

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 04 Day of October 2018)

Hon'ble Mr. Gokul Chandra Pati, Member (A.)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.1752 of 2010
(U/S 19, Administrative Tribunal Act, 1985)

Gaurav Sharma aged about 24 years, son of Shri Gauri Shanker
Sharma, R/o House No. 142, M.I.G. Kedar Puram, District Dehradun.

..... Applicant

By Advocate: Shri A.D Singh

Versus

1. Union of India through its Secretary, Ministry of Communication,
Post and Telegraph Department, Dak Bhawan, Sansad Marg,
New Delhi.
2. The Chief Post Master General, Uttar Pradesh Circle, Lucknow.
3. The Senior Superintendent of Post Offices, Saharanpur Division,
Saharanpur.
4. Vipin Pal S/o Rajendra Kumar Pal, R/o House No. 565/4, Alam
Bag, Lucknow.

..... Respondents

By Advocate: Shri R.K Srivastava

ORDER

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J)

1. Applicant Gaurav Sharma has filed the present O.A. seeking
the following reliefs:

*"a. Quash and set aside the impugned selection dated
16.11.2010 (shown as Annexure No. A-1 to
Compilation No.1).*

have raised any objection or argument with regard to criteria i.e. decibels or percentage.

5. We have heard and considered the arguments of learned counsel for the parties and gone through the material on records.
6. The main ground taken by applicant for setting aside the impugned selection dated 16.11.2010 whereby respondent No.4 was selected to the post of Postal Assistant is that the advertisement held out that the Hearing Handicap should be more than 90% which condition is not fulfilled by the respondent No. 4, more so when the applicant has a 100% Hearing Handicap. Notwithstanding the less marks secured by applicant than the respondent No.4, applicant is entitled to be appointed to the post since his Hearing Handicap is 100%.
7. On the other hand, it has been argued by the learned counsel for the respondents that since respondent No. 4 had hearing loss of 90% and had secured more marks than the applicant as such respondent No. 4 was declared successful and therefore entitled to be appointed to the post advertised by respondent No.2 and OA deserves to be dismissed.
8. Looking to the facts of the case and as also more specifically the condition given in the advertisement that the hearing loss of the deaf candidate should be more than 90 decibels, the medical certificate of the applicant is to the effect that he has about 100% hearing impairment whereas the medical certificate of respondent Vipin Pal is that he has 90% hearing impairment. Looking to the condition in the advertisement that the hearing loss should be more than 90 decibels, it is apparent that case of Vipin Pal is not covered by the said condition and his hearing handicap disability falls short of the criteria laid down in the advertisement since his medical

certificate reflects a loss of 90% hearing, which is less than criteria.

9. In case ***Firdous Ahmad Gazi v/s State of J&K, 2012 Srinagar Law Journal 1306***, the facts were that 1 kg charas was recovered and it was the contention of the defence that since it falls under 'non-commercial' quantity as laid down by Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act') and wherein the 'commercial quantity' has been described as more than 1 kg, as such, the seized quantity of 1 kg does not fall within the definition of 'more than 1 kg'. Section 2 (viiia) of the Act which reads: "Commercial quantity", in relation to Narcotic Drugs and Psychotropic Substances, means any quantity greater than quantity specified by the Central Government by notification in the Official Gazette. As per the notification small quantity of charas is described as 100 grams, whereas commercial quantity of charas is described as more than one Kg. Interpreting the definition 'any quantity greater than specified quantity of 1 kg', the Hon'ble High Court of J&K while granting bail since the seized 1 kg of charas does not fall within the definition of 'more than 1 kg' observed that:

"Strengthening his arguments vis-a-vis the quantity of contraband, learned counsel relies upon the judgment of High Court of Himachal Pradesh in case titled "Ratio v. State of H.P." in which, in paras 41 and 42 of the said judgment, it is observed as under:- "41. As already noted there is hardly any ambiguity, muchless conflict between Section 2(viiia) and the notification as extracted here-in-above for determination of what would be the commercial quantity. By virtue of powers conferred under Sub-section (viiia) of Section 2. Central Government is authorized to notify as to what would be the commercial quantity. Because the 'commercial

quantity" on a plain reading of its definition amongst other things has to be "... greater than the quantity specified by the Central (Government by notification....". Under 2001 Act notification supra was issued specifying the quantity for the propose of Section 2(viia) of the Act. A perusal of this notification indicates that quantity specified is one kilogram. Various columns of the notification extracted hereinabove have to be read in conjunction with the substantive provision of Section 2(viia) of the Act. This also puts a harmonious construction on both, notification as well as Section 2(viia) while determining the quantity under this sub-section, it has to be greater than One kg. There is hardly any doubt regarding either the words one Kg., or the "commercial quantity which has to be "greater than", which in our considered view would always mean any quantity more than/bigger than/larger than one Kg. We are further of the view that this provision, and for that matter, notification admits of no other interpretation on its reading. Thus, it cannot be said that one Kg would be the commercial quantity for the purpose of Section 2(viia), as added by 2001 Act. 42. Another reason to take this view is, that substantive and main provision of the Act is Section 2 (viia) which is subject matter of the discussion in this judgment. It is also well known and accepted rule of interpretation of statues that rules, regulations as well as notification issued thereunder are meant to sub-serve the purpose of main provision of law and not other way round. Notification in the instant case, as extracted hereinabove, it a delegated legislation. Therefore, it can in no case bye-pass or over-ride the substantive provision of law and in case of conflict, delegated legislation has to give way to the main provision of law. "

It has been further observed by the Hon'ble High Court of J & K that "Learned counsel also relies upon an order of Punjab and Haryana High Court dated 03.05.2012 passed in Cri. Misc. No. 7566 of 2012 in case titled 'Karan Singh v. State of Punjab', in which the recovery of the contraband (one Kg of charas) was considered as non-commercial in nature on the ground that only a quantity higher than one kg charas would fall in the category of 'commercial' and not otherwise."

10. In the present case, the clause in the advertisement requires that an applicant should have a hearing disability of 'more than 90 decibels' and only those candidates having more than 90 % would be considered, therefore, the disability of respondent Vipin Pal being 90 % does not fulfill the condition of 'more than 90 decibels' laid down in the advertisement. For respondent Vipin Pal to be considered for the post, it was necessary that he should have a hearing disability of more than 90 % which is lacking in his case.
11. Respondents relied upon **Chandra Prakash Tiwari v/s Shakuntala Shukla, (2006) 6 SCC 127** wherein it has been held by Hon'ble Apex Court that unsuccessful candidate cannot challenge the selection process. However, in the present case, the applicant is challenging the appointment of respondent No. 4 on the ground that he did not fulfill the qualification required, as per, the Advertisement regarding the percentage of loss of hearing which in case of respondent no. 4 is less than the advertised requirement. Therefore, this citation is of no avail to the respondents. Similarly, respondents relied upon **Sadannanda Halo v/s Mamtaz Ali Sheikh, 2008 (4) SCC 619** and **State of Orissa v/s Rajkishore Nanda, Civil Appeal No. 2808 of 2008** decided by Hon'ble Apex Court vide order dated 03.06.2010 are distinguishable and inapplicable to the facts of the present case. And citation **Basudeo Tiwari v/s Sido Kanhu**

University, 1998 (2) ATJ 226 lays down that notice is to be given to an effected person before his services are terminated.

12. It is, therefore, quite clear that the appointment of respondent Vipin Pal does not fulfill the condition laid down by the advertisement regarding the hearing disability criteria, which a candidate is bound to suffer before he can be considered for appointment in the respondent-department. His (respondent No. 4) appointment is contrary to the condition laid down in the advertisement issued by respondent No. 2.
13. On 24.08.2018, when the case was reserved for orders, no one was present on behalf of respondent No. 4. It was directed that counsels for respondents may file written submissions by 27.08.2018. None of the respondents filed written submissions. A written statement was filed by respondent No. 4 on 16.03.2011 wherein it has been averred that even on the own showing of father of applicant in annexure 12 to the O.A., it has been stated that the minimum handicap is 90 % for the post of Postal Assistant. It is also averred in the written statement that for appointment minimum disability required is 90% and applicant having more than 90 % should be given preference and looking to the record, the respondent No. 4 met the eligibility criteria and the O.A should be dismissed.
14. Having regard to the fact that the advertisement responded by the applicant and respondent No. 4 is clear in its term, we cannot add any words thereto. In the event, we read something in the advertisement which is not there, that will amount to altering by us the advertisement which we cannot do. Looking to the conditions of eligibility in the advertisement, it is apparent that the respondent No.4 does not meet the criteria set in the Advertisement, if the respondents-

department is taking the criteria in terms of percentage rather than decibels.

15. In view of the circumstances of the case as discussed above, and looking to the fact that in the advertisement, the condition of hearing handicap is referable to measurement in decibels whereas all parties to this application are referring to percentage of hearing handicap, the case is remanded back to the respondents to review the matter and issue a fresh speaking and reasoned order on the matter of appointment strictly in accordance with the terms and conditions of the advertisement after giving a reasonable opportunity of hearing to the party likely to be adversely affected by such fresh decision of the respondents, if any, which is to be communicated to the applicant and respondent No. 4 within three months from the date of receipt of a certified copy of this order. Accordingly, O.A.is disposed of. No order as to Costs.

[Rakesh Sagar Jain]
Member-J

[Gokul Chandra Pati]
Member-A

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