

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**O.A.Nos.270 & 278 OF 2020**

**Present: Hon'ble Mr.Gokul Chandra Pati, Member(A)  
Hon'ble Mr.Swarup Kumar Mishra, Member(J)**

**O.A.No.270 of 2020**

Sri Sandeep Rout, aged about 20 years, S/o. Sri Sarat Chandra Rout, permanent resident of Qr.No.LP-87, Stage-I, Laxmisagar, Brit Colony, Bhubaneswar, Dist-Khurda, PIN-751 006.

...Applicant

VERSUS

Union of India represented through:

1. The Secretary to Government of India, Ministry of Health & Family Welfare (PMSSY) Division, Nirman Bhawan, Maulana Azad Road, New Delhi-110 011.
2. All India Institute of Medical Sciences (AIIMS, represented through its Director, At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751 019.
3. Director, All India Institute of Medical Sciences (AIIMS), At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751 019.
4. Senior Administrative Officer, AIIMS, At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751 019.
5. Assistant Administrative Officer, AIIMS, At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751 019.

...Respondents

**O.A.No.278 of 2020**

Ms.Banibandita Samantaray, aged about 38 years, D/o. Mr.Biranchi Narayan Samantray, resident of Flat No.3, Mayuree Plaza, Chaterjee Lane Old Bus Stand, Berhampur, Odisha-760 001.

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3. Director, All India Institute of Medical Sciences (AIIMS), At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751 019.

4. Senior Administrative Officer, AIIMS, At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751 019.
5. Assistant Administrative Officer, AIIMS, At-Sijua, PO-Dumduma, Bhubaneswar, Dist-Khurda-751 019.

...Respondents

For the Applicant (OA No.270/20): Mr. S.K. Ojha, Counsel

For the Respondents (OA No.270/20): Mr.J.K.Nayak, Counsel

For the Applicant (OA No.278/20): Mr.M.Pati, Counsel

For the Respondents(OA No.278/20): Mr.B.Swain, Counsel

Order reserved On: 07.09.2020

Order On: 07.10.2020

### **ORDER**

#### **Per Mr.Gokul Chandra Pati, Member(A):**

In both these OAs, the reliefs sought for by the applicants under similar circumstances are identical and involve same question of law, for which both the OAs were considered and heard at the admission stage after receipt of the pleadings of both the parties and with the consent of the parties. Common grounds have been advanced in both the OAs to challenge the order dated 8.7.2020 of the respondents, by which the candidature of the applicants for the posts of Multi-Rehabilitation Worker (referred in short as MRW) as per the advertisement dated 5.5.2017 (Annexure-A/1 of the OA) was cancelled by the respondent All India Institute of Medical Sciences, Bhubaneswar (in short AIIMS). Hence, these OAs are being disposed of by this common order.

2. The common question to be answered in both the OAs is whether registration of a candidate with the Physiotherapy Council one of the eligibility condition for the posts of MRW in the advertisement dated 5.5.2017 (Annexure-A/1). The applicants contend that since they are degree holders in Physiotherapy, the registration should not be insisted by the respondent-AIIMS and even if it is considered to be an eligibility criterion, the respondents may accept the provisional certificate submitted by the applicants issued by Maharashtra Council for the time being and they may be allowed more time to furnish final registration certificate. The decision of the respondents to cancel the candidature of the applicant in OA No. 270/2020 by order dated 8.7.2020 (Annexure-A/11 of the OA) has been challenged seeking the following reliefs in the said OA:-

- i) To quash the order of rejection order communicated vide letter dated 08.07.2020 (Annex.A/11) holding that the same is unreasonable and arbitrary.

- ii) To direct the Respondents not to impose the condition of production of resignation certificate or to accept the provisional certificate issued by the Maharashtra Council for the time being or grant sufficient time to get the final certificate from the concerned Council.
- iii) To declare that imposition of production of Physiotherapy Council registration certificate is against the Recruitment Rules and cancellation of candidature on this ground is opposing the law settled by the Hon'ble Apex Court.
- iv) To direct the Respondents to issue offer of appointment in favour of applicant accepting undertaking if any for furnishing Registration certificate later on.
- iv) To direct the Respondents to extend all consequential benefits as due and admissible in the facts and circumstances of the case.

In O.A.No.278/20, the applicant has sought for same reliefs as in OA No. 270/20, with the difference that the impugned order dated 08.07.2020 in that OA is enclosed at Annexure-A/7.

3. Per contra, the respondents have opposed both the OAs and contended that the Recruitment Rules of Non-Faculty posts for the AIIMS, Bhubaneswar, copy of which is enclosed at Annexure-R/2 of the Counter, prescribe registration with Physiotherapy Council as one of the eligibility requirement for the posts of Physiotherapist and MRW and accordingly, it was specified in the advertisement dated 5.5.2017 (Annexure-R/1 of the Counter). It is further contended that although the applicants in both the OAs had declared in online application that they were registered with Physiotherapy Council, but they failed to produce the certificate at the time of document verification, for which they were allowed one month time to produce the registration certificate. The applicant in the OA No. 270/20 informed through email on 15.6.2020 that he had applied for registration in Maharashtra Council on 14.3.2020. The respondents further stated that the applicants had given a false declaration in the application form regarding their registration and as such they had violated the general conditions of the advertisement dated 5.5.2017 and accordingly their candidature was liable to be cancelled.

4. In the Rejoinder filed by the applicant of OA No. 270/20, it was averred that the online form was designed in such a way that for answer to the question about registration with Physiotherapy Council, only "yes" was possible and it was not accepting the answers like "no" or "not necessary". For this difficulty, the applicant submitted a representation to AIIMS on 20.5.2017, copy of which is attached at Annexure-A/14 of the Rejoinder. It was stated that he was advised to fill up "yes" in the online form since for the degree holders such registration was not necessary. It is further averred that the respondents

insisted for registration certificate at the time of document verification, deviating from their instructions earlier. It is stated that some persons like Sradha Subhadarshini Satpathi, who was selected for the post of occupational therapist, was allowed to join based on her undertaking. It is also contended that the registration was necessary for MRW post for the diploma holders as per the advertisement dated 5.5.2017 and not for the degree holders. It is also averred that the respondents cannot reject the applicant's candidature arbitrarily when they have allowed time to submit the registration certificate and due to COVID-19, it was not possible for the applicant to obtain the original certificate from the Council at Mumbai. It is urged that under the circumstances, the authorities should be sympathetic towards the applicant who should have been allowed to join the post in question on furnishing an undertaking regarding registration.

5. in the Rejoinder filed in OA No. 278/20, it was submitted that the requirement of registration is not based on a statutory law and hence, it was not binding when there is no Physiotherapy Council in Odisha. It was also stated that no opportunity of hearing was allowed to the applicant before cancelling his candidature. It is stated that in the online form, the applicant had answered the question relating to registration as "yes" since she was registered with the Indian Association of Physiotherapist. It is also averred that no registration is required for degree holders for the post of MRW as per the stipulation in the advertisement dated 5.5.2017.

6. Heard learned counsels for the applicants and the respondents in both the OAs. Following grounds were advanced by learned counsels for the applicants:-

(i) In the advertisements issued for the same posts in 2014 and 2020 by AIIMS, the requirement of registration has not been specified.

(ii) As per the advertisement dated 5.5.2017 (A/1), the registration is specified for the candidates with Diploma below the degree qualification and such requirement is for the Diploma holders and not applicable for Degree holders. Since the applicants in both the OAs hold the degree qualification in the specified subjects, there is no need for them to register as per the said advertisement. Had the registration been mandatory even for degree holders, then it would have been numbered separately for the post of MRW in the advertisement, like the eligibility criteria specified for Physiotherapist.

(iii) Since the applicants have produced Provisional Registration Certificate of Maharashtra Physiotherapy Council, they may be considered to have fulfilled the requirement of registration and the respondents should have allowed more

time for submission of the Registration Certificate instead of cancelling their candidature although they are in the merit list published by AIIMS.

(iv) Regarding the declaration furnished in the online application form about registration, it is explained that the online application form did not take any other entry except 'yes' as answer to the question regarding registration and in any case, the applicants did not require registration in view of their degree qualification as explained in sub-para (ii) above.

(v) In order to fortify the grounds advanced in OA No. 270/20, the applicant referred to the judgments in the case of Dinesh Kumar Kashyap & Ors. vs. South East Central Railway & Ors. in Civil Appeal Nos. 11360-11363 of 2015 and in the case of Kerala State Road Transport Corporation and Another vs. Akhilesh V.S. and others in Civil Appeal No. 3346 of 2019, Cable Corporation of India Limited vs. Additional Commissioner of Labour and Others reported in (2008) 2 SCC (L&S) 581 and Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N. Visweshara Rao & Ors in Civil Appeal No. 11676-11724 of 1996.

7. Learned counsel for the respondents in both the OAs opposed the OAs by reiterating the stand of the respondents in the Counters as well as in the Short Reply filed in both the OAs. While arguing the matter, learned counsels for respondents also referred to the judgments in the case of Karnataka State Seeds Development Corporation Limited and Anr. vs. H.L. Kaveri & Ors. in Civil Appeal No. 344 of 2020, Sajay K. Dixit and Others vs. State of U.P. and Others reported in 2019 3 Scale 671 and Bedanga Talukdar vs. Saifuddullah Khan & Ors. reported in AIR 2012 SC 1803, which are cited in the Counter filed in OA No. 270/20.

#### **Judgments referred by the applicant in OA No. 270/20**

8. In the case of Dinesh Kumar Kashyap (supra), the controversy related to a decision of the Railway to call 20% extra candidates for document verification to take care of the situation if sufficient candidates fail to appear to fill up the notified vacancy. The appellants were aggrieved since though they were included in the panel with 20% extra candidates and there were vacancies, but they were not appointed. The majority judgment held that the appellants were entitled for appointment as per the instructions of the Railway since all notified vacancies were not filled up. But the dissenting judgment held that there was no cause for interference through judicial review and the authorities were at liberty not to fill up all the vacancies if there are justifications for the same. The controversy in the present OAs in hand arises out of the decision of the

respondents to cancel the candidature of the applicants on the ground of not fulfilling the eligibility criteria, which is contested by the applicants. The applicant in OA No. 270/20 relies on the law laid down in the above cited judgment that the authority cannot be arbitrary while deciding to refuse appointment to selected candidates.

9. In the case of Akhilesh V.S. (supra), it was held by Hon'ble Apex Court that although the employer has the discretion not to fill up all the vacancies considered in a recruitment process, but there has to be valid reasons for the same and it should not be arbitrary. In the present OAs, the question is whether the applicants would be considered to be eligible for the post of MRW as per the advertisement dated 5.5.2017 and whether the decision to cancel the candidature of the applicants on the ground that they do not fulfill the eligibility criteria is valid and sustainable or it can be termed as arbitrary. In other two cases cited by the applicant's counsel, the facts are different, for which the cited judgments will not be of any help for the applicant's case.

#### **Judgments referred by the respondents in OA No. 270/20**

10. In the case of H.L. Kaveri (supra), the advertisement issued by the appellant corporation required the candidates to furnish a certificate of work experience in a reputed company with the application form. The respondent did not enclose such experience certificate with the application form. But in the present OA, respondent-AIIMS did not require any certificate to be enclosed with the application form, but it was to be produced at the time of document verification. The respondents have alleged in the present OA that the applicants have furnished a wrong declaration about the registration. Hence, the cited judgment is factually distinguishable. Similarly in the case of Sanjay K. Dixit (supra), the facts were different for which the cited judgment will not be helpful. In the case of Bedanga Talukdar (supra), it was held by Hon'ble Apex Court that the selection has to be conducted strictly in accordance with the selection procedure and criteria as specified in the advertisement.

11. Applying the principles laid down in the cited judgments and relied on by the parties for the present OAs, the decision of the respondents will not be sustainable if it is arbitrary and not as per the rules applicable. Hence, the relevant question to be answered in these OAs is ***whether the applicants have fulfilled the eligibility criteria as stipulated in the advertisement dated 5.5.2017 (Annexure-A/1 of the OA) and whether the respondents have acted strictly in accordance with the terms and conditions of the advertisement dated 5.5.2017 or not.*** If the action of the respondents would be found to be

not as per the terms of the advertisement and/or the rules applicable, then it has to be deemed to be arbitrary and illegal as claimed by the applicants.

12. We have considered the pleadings on record and the submissions and take note of the fact that in this case although the AIIMS had published the advertisement for filling up of non-faculty posts on 5.5.2017, but the selection list was published on 24.9.2019 (Annexure-A/4) asking the applicant to appear for document verification, which was undertaken in 2020 since the applicant was asked to furnish the registration certificate by 25.6.2020 as stated in the Counter filed by the respondents. The advertisement required the shortlisted candidates to produce all relevant documents at the time of document verification and there is no instruction in the advertisement that a candidate, after his failure to produce all the required documents, will be given another chance to produce the same. In spite of no such provision in the advertisement, the AIIMS authorities have allowed the applicants further time to produce the registration certificate and due to such action, the applicants have taken a stand that they have been allowed time to produce the registration certificate and they should have been allowed more time. Clearly, allowing such time to the applicants to produce registration certificate was not as per the terms and conditions of the advertisement dated 5.5.2017. But since the applicants were allowed additional opportunity to produce the required documents, it cannot be treated as arbitrary.

13. The applicants claim that in some other advertisements, the requirement of registration is not stipulated by AIIMS for the post of MRW. In the written note for the applicant filed in OA No. 278/20, one advertisement dated 28.2.2014 has been enclosed. But such argument will not invalidate the requirements specified in the advertisement dated 5.5.2017, which are relevant for these OAs since the applicants have applied for the posts in question under the said advertisement. It is also noticed that the applicants had not challenged the registration requirement in the advertisement issued on 5.5.2017 in these OAs. Further, having participated in the selection process as per the said advertisement, they cannot challenge the requirement of registration at this stage. It has been held by Hon'ble Supreme Court in a number of cases that a candidate after participating in a selection process, cannot challenge it in the event of his failure in selection. The judgments in the case of Chandra Prakash Tiwari & others vs. Shakuntala Shukla & others, reported in (2002) 6 SCC 127 and in the case of Trivedi Himanshu Ghanashyam Bhai vs. Ahmedabad Municipal Corporation, reported in 2007 (8) SCC 644 may be referred to in this regard.

14. The applicants have averred that for the post of MRW, the requirement of registration in Physiotherapy Council is not stipulated for the candidates with degree qualifications and the same is specified only for diploma qualification since it was mentioned in the advertisement with the diploma qualification and was not numbered as a separate requirement. Learned counsel for the applicant had submitted that for the post of 'Physiotherapist' in the same advertisement, the requirement of registration was separately specified at serial number (iv), which is not the case for the post of MRW. We are unable to accept such an argument for the reason that the applicants were aware of the requirement of registration as revealed from the averments in paragraph 4.1 of both the OAs stating that the registration with Physiotherapy Council was necessary for the degree candidates. Paragraph 4.1 of both the OAs stated:-

**"4.1..... For the aforesaid post Bachelor's Degree in Physiotherapy from a recognized Institute/University was required with two years experience in the field. One more requirement was added that the candidate must have registered with the physiotherapy council...."**

From above averments, it is clear that the requirement as per the advertisement included registration with the physiotherapy council even for the degree holders as averred in these OAs. In spite of the ground taken in the letter dated 8.7.2020 (Annexure-A/11 of OA No. 270/20) that the rejection of candidature is due to failure to produce the registration certificate, there is no averment in both the OAs to the effect that there was no requirement of registration for degree holders for the post of MRW in the aforesaid advertisement. Such averments are made in the Rejoinders in both the OAs.

15. Another reason for rejecting the contention that registration is not required for the degree holders as per the advertisement, is that there is no representation or letter submitted by the applicants to the authorities to state that for degree holders, no registration certificate is necessary. There is nothing on record to show that the applicants have opposed the instruction of the respondents to produce the registration certificate after document verification when it was found that the applicants did not have the registration certificate with the Council. Instead of opposing the instruction of the respondents to produce such certificate, the applicants have approached the Councils in different states including Maharashtra for registration and have produced provisional registration from Maharashtra Council in March, 2020. It is also seen from the letter dated 20.5.2017 of the applicant in OA No. 270/20 (Annexure-A/14 to the Rejoinder), a request was made by the applicant to remove the requirement of registration since physiotherapy councils were not available in many states including Odisha. There was no submission in the letter dated 20.5.2017 that such registration was not required for degree

holders as per the advertisement. It is clear that the actions of the applicant as stated above, contradict their contention in the Rejoinder that registration with physiotherapy council is not required for degree holders for the post of MRW.

16. Further, it is seen from the advertisement that the requirement of registration with the Physiotherapy Council has been mentioned for the post of MRW as a separate sentence/paragraph below the qualifications. There is no stipulation in the advertisement that it was applicable only for the diploma qualification and not for the degree qualification. Absence of a separate serial number for the registration requirement for the post of MRW as given for the post of Physiotherapist will not change the fact that it was a requirement common for both the degree and diploma holders.

17. Lastly, no rule or instructions of the respondents have been furnished by the applicants in support of such contention that no registration was required for degree holders. For the aforesaid reasons as discussed in preceding paragraphs, ***we are unable to accept the contentions of learned counsel for the applicants that as per the advertisement, there was no requirement for registration for degree holders.***

18. We also take note of the fact that the applicants in both the OAs, while submitting the online application form, have stated “Yes” in answer to the question: “Are you Registered with the Physiotherapy Council”. It was explained by learned counsels for the applicants that there was difficulty in filling up of the online application form which did not take any other reply to the said question and that they had stated “Yes” in the form since there was no requirement for registration for candidates like the applicants with degree qualification. In the rejoinder filed in OA No. 270/20, it is stated that the applicant had represented to the authorities on 20.5.2017 (Annexure-A/14) and they advised him to fill up “yes” for the question on registration. But no document or copy of the mail has been furnished with the above instruction of the authority. Besides, from the applicant’s letter dated 20.5.2017, it is seen that there was no mention about such difficulty in the online form and instruction to him to answer the question relating to registration. The letter dated 20.5.2017 (Annexure-A/14 of the Rejoinder in OA No. 270/20) mentioned about the difficulty in obtaining registration certificate since there was no physiotherapy council in many states including Odisha and applicant requested the authorities to remove the requirement of registration. In the Rejoinder filed in OA No. 278/20, it is stated that the applicant understood the registration to be the registration with the Indian Association of Physiotherapists. There is nothing in the letter dated 20.5.2017 (Annexure-A/14) to show that the applicant had faced difficulty in filling up the question

in online form about registration and they were advised by some authority to fill up “yes” to the question in online form. In case there was some difficulty in filling up online application in for the question regarding registration, there should have been some letter by the applicant subsequent to submission of online application, indicating the difficulties in answering the said question in the online application and stating clearly that though he did not have the registration of the Physiotherapy Council, he had to answer “Yes” to the question in online application. No such letter was furnished by the applicants in his pleadings. Hence, such submissions do not have any force.

19. In the written notes submitted by applicant’s counsel in OA No. 278/20, it is stated that in an earlier advertisement issued by AIIMS in 2014, no requirement of registration was there. The contention that no registration is required for degree holders has been reiterated in the written notes. As discussed earlier, such contentions have no merit.

20. The applicant in Rejoinder filed in OA No. 270/20 has cited the case of one Sradha Subhadarshini Satpathi, selected for the post of occupational therapist in AIIMS, has been allowed to join on the basis of undertaking, claiming similar benefit for the applicant. Firstly, the post is different from MRW for the cited example and the eligibility requirements for the post of occupational therapist have not been shown to be same as those for the post of MRW. Secondly, assuming that the authorities had committed a mistake by allowing one candidate to join on the basis of undertaking, it will not create any right for the applicants for similar treatment as there is no negative equality. Hence, the example cited in the Rejoinder in OA No. 270/20 is of no assistance for the applicant’s case.

21. Lastly, the applicants have sought for a direction to be appointed to the post after accepting their undertaking that the registration certificate will be furnished by them later on, particularly since the applicants have furnished provisional registration obtained from Maharashtra Physiotherapy Council in March, 2020. Action of the applicants to obtain registration in the year 2020 shows that they did not have registration certificate as on the date of submission of the online application as per the advertisement dated 5.5.2017 and hence, they were ineligible for the post of MRW as per the terms and conditions of the aforesaid advertisement. Obtaining provisional certificate in March, 2020 will not change the fact that they were ineligible to apply for the post of MRW since they did not have the registration with physiotherapy council as on the date of submission of the online application form. It is noted that there was no stipulation in the aforesaid advertisement that the provisionally selected candidates will be allowed time to produce the

registration certificate although it was an eligibility criteria. In the light of law settled in the case of Bedanga Talukdar (supra), it was not permissible on the part of the respondents to allow any concession to the applicants, which are not as per the terms and conditions stipulated in the advertisement in question. Hence, we are unable to allow such relief to the applicants.

22. In view of the discussions above, we do not find any ground in both the OAs to justify interference in the matter. Both the OAs are accordingly dismissed at the admission stage and the interim orders passed earlier are vacated. There will be no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER (A)