

CENTRAL ADMINISTRATIVE TRIBUNAL
 ALIAHABAD BENCH
 ALIAHABAD.

Allahabad this the 12th day of February 1997.

Original application No. 902 of 1993.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

Vijay Bhan Singh, S/o Deo Nazain
 Singh, R/o Village P.S. Sarai Inayat,
 Dist. Allahabad.

..... Applicant.

C/A Sri Sudhir Agarwal

Versus

1. Union of India, through M/o
 personnel, New Delhi.

2. Regional Director, Staff Selection
 Commission, Central Region, Allahabad.

.... Respondents.

C/R Sri Prashant Mathur

ORDER

Hon'ble Mr. D.S. Baweja, AM

Through this application prayer has been made to quash impugned order dated 29.4.93 and issue direction to the respondents to appoint the applicant on the post of Divisional Accountant/Auditor ^{or} and Upper Division Clerk in pursuance of the result of the applicant declared in the Employment News dated 23/29.1.93.

2. The applicant is orthopaedically handicapped. Vide notification dated 23.11.91, applications were invited by Staff Selection Commission for recruitment for the post of Divisional Accountant/Auditor and Upper Divisional Clerks. The applicant applied for the same. He appeared in the Written examination held on 12.4.92 against roll No. 2411527.

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The final result was declared in Employment News dated 23/29.1.93 and applicant's roll No. 2411527 was included in the list against hearing-handicapped category. Vide letter dated 3.3.93 the applicant was asked to submit necessary certificates for being physically handicapped in the prescribed proforma from the competent medical authority as laid down. In compliance with this, the applicant submitted the required certificate vide letter dated 26.3.93. After the declaration of the result, the applicant did not get any appointment order and approached the office of Staff Selection Commission for necessary posting orders. However the applicant received letter dated 29.4.93 from respondent No. 2, Regional Director Staff Selection Commission, Allahabad informing him that his result of the examination held in 1992 is cancelled on the ground that result was wrongly declared treating the applicant as hearing handicapped while the applicant in fact was physically handicapped category and on redetermination of the result for the correct category the applicant does not come in the select list. Being aggrieved, this application has been filed on 31.5.93.

3. The applicant has assailed the impugned order on the grounds in the original application:-

- (a) Impugned order has been passed without any opportunity of hearing or show cause notice and thus this action is violation of principles of Natural Justice.
- (b) The applicant has never claimed in the category of Hearing Handicapped in any of documents submitted by him.
- (c) Applicant has been informed that according to total marks obtained in the written

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examination, he has qualified under the category of physically handicapped category and cancellation of the result is therefore illegal, arbitrary and unjust.

4. The respondents have opposed the application in the counter reply. It is submitted by the respondents that in the original application, the applicant ^{had} indicated as belonging to the 'Hearing handicapped' category. Accordingly his merit was considered in this category and he was placed in the select list. Consequent to the notification of the result, the applicant was advised to furnish certificate to substantiate his claim that he belongs to hearing handicapped category. The applicant submitted a certificate for orthopaedically handicapped category. On the basis of this certificate, his result was re-determined. Applicant vide his application dated 26.3.95, had also requested to re-determine his result for orthopaedically handicapped category. It was found that in orthopaedically handicapped category, he was low in the merit and did not find the place in the select list. In the result, the impugned order dated 29.4.93 was issued to the applicant cancelling his result based on hearing handicapped category. In view of these facts, none of the grounds taken by the applicant are tenable and the application has no merit.

5. Vide order dated 2.3.93, it was provided that respondents shall keep one post of Divisional Accountant/Auditor/Upper Divisional Clerk in the physically handicapped category till the disposal of the application.

6. The applicant has filed the rejoinder reply controve~~ying~~ting the arguments by the respondents. It is further submitted that with the application, he had

attached a medical certificate issued by Viklang Kendra Bhardwaj, Jawahar Lal Nehru Road, Allahabad with 40 per cent disability. However, ^{advertantly} he indicated the category No. 5 'hearing handicapped' under Column 6 of the application form. This was not a deliberate attempt to give false declaration but a genuine mistake. It is also further contended that in terms of Clause 16 of the notification of 1991, since the applicant has qualified in the examination and if he is not finding place in his zone, it is obligatory upon the respondents to have offered appointment in other offices out side the zone.

7. We have heard the Sri Sudhir Agarwal counsel for the applicant and Sri Prashant Mathur for the respondents. The respondents have made available the original application form of the applicant ^{and the} proceedings of the selection. We have also carefully gone through the material placed on the record.

8. From the averments made by the either party, the main facts of the case are admitted. Before we go into the merit of the arguments advanced by the applicant in the application, rejoinder and also during the hearing, we would like to bring out the factual details which emerge from the perusal of the original record made available by the respondents. On scrutiny of the original application form, we find that in the column 6, five categories have been listed and the candidate is required to indicate his category in the block provided for the same.

(H4)

The code for ~~hearing handicapped~~ is 5 and the applicant in the block has filled ^{with} 5 declaring that he belongs to hearing handicapped category. There is no ^{medical} certificate for being handicapped in the record made available, although other certificates for educational qualification are

available. The scrutiny sheet prepared by the Commission office shows the applicant under hearing handicapped category. Further in column 8, the applicant has stated that he does not deserve to be considered for the post of Divisional Accountant. In the result sheet (extract brought on record) also against the applicant category 5⁵ shown indicating that he is selected under the HH category. On going through the proceedings of the selection put up to Chairman for approving the result of selection, we note that for U.P. Zone the result is separately compiled for the Orthopaedically handicapped(OH) and hearing handicapped(HH)categories. The vacancies for each category are shown separately. The cut off point for marks in case of OH category is 48 per cent while it is 34 per cent in case of HH category. The applicant has obtained 36.5. per cent marks in the written test. Thus with 36.5. per cent marks the applicant comes in the select list for the HH category but will not find place in the select list in case of OH category with cut off point at 48 per cent. ~~Through~~ On perusal of the notification dated 23.11.91 issued for notification, the number of vacancies have not been indicated. However it is mentioned "reservation for scheduled caste/scheduled tribe, ex-service-men, physically handicapped persons(Orthopaedically handicapped and deaf only) shall be taken into account as per the vacancy position reported by each department for each category of the post." In the final result notified, however the break up of the selected candidates for each category have been given. Separate list of the candidates for HH and OH categories have been indicated.
^{ah}

9. From the fact-situation emerging above, it is clear that the recruitment has been processed with

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separate vacancies reserved for the HH & OH category under the handicapped quota. Merit list has been accordingly separately prepared. The applicant had indicated his category as No. 5 in column 6 i.e. Hearing handicapped and accordingly his selection was processed. His result was declared treating him in the HH category. After the result was declared the applicant himself made an application that by mistake he has indicated his category as HH and his result should be redetermined based on the OH category for which he has submitted the required certification. Based on OH category his name could not come in the select list and thereby the cancellation of his result was imperative. The action taken by the respondents in cancellation of the result ^{thus} declared under HH category was warranted as the applicant ^{not} came in the merit in the OH category. With the above findings, we now take up the grounds advanced by the applicant in support of his prayer for the reliefs. The first ground is that the cancellation of his result had been done without giving any show cause notice or opportunity of hearing. We do not consider that there is any merit in this plea. The applicant himself has admitted that he has wrongly shown his category No. 5 i.e. HH in the application form. He requested that his result be redetermined under OH category. He was not found to come in the select list as per merit in the OH category. Once the applicant knows that his result is declared under wrong category and the same is required to be redetermined for OH category, the applicant cannot ~~persume~~ that he will come in the merit for OH category also. The applicant was aware of the developments and issue of show cause notice would have been just a ^{on his account} formality. We, therefore, hold that there is no denial of the principles of natural justice. The second contention

to be

of the applicant is that he did not claim eligible for hearing handicapped category in any of the documents submitted by him. From the facts brought out earlier this statement has no merit. In the application form he has indicated his category as hearing handicapped and on this basis his selection was processed. His plea that he submitted the medical certificate with application form is ^{ab.} not believable. The certificate was to be as per the proforma laid down with the notification while ^{the} certificate brought on the record with rejoinder is ^{ab. form &} not as per this proforma and the prescribed medical authority.

10. The third argument advanced by the applicant is that he was given to understand that according to the total marks he qualified under the category of physically handicapped. This aspect has been already discussed above based on the original records. The applicant's claim has no basis and perhaps made this averment on presumption.

11. The applicant has also claimed that in terms of clause 16 of the notification that having been qualified in the examination, if there was no vacancy in U.P. Zone, then applicant could be considered for other zones. We have carefully gone through Clause 16. As per this Clause, the select list is to be drawn in respect of each Zone separately on the availability of the vacancies. A candidate will be eligible to be recommended for appointment to vacancies only in offices located in a particular zone in which the centre selected by him for taking the examination is located. In view of these provisions, the claim made by the applicant is misplaced. Apart from this, on scrutiny of the result reveals that the cut off marks for OH category in all the zones are higher than the marks obtained by the applicant i.e. 36.5 %.

12. During hearing, the learned counsel of the applicant advanced the pleading that handicapped candidates constitute a homogeneous class and any further classification into orthopaedic handicapped (OH) and hearing handicapped (HH) is violative of Article 16 (1) of Constitution of India which lays down equality between members of the same class. A combined merit list for the handicapped quota was therefore required to be prepared. Action taken by the respondents in declaring the separate merit list for OH and HH category is legally not valid. The learned counsel of the applicant was at great pains to dwell on this aspect citing several judgements in support. On the other hand the respondents opposed this plea stating that this has not been taken in the application or rejoinder and cannot be taken at the time of hearing. Keeping in view the grounds taken in the O.A. and the rejoinder we are inclined to agree with the respondents. There is no contesting to the submission of the respondents on this aspect by the applicant. In the application form the separate category for OH and HH has been laid down and applicant appeared in the examination fully knowing the category against which he is to compete. The pleadings made by the applicant in the original application and rejoinder and the reliefs prayed for clearly manifest the acceptance of separate ^{under} select lists for the posts reserved for HH and OH category on the handicapped quota. In fact this plea challenges the entire selection proceedings but this is not the case of the applicant. Considering these facts, we are unable to find any nexus between this plea of the applicant and the averments made in the application. The applicant has not raised this plea in the application and cannot be permitted to raise the same at the arguments stage. In consideration of this background, we are unable to go into merit of this pleading.

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13. In the result of the aforesaid reasons, we do not find any merit in the application and the same is dismissed. Stay order granted vide order dated 23.8.93 is vacated. No order as to costs.

D. Bhawar
Member - A

D. Bhawar
Member - J

Arvind.