



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Writ Petition No. 18826/2018

Ranjan Tak S/o Shri Ram Pratap Tak, Aged About 23 Years, R/o  
Opposite Govt. Girls Senior Secondary School, Rajmahal,  
Gulabsagar, Jodhpur, Rajasthan.

-----Petitioner

Versus

1. Union of India through Secretary, Ministry of Petroleum  
And Natural Gas, Government of India, Shastri Bhawan,  
New Delhi.
2. Oil And Natural Gas Corporation Limited through its  
Director (H.R.), Recruitment Section, Deendayal Urja  
Bhawan, 5-Nelson Mandela Marg, Vasant Kunj, New Delhi,  
Pin- 110070.
3. Incharge, Corporate Recruitment Oil And Natural Gas  
Corporation Limited, Tej Bhawan, Deharadun, Uttarakhand.

-----Respondents

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|-------------------|---|-------------------------------------------------------------------------------------------------|
| For Petitioner(s) | : | Mr. Sunil Purohit                                                                               |
| For Respondent(s) | : | Dr. Sachin Acharya, Sr. Advocate<br>assisted by Mr. Karan Parihar<br>Mr. O.P. Mehta, through VC |

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**JUSTICE DINESH MEHTA**

**Judgment**

**Reportable**

**02/09/2023**

1. The petitioner has approached this Court with a grievance  
that the respondents have wrongly declared him unfit on account  
of his visual constraint.
2. The facts appertain are that the petitioner having requisite  
educational qualification applied for the post of Materials  
Management Officer, pursuant to the advertisement dated 3/18



(R&P) (Annex.-1) issued by the respondent – Oil & Natural Gas Corporation Limited (hereinafter referred to as 'the Corporation').

3. It is to be noted that by the advertisement above referred, total 49 seats were notified, out of which, 19 seats were reserved for Visually Handicapped persons and one was earmarked for Hard of Hearing person. Furthermore, it was specifically mentioned in the subject advertisement that the post is suitable for OA, OL, BL, HH and LV category (One Arm, One Leg, Both Legs, Hard of Hearing and Lower Vision) category of persons.

4. The petitioner submitted his application form as an OBC category candidate and not as PH category candidate, though, he was visually impaired 30%.

5. Petitioner was found meritorious and was offered appointment by way of an order dated 25.09.2018, subject to production of certificate of medical fitness from the Medical Officer of the respondent – Corporation. When the petitioner was subjected to medical examination, the board opined that as per the medical certificate, the petitioner does not have binocular vision for having impairment in his left eye to the extent of 30% and hence, he is unfit.

6. When the petitioner was not allowed to join, he made a detailed representation dated 14.10.2018 addressed to the Chairman of the respondent – Corporation and highlighted that he stood meritorious without claiming reservation as 'PH' category candidate and that he (having 30% disability) cannot be denied appointment, when persons with greater degree of visual impairment are given reservation and offered appointment.





7. Petitioner's request for review – relook came to be turned down by way of impugned communication dated 27.11.2018. The relevant extract of the impugned communication is reproduced thus:-

*"3. As per the medical norms of ONGC, the candidate should have good Binocular Vision. For regular appointment one-eyed persons are to be regarded as unfit. However, as indicated in ONGC MER-1 form, it has been mentioned that you do not have Binocular Vision. As per the Medical Fitness Certificate issued by I/c-Medical Services. ONGC, Mumbai, you have been declared medically unfit, as you are not fulfilling the above condition."*

8. Mr. Purohit, learned counsel for the petitioner while accepting the fact that the petitioner is having 30% impairment in his left eye submitted that the respondents' action of declaring him medically unfit is absolutely illegal and arbitrary.

9. He argued that when the post of Materials Management Officer has been earmarked for reservation to visually handicapped persons and as many as 19 posts have been earmarked and further fact that such post has been held suitable for Blind and Low Visioned (BL and LV) persons, declaring petitioner who has lesser disability (of 30%) to be unfit for the post is unreasonable.

10. Learned counsel argued that the petitioner cannot be discriminated simply because of having a lesser impairment or being less disabled than the benchmark disability which would have made him entitled to claim reservation as a 'PH' category





candidate. It was argued that it was preposterous to see that the respondents are considering persons having 40% or more disability in their eyes to be suitable for appointment while treating the petitioner unfit for having 30% impairment in his eye.

11. Learned counsel emphatically argued that unless the petitioner claims reservation as a blind person or person with low vision, his percentage of disability in his eye cannot come in his way of getting appointment, particularly, when the persons who have similar impairment are treated fit to be appointed on the post in question.

12. The Court interacted with the petitioner who was present in the Court. The petitioner informed that he is an engineer having obtained his B. Tech Degree from the Indian Institute of Technology, Roorkee. Upon being asked, he informed that the impairment in his eye was not acquired at birth, but on a fateful day, when he was playing cricket, a ball struck his left eye and that stroke of ball created deformity in his left eye. But it was heartening to learn that the bright boy who has secured 81.48% marks in the recruitment held by the respondent – Corporation and stood 10<sup>th</sup> in the merit did not take it as a curse and has worked hard to get admission in IIT (Roorkee), a coveted course in the field of engineering.

13. Mr. Sunil Purohit, learned counsel relied upon the Co-ordinate Bench's order dated 14.05.2019 rendered in the case of **Varsha Narwani Vs. State of Rajasthan & Ors.(S.B. Civil Writ Petition No.13034/2018)** and the judgment dated 27.02.2020 passed by this Court in the case of **Rekha Meena Vs.**





**State of Rajasthan & Ors. (S.B. Civil Writ Petition No.1325/2020).**

14. Learned senior counsel appearing for the respondents, on the other hand, argued that the petitioner was aware of the condition of the advertisement, which clearly provided that the persons who have good binocular vision alone would be treated fit. It was further argued that the petitioner ought to have challenged the condition of the advertisement if he was so aggrieved that too before appearing in the recruitment process.

15. Learned senior counsel also argued that the respondents have limited seats (19) available for people with visual impairment. He submitted that visually challenged persons can be posted only on those earmarked posts and more persons with difficulty in vision than the number which has been already notified cannot be accommodated in the respondent's organisation.

16. Heard learned counsel for the parties.

17. There is no gainsaying the fact that the petitioner is having 30% challenge in his vision. The moot question which has come up for consideration of this Court is, whether a person having lesser impairment than the parameter fixed for reservation under 'the Rights of Persons with Disabilities Act, 2016 (i.e. 40% or more)' despite being meritorious can be non-suited on the medical grounds, particularly when the post has been reserved to be filled in by the persons with the very same disability.

18. Answer to this question, in the opinion of this Court is, a definitive 'No'.





19. According to this Court, when the Central Government or the respondents after due application of mind have identified a particular post suitable for appointment of person with particular kind of disability and further if reservation has been provided to the candidates with such disability having 40% or more impairment, other candidates with that particular type of disability cannot be denied appointment on remaining or unreserved seat. Treating the persons other than the person with benchmark disability to be medically unfit is irrational and arbitrary to say the least.

20. According to this Court, a person like the petitioner who is having lesser disability cannot be left in the lurch to keep cursing the nature for giving him lesser injury or impairment. On account of regressive approach of the respondents, the petitioner would relentlessly repent and think - 'Alas! I was more disabled.'

21. The stand of the respondent – Corporation that only 19 posts have been kept reserved for persons having visual impairment and the respondents cannot accommodate more persons than that, is factually incorrect on the one hand and illogical on the other.

22. A perusal of the result (Annex.4) reveals that only 11 persons with Disabilities (VH) have been empanelled for appointment whereas, the number of posts that were advertised for VH category was 19. Hence, Corporation's version that they cannot accommodate more candidates is unacceptable, because number of posts (8) earmarked for VH category candidates are still unfilled.

23. While maintaining that the petitioner, a meritorious candidate having secured much more marks (81.48) than even





the cut-off of General Category Candidates cannot be treated to be a reserved/PH category candidate and that the petitioner who after the unfortunate accident has completed his B.Tech degree including all the practicals and thereafter cleared G.A.T.E. (Graduate Aptitude Test in Engineering) with flying colours can satisfactorily discharge all the duties/responsibilities assigned to him, this Court feels that in case he faces any functional difficulty, then, the petitioner can well be asked to perform the duties which have been purportedly earmarked for 19 posts reserved for VH persons.

24. Moving on the legal position, it is a known fact that with a view to give effect to the United Nations Convention on the Rights of persons with disabilities and for matters connected therewith or incidental thereto, the Parliament enacted the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act of 2016') and the Central Government made the Rights of Persons with Disabilities Rules, 2017 (hereinafter referred to as 'the Rules of 2017') in exercise of the powers conferred by sub-section (1) and (2) of section 100 of the Act of 2016.

25. The provisions of the Act of 2016 and Rule 3 of the Rules of 2017, which are relevant for the present purposes are being reproduced as under:-

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

(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;*





(h) "discrimination" in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

(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;

(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

### **3. Equality and non-discrimination.—**

(1) The appropriate Government shall ensure ....

.....

(2) .....

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

### **20. Non-discrimination in employment-**

(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

### **33. Identification of posts for reservation — The appropriate Government shall—**

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and





(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

**Rule 3. Establishment not to discriminate on the ground of disability.-**

(1) The head of the establishment shall ensure that the provision of sub-section (3) of section 3 of the Act are not misused to deny any right or benefit to persons with disabilities covered under the Act.

(2) If the head of the Government establishment or a private establishment employing twenty or more persons receives a complaint from an aggrieved persons regarding discrimination on the ground of disability, he shall -

(a) initiate action in accordance with the provisions of the Act; or

(b) inform the aggrieved person in writing as to how the impugned act or omission is a proportionate means of achieving a legitimate aim.

(3) If the aggrieved person submits a complaint to the Chief Commissioner or State Commissioner for Persons with Disabilities, as the case may be, the complaint shall be disposed of within a period of sixty days:

Provided that in exceptional cases, the Chief Commissioner or State Commissioner may dispose of such complaint within thirty days.

(4) No establishment shall compel a person with disability to partly or fully pay the costs incurred for reasonable accommodation."

26. A combined reading of the above provisions of sections 2(h) and 3(3), particularly the highlighted part(s) of the Act, reveals that the Act of 2016 casts a duty upon respondent – Corporation, (which falls squarely within the definition of appropriate Government) to ensure that persons with disability are not discriminated against.

27. It is to be noted that two seemingly similar, but legally distinct terms have been used by the Act of 2016 and Rules of 2017 – "persons with benchmark disability and persons with





disability”, duly defined in clause (r) and (s) of section 2 of the Act of 2016. A person with specified disability whose disability exceeds 40% or more is called a person with benchmark disability.

28. Chapter II of the Act of 2016 deals with special provisions for person with Benchmark disabilities of which, Sections 32, 33 and 34 are integral part. Section 32 of the Act of 2016 provides for reservation in educational institutions, while sections 33 and 34 stipulate identification of posts and reservation for person with benchmark disabilities qua such posts.

29. It is pertinent to note that Section 3 of the Act in particular, is not confined to the persons with benchmark disabilities – it is applicable to all specially abled persons, irrespective of nature and extent of their disability. If read in that perspective, sub-section (3) of section 3 of the Act of 2016 clearly mandates that a person with disability shall not be discriminated on the ground of disability unless it is shown that impugned act or omission is a proportionate means of achieving a legitimate aim.

30. According to this Court, Note No. (iii) appended with clause V (Eyes) of the Instructions to the Competent Medical Authority regarding Physical Examination of candidates for appointment in Oil and Natural Gas Corporation Ltd. (hereinafter referred to as ‘the Instructions’), is clearly contrary to law and is afront to the provisions of the Act of 2016, at least in the present set of facts.

31. Offending condition may be valid for other posts, but in relation to ‘Materials Management Officer’, when the post has been identified for low vision candidates and 19 posts have been reserved for Visually Handicapped (VH) persons, the impugned condition has to concede. As the category of visually handicapped





person has been identified for the post of Materials Management Officer, the condition of having binocular vision is a contradiction in itself.

32. In the opinion of this Court, the norms or criteria fixed for eyes, ears, hearing defects and gait or locomotion etc. have to be accordingly construed or relaxed, while conducting medical examination of a person who is having a bodily challenge, if such challenge or disability has been held acceptable rather suitable for the corresponding post. To express it differently and to make it more clear, it is held that "In case a post has been held suitable for a particular type of disability and if a person suffers from such disability, he cannot be declared medically unfit, simply because he has not claimed reservation or his disability is less than the benchmark fixed for making him entitled to claim reservation.

33. If that is not done, the result would be unjust and inequitable.

34. In the present case 11 persons with benchmark disability have been selected (who had more than 40% disability) regardless of the fact that they do not have binocular vision, but the petitioner has been declared unfit for not having binocular vision or having less than 40% disability. Respondents' action besides being discriminatory, defies all logics and the same disregards petitioner's fundamental right guaranteed under Article 14 of the Constitution of India.

35. Such action/act of the respondents is also in the teeth of sub-section (3) of section 3 of the Act of 2016 and infringes right to live with dignity guaranteed by Article 21 of the Constitution of India. Because, expanse of right to life guaranteed under Article





21 of the Constitution of India has been held to be wide enough to include within its lap, right to live with dignity.

36. The petitioner, in the present case, has come with a plea that he deserves to be considered on the basis of his own merit in his category (OBC - Non-Creamy Layer) and not qua the posts meant/reserved for the persons with disability.

37. Needless to mention that the Act of 2016 so also the Rules of 2017 have been promulgated with a view to not only provide equal opportunities, but also to ensure full participation of the person having physical or mental challenges. The provisions of the Act and Rules are beneficial and reformatory in nature and hence, an endeavor should be made to harmonize the provisions and relevant conditions to achieve the object for which they were enacted. In light of the avowed object of empowering Persons with Disabilities, the impugned action of the respondents appears to be wholly unsustainable and against human rights and the fundamental rights guaranteed by the Constitution of India.

38. "One ball which hit the petitioner's eye while playing cricket has caused enough injury. The respondents cannot be permitted to rub salt to such injury by denying the petitioner his legit 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 seats. In the growing economy and vibrant society like ours and in a developing country of bright youths, such blind-folded approach does not muster clear the test of reasonableness. Such attitudinal barrier, which impedes the future of an otherwise meritorious





candidate deserves to be removed to boost the morale of the society and to uplift socio economic environment of the Country.

39. According to this Court, the intention of the Act is not simply to give benefit of reservation to persons with disability who are having 40% or more disability but also to sensitize the State and its instrumentalities towards predicament of such people.

40. The Rights of Persons with Disabilities Act, 2016 mandates that a person with benchmark disability will be given reservation in the public employment but the same cannot be read to mean that a person with lesser disability will be ignored and considered medically unfit when it comes to employment in the same stream and with the same disability.

41. In light of what has been stated hereinabove, the writ petition is allowed; the impugned order dated 27.11.2018 (Annex.9) is quashed.

42. The respondents are directed to accord appointment to the petitioner on the post of Materials Management Officer within a period of eight weeks from today against the post that has been ordered to be kept vacant per-viam interim order dated 11.12.2018 passed in this case.

43. The petitioner shall be entitled for notional benefits from 05.10.2018, the date when he was declared medically unfit.

44. Stay petition also stands disposed of accordingly.

**(DINESH MEHTA),J**

269-Arvind/Ramesh-

