, learned Additional Government Counsel appearing for the respondent-State, has strenuously opposed the reliefs sought in the writ petition and had raised the following legal and factual contentions:

29. **Non-Claim of Reservation under Disability**

Category: It was submitted that the petitioner had not, at any stage, claimed consideration under the reserved category for persons with disabilities and in the absence of such a claim, the petitioner cannot subsequently assert any right to reservation under the physically handicapped category. It is a well-settled principle that rights flowing from a reserved category cannot be extended to a candidate who has not claimed such benefit at the relevant time. The law does not permit retrospective accrual of





such benefit where no foundational claim has been made in the application or during the selection process.

30. **Medical Ineligibility and Supremacy of Medical**

Board Opinion: It was further contended that, in accordance with the prevailing rules and the medical guidelines operative at the relevant time, the petitioner was declared medically unfit and unsuitable for the RAS cadre on a recurring basis by the duly constituted Medical Board. As per Rules 19 and 20 of the **Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1999 (hereinafter referred to as the Rules of 1999)**, fitness as determined by the Medical Board is a mandatory eligibility criterion. The petitioner, being declared unfit, does not possess any vested right to seek appointment in the RAS cadre. Moreover, the consistent view of the Hon'ble Supreme Court is that the opinion of the Medical Board must be accorded primacy in service matters concerning physical fitness. In support of the contentions noted hereinabove, learned counsel had placed reliance upon the ratio encapsulated in **No.14666828M Ex CNF Narsingh Yadav v. Union of India & Ors., Civil Appeal No. 7672/2019; Om Prakash Singh v. Union of India & Ors., Civil Appeal No. 5655/2010; Shri Munna Singh v. Union of India & Ors., Writ Petition No. 316/2020; D.K. Trivedi & Ors. v. State of Gujarat & Ors., (1986) Supp. SCC 20; Raojibhai Jivabhai Patel & Ors. v. State of Gujarat & Ors., (1989) Supp. (2) SCC 744; State of Rajasthan & Ors. v. Sunita, DB Special Appeal Writ No. 572/2023;** decided by the





Court at Principal Seat, Jodhpur, vide order dated 31.08.2024, along with other connected appeals.

31. **Doctrine of Estoppel and Acquiescence:** It was further submitted that, in view of the petitioner's medical ineligibility, the respondent-State, in exercise of its discretionary powers, considered the case of the petitioner with sensitivity and granted him appointment in the Rajasthan Accounts Service on humanitarian grounds. The petitioner, having accepted such appointment without protest or demur, is now estopped from challenging the said appointment. The doctrine of estoppel by conduct and the principle of acquiescence bar the petitioner from seeking any alternate appointment or claiming elevation to the RAS cadre.

32. Qua the issue of non-Challenge to Rules and Guidelines learned counsel had pointed out that the petitioner had neither challenged the validity of the guidelines of the year 1975 nor the relevant rules and guidelines that govern recruitment and fitness for appointment. In the absence of such a challenge, the petitioner's claim remains unsustainable in law. Moreso, a statutory rule or government order carries the presumption of legality and must be complied with unless declared *ultra vires* by a competent court. It was further submitted that, as clarified through the affidavits of the Chief Secretary and the Principal Secretary, the reservation or selection of candidates with disabilities for RAS and IAS services began only during the period 2005–2007. Prior to that, no such reservation existed. Despite this, the petitioner was favorably considered and accommodated





based on his meritorious record and positive performance feedback, demonstrating the State's leniency and empathetic approach. However, such a one-time exception cannot be converted into a precedent or a matter of right. Therefore, it can be inferred that no vested right to employment in a particular cadre is created by the appointment so granted to the petitioner in the Rajasthan Account Service cadre.

33. Lastly, it was argued that employment in a particular cadre or service, especially in posts such as RAS, is not a matter of right but subject to fulfilling statutory criteria, including medical fitness. The discretionary power exercised by the State in offering alternate suitable employment is within its domain and cannot be converted into an enforceable legal right by the petitioner.

34. In view of the aforementioned submissions, learned Additional Government Counsel has prayed for the dismissal of the writ petition, stating that no case is made out for judicial interference. The action of the respondent-State is well within the bounds of law, reason, and administrative discretion.

DISCUSSION AND FINDINGS :-

35. Having heard the rival arguments advanced by the learned counsel for both the parties, upon a perusal of the material available on record, more specifically the erstwhile ACRs of the petitioner, scanning the judgments cited at the Bar and juxtaposing the contentions noted herein above, this Court at the outset is of the view that the Indian Constitution enshrines **justice — social, economic, and political** — as a core ideal of the Preamble. India's model of governance is that of a **welfare**





state, where the State bears a solemn duty to protect the interests of its vulnerable and marginalized populations. Article 41 as enshrined in the Directive Principles of State Policy, of the Constitution of India further obligates the State to secure “the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.” In this context, the Act of 2016, is a manifestation of India’s commitment to equality and dignity for all persons with disabilities. It mandates non-discrimination in employment (Section 20), reasonable accommodation, and reservation in government posts.

36. Yet in the matter in hand, the petitioner despite being meritorious, qualified, and aspiring was denied consideration for a RAS cadre services not because he is able, but because his disability is not “sufficiently severe” to meet the technical threshold for reservation. Thus, he is excluded from both the general category, due to functional limitations, and from the reserved category, due to not meeting the 40% disability threshold. This leads to a tragic administrative blind spot, a form of constructive exclusion wherein, the petitioner is neither “abled” nor “disabled enough” to benefit from the system. The legal framework, intended to be inclusive, becomes ironically exclusionary. Hence the grief behind the statement: *“I wish I had been more disabled.”* It is not a rejection of self, but a damning critique of a system that values percentage points over real barriers, and checkboxes over capability. It calls into question whether the State is truly seeing its citizens, or merely scanning



them for conformity to pre-set categories under the garb of empathy and consideration.

37. Consequentially, it is apposite to jot down certain undisputed facts of the present petitions:

37.1 That it is an admitted position that the petitioner suffers from low vision and is diagnosed with Congenital Nystagmus.

37.2 That the medical records dated 14th March, 2001, 31st July, 2001, 1st December, 2005, and 6th January, 2006 including the re-examination and re-medical assessments, consistently conclude that the petitioner is "unfit for RAS, allied services due to defective vision." However, no satisfactory justification of rationale behind the said opinion is noted by the concerned experts.

37.3 That the petitioner had successfully qualified all stages of the Rajasthan Administrative Services Examination conducted in the year 1999 and was placed at 360th position in the overall merit list. Subsequently, in the RAS Examinations held in the years 2001 and 2003, the petitioner once again qualified all stages and secured a significantly improved 21st rank in the merit list. The petitioner, in both the Rajasthan Administrative Services (RAS) Examinations conducted in the years 1999 and 2003, had appeared under the 'general category' and not under any reserved category, despite being eligible for Other Backward Classes (OBC) reservation and having a known medical condition of low vision. Notably, the petitioner successfully secured 360th and 21st positions in the final merit list, respectively, which reflects his academic and competitive merit beyond any reservation benefit.





37.4 That one Ms. Prabha Gautam, who secured the 22nd rank in the said merit list, was appointed to the RAS cadre service. In contrast, the petitioner, despite attaining the 21st rank, was initially excluded from appointment by an order dated 21.04.2006. However, upon consideration of the petitioner's representation and pursuant to directions issued by the office of the Hon'ble Chief Minister, the petitioner was subsequently allocated to the Rajasthan Accounts Service on 22.04.2006. The relevant extract from the reply to the petitioner's representation is reiterated hereinbelow:

"टिप्पणी (कमिक)

कार्मिक (क-1) विभाग

विषय:- श्री देवाराम शिवरान, अभ्यर्थी को राजस्थान राज्य एवं अधीनस्थ सेवाएं संयुक्त प्रतियोगी परीक्षा के परिणाम के उपरान्त दृष्टि परीक्षण के मापदण्डों का **Interpretation** कराने के उपरान्त सेवा आवंटन करने बाबत।

कृपया श्री राजपाल सिंह यादव, विशेषाधिकारी, मुख्यमंत्री द्वारा शासन सचिव, कार्मिक विभाग को प्रेषित अशासकीय टीप दिनांक 2.1.2006 का अवलोकन 20/सी पर करें। उक्त टीप में राज्य प्रशासनिक सेवा के लिए गठित चिकित्सीय बोर्ड के दृष्टि परीक्षण के मानदण्डों का अर्थ लगवाने के सम्बन्ध में श्री देवाराम शिवरान के प्रकरण का परीक्षण कराते हुए तथ्यात्मक टिप्पणी भेजने के निर्देश दिये गये थे। मुख्यमंत्री कार्यालय को यह अवगत करा दिया गया कि राजस्थान राज्य एवं अधीनस्थ सेवाएं संयुक्त प्रतियोगी परीक्षा, 2003 के माध्यम से चयनित अभ्यर्थी श्री देवाराम शिवरान मेरिट नं. 21 (अनुक्रमांक 543467) को नियुक्ति दिये जाने से पूर्व स्वास्थ्य परीक्षण करवाये जाने के लिए दिनांक 14.11.2005 को पत्र (पृष्ठ 6/सी) प्रेषित किया गया। श्री शिवरान का स्वास्थ्य परीक्षण दिनांक 1.12.2005 को होना तय किया गया था तथा श्री शिवरान को पुनः 19.12.2005 को पांच अन्य अभ्यर्थियों के साथ स्वास्थ्य परीक्षण हेतु बुलाया गया। बाद में यह परीक्षण जनवरी, 2006 के प्रथम सप्ताह में सम्पादित किया गया। पुनः स्वास्थ्य परीक्षण करवाये जाने पर भी श्री शिवरान राज्य एवं अधीनस्थ सेवाओं में मेडिकल बोर्ड द्वारा योग्य नहीं दर्शाये गये (पृष्ठ 23-27/सी)। मेडिकल बोर्ड द्वारा श्री शिवरान को राज्य/अधीनस्थ सेवाओं में नियुक्ति हेतु अयोग्य दर्शाये जाने पर राज्य सरकार को श्री शिवरान द्वारा अभ्यावेदन प्रस्तुत किया गया (पृष्ठ 9-17/सी)। चूंकि श्री शिवरान द्वारा माननीया मुख्यमंत्री महोदय को प्रस्तुत ज्ञापन में कार्मिक (क-2) विभाग के दिनांक 01.01.1975 को नियमों में से निम्नलिखित नियम का हवाला दिया गया था, इसलिए प्रकरण को स्पष्ट टिप्पणी के लिए शासन सचिव, चिकित्सा शिक्षा विभाग को 12.01.2006 को प्रेषित कर दिया गया :-

"These instructions are intended to provide guidelines to the Medical Examiners and a Candidates who does not satisfy the minimum requirements prescribed in these instruction cannot be declared fit by the medical Examiners. However, while Holding that a candidate is not fit according to the norms laid down in these instructions it would be permissible for a Medical Board to recommend to the Government of Rajasthan





for reasons specifically recorded in writing that he/she may be admitted to service without disadvantage to Government. If any doubt arises relating to the application and scope of these instructions it shall be referred to the Government in the Department of Personnel, whose decision thereon shall be final."

श्री शिवरान के अभ्यावेदन पर चिकित्सा एवं स्वास्थ्य विभाग की टिप्पणी/राय प्राप्त करने के लिए विभाग द्वारा दिनांक 2.1.2006 (पृष्ठ 18/सी) व स्मरण-पत्र 22.2.2006 (पृष्ठ 21/सी) व 1.4.2006 (पृष्ठ 22/सी) को पत्र प्रेषित किये गये। चिकित्सा एवं स्वास्थ्य (ग्रुप-1) विभाग से प्राप्त पत्र का पृष्ठ 28/सी पर अवलोकन करें।

चिकित्सा एवं स्वास्थ्य विभाग के अनुसार मेडिकल बोर्ड भर्ती सम्बन्धी नियमों में दिये गये मापदण्डों के अनुसार ही अपना निष्कर्ष दे सकता है तथा चिकित्सा एवं स्वास्थ्य विभाग की राय मेडिकल बोर्ड से भिन्न होना सम्भव नहीं है। साथ ही उन्होंने कार्मिक विभाग को अपने स्वयं के स्तर पर अन्तिम निर्णय लेने की कार्यवाही करने की राय दी है। नियमानुसार मेडिकल बोर्ड को यह शक्ति दी गई है कि यदि कोई अभ्यर्थी भर्ती नियमों में उल्लेखित चिकित्सीय परीक्षण मानदण्ड पूर्ण नहीं कर पा रहा है तब अपनी लिखित कारण सहित राय के द्वारा मेडिकल बोर्ड उस अभ्यर्थी की इस शर्त पर नियुक्ति हेतु अभिशंसा कर सकता है कि राज्य सरकार को किसी प्रकार का **disadvantage** न हो। इन निर्देशों में संशय की स्थिति में मामला कार्मिक विभाग को सौंपा जा सकता है जिसका निर्णय अन्तिम होगा।

पत्रावली का अवलोकन करने पर ज्ञात होता है कि राज्य एवं अधीनस्थ सेवाएं संयुक्त प्रतियोगी परीक्षा, 2003 में राजस्थान लेखा सेवा में कार्मिक विभाग द्वारा नेत्रहीन अभ्यर्थी के लिये आरक्षण किया गया है (पृष्ठ सं. 48/सी एवं 49/सी)। राजस्थान लोक सेवा आयोग द्वारा घोषित परिणाम के अनुसार एक नेत्रहीन अभ्यर्थी को यह सेवा आवंटन करने की कार्यवाही भी की जा रही है। अतः स्पष्ट है कि पूरी तरह से आंखों से नहीं देख पाने पर भी लेखा सेवा का कार्य सम्पादन कराया जा सकता है। चूंकि वर्तमान प्रकरण में श्री शिवरान विकलांग अभ्यर्थी की श्रेणी में भी नहीं आते हैं तथा **Worst to Worst** उनके केस में अधिकतम पूर्णतया नेत्रहीन होना ही स्थिति बन सकती है तो श्री शिवरान को कोई भी सेवा आवंटित नहीं करना उचित प्रतीत नहीं होता है। यहां यह उल्लेख करना उचित होगा कि वर्तमान में श्री शिवरान एम.पी.यू.ए.टी., उदयपुर में सहायक प्राचार्य के पद पर कार्यरत हैं तथा उनका कार्य अनुसन्धान से संबंधित है। श्री शिवरान ने उच्च शिक्षा प्राप्त की है तथा पी.एच.डी. एवं नैट परीक्षा भी उत्तीर्ण की है जिससे यह स्पष्ट है कि शैक्षणिक रूप से श्री शिवरान सक्षम हैं।

श्री देवाराम शिवरान का वरीयता क्रमांक 21 (अनुक्रमांक 443467) है, जिसके आधार पर स्वास्थ्य परीक्षण में पूर्णतया फिट होने पर उन्हें राजस्थान प्रशासनिक सेवा का आवंटन किया जा सकता था तथा प्रशासनिक सेवा के उपरान्त श्री शिवरान द्वारा द्वितीय वरीयता राजस्थान परिवहन सेवा को दी गई है। राजस्थान राज्य एवं अधीनस्थ सेवाएं संयुक्त प्रतियोगी परीक्षा हेतु प्रेषित रिक्तियों के सम्बन्ध में निम्नलिखित निर्णय से दिनांक 28.02.2003 को पत्र (पृष्ठ 48/सी) के द्वारा कार्मिक विभाग द्वारा सचिव, राजस्थान लोक सेवा आयोग, अजमेर को भी अवगत कराया गया :-

राजस्थान प्रशासनिक सेवा में विकलांग हेतु नियमानुसार आरक्षण नहीं है। यह राज्य सिविल सेवा है। भारत सरकार की अधिसूचना दिनांक 31.05.2001 में राज्य सिविल सेवा या प्रोवेन्सियल सिविल सर्विसेज का कोई हवाला नहीं है। अतः राजस्थान प्रशासनिक सेवा उक्त अधिसूचना की परिभाषा में नहीं आती है। अतः विचार विमर्श के पश्चात लिये गये निर्णय के अनुसार राजस्थान प्रशासनिक सेवा में विकलांग हेतु कोई आरक्षण नहीं है। पूर्व में विकलांग हेतु दर्शाया गया आरक्षण वापस लिया जाता है।



राजस्थान प्रशासनिक सेवा अधिकारियों को उपखण्ड अधिकारी/अतिरिक्त जिला कलक्टर आदि पदों पर किसी भी समय कानून एवं व्यवस्था की स्थिति के मद्देनजर कर्तव्य निष्पादन करते हुए सही शारीरिक क्षमता की आवश्यकता पड़ती है। इसी प्रकार राजस्थान यातायात सेवा अधिकारियों को कर चोरी रोकने, अवैध वाहन, संचालन रोकने तथा विशेष निर्देश मिलने पर किसी भी समय चैकिंग आदि करनी पड़ती है। अतः इन दोनों सेवाओं (प्रशासनिक सेवा/राजस्थान परिवहन सेवा) में कार्य सम्बन्धी दायित्व इस प्रकार के है कि किसी भी समय फील्ड में आकस्मिक निरीक्षण/कार्यवाही हेतु जाना पड़ सकता है तथा दोनों सेवाओं हेतु पर्याप्त नेत्रशक्ति मापदण्ड कार्य के सही निष्पादन हेतु आवश्यक भी है।

अतः इन तथ्यों की रोशनी में कार्मिक (नियम) विभाग के स्तर से स्वास्थ्य परीक्षण हेतु जारी विस्तृत दिशा निर्देश (Instruction as to the Physical Examination of Candidates for Admission into Various State Service Under the Government of Rajasthan) दिनांक 1.1.75 के अनुच्छेद-II (30/सी) में दी गई शक्तियों का विधिवत प्रयोग करते हुए अनुशंसा की जाती है कि श्री शिवरान को भर्ती नियमों में शिथिलता प्रदान करते हुए राजस्थान लेखा सेवा आवंटित की जावे।

(नवीन जैन)

शासन उप सचिव

शासन सचिव (कार्मिक)

मुख्य सचिव

मा. मुख्यमंत्री महोदया”

37.5 It is an admitted position, as per the affidavit filed by the Chief Secretary, that upon due consideration and exercise of discretion by the State Government, and notwithstanding the petitioner's medical condition of low vision, he was found fit for appointment to the Rajasthan Accounts Service. Accordingly, in the peculiar facts and circumstances of the case, the petitioner was permitted to join service, reflecting a conscious and reasoned decision by the competent authority.

37.6 This Court further observes that at no point did the petitioner apply under or seek the benefit of the physically handicapped category, nor did he claim any reservation in the selection process. *Expressio unius est exclusio alterius* — the express mention of one category (general) implies the exclusion of





the other (reserved), thereby confirming that the petitioner sought consideration solely on merit.

38. It is also pertinent to note that the petitioner does not fall within the definition of a person with "benchmark disability" as contemplated under the applicable legal framework, being below the 40% threshold. The Commissioner for Disabilities, in categorical terms, recorded a finding that the petitioner does not possess a benchmark disability. Contrarily, the medical boards, consistently from the year 1999 through 2006, opined that the petitioner was unfit for the Rajasthan Administrative Services and allied services, on account of his visual impairment. This apparent contradiction between administrative and medical determinations calls for the application of the principle *audi alteram partem* i.e. the right to be heard as well as a harmonized interpretation of medical incapacity and administrative discretion; however, in the matter in hand the plea of the petitioner was not considered by the medical board within the stipulated period, moreover, the petitioner had to move from pillars to pole to attain the said medical opinion.

39. Notwithstanding the adverse medical opinions, the petitioner's professional record, as reflected in his Annual Confidential Reports (ACRs), is found to be consistently exemplary. The petitioner is rated as either "outstanding" or "very good" in all relevant service periods. No adverse, stigmatic, or derogatory remarks appear on record. This Court at this nascent juncture deems it appropriate to rely on the principle of *Res ipsa loquitur* i.e. the thing speaks for itself, and is of the opinion that





the petitioner's service record speaks to his efficiency, competence, and contribution, which has proven to be an asset to the State across various departments, corporations, and postings.

40. The petitioner's ACRs, academic records, and service credentials indicate consistent excellence, as reflected by ratings of "Outstanding" and "Very Good." In terms of Rules 19 and 20 of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules, 1999, the State Government is vested with discretionary authority to grant appointments. While such discretion is not a vested right in favour of the petitioner, once the government itself, through its highest executive offices, namely the Hon'ble Chief Minister and Chief Secretary, has exercised this discretion in the petitioner's favour for Rajasthan Accounts Services, the subsequent exclusion from RAS cadre appears to be not only arbitrary, but also discriminatory and violative of the provisions of the Constitution of India.

41. Upon perusal of the Guidelines of 1975 pertaining to medical fitness and classification of services, it is noted that the said guidelines divide governmental services into two broad categories: technical and non-technical. Technical services include posts requiring specialized physical standards, such as engineering, medical, and certain Group 'B' services. In contrast, non-technical services, such as, the Rajasthan Administrative Services, Rajasthan Accounts Services, and analogous posts, are not predicated upon stringent physical fitness criteria. The Guidelines explicitly recognize that individuals with diminished physical capabilities, including low vision, are capable of





discharging duties effectively in non-technical services. Thus, where no essential physical prerequisites exist, exclusion solely on medical grounds, in absence of statutory bar or functional incapacity, may amount to arbitrariness.

42. Upon a comprehensive reading of the Guidelines of 1975 relating to medical assessment for government services, this Court finds no material distinction between the functional nature or service requirements of the Rajasthan Administrative Service and the Rajasthan Accounts Service. Both are classified as “non-technical services” and are not contingent upon heightened physical standards. Thus, any differentiation in treatment between these two cadres, on the ground of medical unfitness due to low vision, appears to be bereft of any rational basis and is inconsistent with the object of the said guidelines. Such differential treatment without *intelligible differentia* violates the test laid down in the ratio of **E.P. Royappa v. State of Tamil Nadu: (1974) 4 SCC 3.**

43. Moreover, in the ratio encapsulated in **Oil and Natural Gas Corporation Ltd. & Anr. (Supra)**, the Division Bench categorically held that individuals falling in the intermediate category i.e., those with less than 40% disability but more than negligible impairment ought not to be excluded from consideration merely on the ground of not possessing a benchmark disability. The Division Bench, while construing Sections 2(h), 2(r), 2(s), and 3 of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the Act of 2016), held that:





43.1 The term “discrimination” under Section 2(h) includes denial of reasonable accommodation;

43.2 The principles of “equality” and “non-discrimination” enshrined in Section 3 mandate that individuals with disabilities be treated with parity;

43.3 The definitions of “person with benchmark disability” under Section 2(r) and “person with disability” under Section 2(s) must be interpreted harmoniously to avoid exclusion of those with less than 40% disability from the purview of equal opportunity.

44. The Division Bench held that if persons with benchmark disabilities are granted reservation and appointment, the exclusion of those with a lesser degree of disability who are otherwise meritorious, from the appointment, on grounds of medical unfitness, would defeat the legislative intent and spirit of the Act of 2016. It was poignantly observed that such a person cannot be left to ponder, “Why was I not more disabled, so as to qualify for consideration?” Such an interpretation would be contrary to international human rights instruments, including the principles of the **United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), 2007, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995** and antithetical to the objectives of the Act of 2016. The relevant extract from the dictum passed by the Division Bench is reproduced herein below:

“25. While dealing with persons with disabilities, a public functionary is required to act with higher degree of sensitivity, objectivity and in furtherance, not only laws, but also the spirit of the Act of 2016. Equality of treatment is not merely a statutory right, but a





fundamental right which is at stake in the present case. Denial of such right not only violates the Constitution or Statue, but also the basic human right of specially abled persons to live with dignity. Learned Single Judge rightly observed that the treatment meted out to Respondent No. 1 amounts to rubbing salt to such injury by denying Respondent No.1 his legitimate and legal right and make him think the worst that the ball should have caused 10% more injury so that his merit would not be trampled upon and he could get appointment at least against the reserved posts. We would add by saying that denial of appointment to Respondent No. 1 has added insult to injury which must be deprecated.

That is the reason why in the beginning of our judgment, we have observed that it is the attitudinal barrier which is the matter of concern. Section 2, clause (c) of the Act of 2016, in that context, defines the word, 'barrier' as below:

"2. Definitions.—In this Act, unless the context otherwise requires,—

(a)

(b)

(c) "barrier" means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society;"

26. We hope and trust that the appellants while dealing with persons with disabilities will act free from such barrier which hampers the full and effective participation of the persons with disabilities in the society. We are also of the view that present is a fit case where cost should be imposed upon the appellants."

45. The petitioner has rendered over two decades of exemplary service in non-technical roles, where his disability did not hinder performance. The respondents' claim of his unsuitability for field posts is negated by the record of consistent high performance, thus undermining the rationale for denial of RAS cadre. Therefore, the maxim *actus curiae neminem gravabit* (an





act of the court shall prejudice no one) must apply to ensure the petitioner's rights are not defeated by executive inconsistency.

46. It is also noted that persons possessing benchmark disabilities have, since the year 2005 up to 2007, been appointed to high-ranking posts within the Indian Administrative Service (IAS) and Rajasthan Administrative Service (RAS). The petitioner has submitted a list of 26 such instances (Reiterated in order dated 22.01.2025), of which at least five appointments were expressly acknowledged by the State in the affidavit filed by the learned Chief Secretary. The only contention raised by the State is that, during the relevant time, statutory provisions did not explicitly permit such appointments. Notwithstanding this position, the State adopted a sympathetic approach by offering the petitioner an appointment in the Rajasthan Accounts Service, albeit while declining his claim to the RAS, citing alleged non-performance in field postings as recorded in the departmental order-sheet.

47. This Court finds that such selective reliance on medical assessment and selective exclusion from a particular cadre, despite meritorious performance and subsequent acknowledgment of capability in another cadre, warrants judicial scrutiny under the principles of reasonable classification and substantive equality enshrined under Article 14 of the Constitution of India.

48. The Court, invoking the UNCRPD, 2007 principles and the provisions of the Act of 2016, observes that the law recognizes two distinct categories:

(I) Persons with benchmark disabilities ($\geq 40\%$)





(II) Persons with disabilities (<40%)

The interpretation, as herein drawn by the respondents, that denies a person with lesser disability from appointment on medical grounds, while accommodating a more disabled person under the reservation category, is a paradoxical injustice and contrary to the doctrine of proportional equality as enshrined under Articles 14, 16, and 21 of the Constitution of India. Such interpretation frustrates the legislative intent and compels a person to lament that they were not more disabled.

49. The reasoning adopted in the government's internal notes that the petitioner is fit for Rajasthan Accounts Service but not for RAS, is fundamentally flawed and based on a misinterpretation of the applicable guidelines. The record shows that from 2005 to 2007 and earlier, candidates with benchmark disabilities were appointed to IAS and RAS posts. Thus, the denial to the petitioner who stands higher on merit and without a claim for reservation is arbitrary, illusory, and contrary to judicial precedents and the constitutional mandate of substantive equality; especially when once the petitioner was adjudged fit for Rajasthan Accounts Service, and the Guidelines of 1975 treat both cadres similarly, a contrary view for RAS cannot sustain judicial scrutiny. The respondents' selective application of the rules offends the principle of non-arbitrariness.

50. The Constitution of India and the Act of 2016 provide a level playing field for differently-abled persons. When a candidate placed 21st in merit, with outstanding service records, gold medals, and commendable publications, is denied a rightful post



solely due to lesser disability, it constitutes a direct affront to Article 14 and amounts to *per iniquitatem jus non oritur* i.e. a right does not arise from injustice. The Division Bench in **Oil and Natural Gas Corporation Ltd. & Anr. (Supra)** emphasized the need for sensitive and inclusive governance. Equal treatment and effective participation of specially-abled persons is a constitutional obligation, and their dignity must not be compromised by flawed interpretations.

51. The contention of principles of acquiescence or estoppel on the ground of the petitioner's joining Rajasthan Accounts Service is unsustainable. The petitioner has consistently challenged the denial of his candidature for services of RAS cadre, as evident from his filings in 2001 and 2006. Thus, the doctrine of approbate and reprobate does not apply.

CONCLUSION AND DIRECTIONS :-

52. In view of the foregoing observations and analysis, this Court finds the rejection of the petitioner's candidature for the RAS cadre services is arbitrary, discriminatory, and unconstitutional, warranting judicial intervention under Article 226 of the Constitution of India. Thence, the decision dated 05.07.2001 holding the petitioner to be unfit for Rajasthan Administrative Services and allied services due to defective vision is hereby quashed and set aside.

53. Accordingly, the writ petitions are allowed and the respondents are directed to:

53.1 Grant the petitioner appointment w.e.f. 21.04.2006 i.e. the date on which the next candidate in merit, Ms. Prabha Gautam





(Rank 22), was appointed in the RAS cadre service in the Rajasthan Administrative Service (RAS) cadre; with all consequential benefits, including arrears, seniority, promotions and pensionary advantages;

53.2 Include notional calculation for pension and other service-related benefits from the date of filing of the first petition in 2001, considering that by way of interim order dated 03.09.2001, granted in SB Civil Writ Petition No.4343/2001, one post was directed to be kept vacant for the petitioner.

53.4 This Court further directs that, in recognition of the undue hardships, humiliation and prolonged discrimination endured by the petitioner, he be compensated with ₹5,00,000/- (Rupees Five Lakhs Only), to be paid by the respondent-State.

54. In a symbolic gesture of institutional redressal and acknowledgment of merit, the petitioner shall be formally granted RAS cadre appointment in the presence of the Chief Secretary of the State, reflecting a progressive and sensitive governance ethos toward differently-abled citizens.

55. The above directions shall be implemented within a period of one month from the date of pronouncement of this judgment.

56. With these directions, these writ petitions stand allowed. Stay application and/or pending applications, if any, shall stand disposed of.

(SAMEER JAIN),J

Preeti Asopa

