

**Central Administrative Tribunal
Principal Bench, New Delhi**

T.A. No. 3/2014

Hon'ble Shri Sudhir Kumar, Member(A)
Hon'ble Shri Raj Vir Sharma, Member(J)

Pronounced on :03.08.2016

Smt. Sheeja Joshy,
Age :30 years
W/o Joshi
Chowalloor House
Thiruthiparambu,
Mundathikode (PO), Thrissur (Tricur),
Kerala State

... Petitioner

(By Advocate: Mr. Dhruv Joshi for Shri K. Girish Kumar)

Versus

1. All India Institute of Medical Science,
By its Director,
Ansal Nagar, New Delhi

2. Union of India through
Secretary
Ministry of Health & Family Welfare
NAMS Building, Ansari Nagar,
Mahatma Gandhi Marg,
Ring Road, New Delhi.

... Respondents

(By Advocate: Mr. R K Gupta)

Order

Hon'ble Mr. Raj Vir Sharma, M(J)

It is essential to briefly outlay the facts that led to this T.A.

2. The applicant had filed Writ Petition(C) No. 2972 of 2014 before the Hon'ble High Court claiming the following reliefs:-

"(a) Issue a writ in the nature of Mandamus and/or any other appropriate writ/order to direct the respondents to issue a letter of joining to her; treating the withholding of the same as arbitrary and illegal,

(b) Issue a writ in the nature of Mandamus and/or any other appropriate writ/order to direct the respondents to stay the appointment in the PH(OL) quota till the above petition is finally decided by this Hon'ble Court,

(C) Issue a writ in the nature of certiorari/or any oth appropriate wirt/order to quash the Memorandum dated 21.04.2014 issued by the respondent No.1 preventing the joining of the petitioner with the respondent No.1 under the category of PH(OL) quota as same being arbitrary and illegal,

(d) Issue writ in the nature of certiorari/or any other appropriate writ/order to quash the new rule if any made by the respondent No.1 behind the back of the petitioner to prevent her joining with the respondent No.1 under the category of PH(OL) quota.

(e) Directing the respondents to pay appropriate compensation to the petitioner which this Hon'ble Court thinks fit in the facts and circumstances of the case; in case of respondent No.1's failure to issue a joining letter to her and held the erring officers to responsible for such compensation since the petitioner and her family had to undergo in explicable sufferings and damage due to the negligence and callous attitude of them, and

(f) Grant such other appropriate writ order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

3. Hon'ble High Court of Delhi was pleased to transfer the above mentioned writ petition to this Tribunal, and it was registered as a T.A.

4. The case of the applicant is that she is permanent disabled person. The Chairman, Medical Board for Persons With Disabilities, Govt Medical College Hospital, Thrissur has issued certificate dated 20.01.2010 in favour of applicant stating that she has a permanent disability of 15%.

5. In July, 2013, Respondent No.1 had issued Recruitment Notice for recruitment test for appointment to the post of sister grade –II in the pay band -2 scale of Rs. 9300-34800/- with grade pay band of Rs. 4600/- and invited applications in the prescribed form through on line mode for filling of 1004 (UR -534, SC-145, ST-70 & OBC -257 including PH(OL) posts of Sister Grade –II possessing qualifications of matriculation or equivalent, Certificate in General Nursing and Midwifery and should be registered 'A' Grade Nurse and Midwife with state nursing council with upper age limit of 30 years.

6. The applicant, who fulfils the eligibility criteria prescribed in the general conditions of Recruitment Notice for the said post of Sister Grade-II had submitted her application before the Respondent No.1 on 22.07.2013 and permanent disability certificate was produced at

the time of submission of application itself. An admit card was issued to the applicant, and, thereafter she entered in the examination. The result was declared on 05.09.2013 and the applicant was declared successful with IIIrd rank in the category of PH(OL). At the time of preparation of the said rank list her disability certificate was taken into consideration by respondent No.1 for second time. The applicant appeared before the Medical Board for Persons with Disability, Govt. Medical College Hospital Thrissur to ascertain the present disability as her previous disability certificate was dated 21.2.2010. The Chairman, Medical Board for persons with disabilities, Govt. Medical College Hospital, Thrissur issued a certificate dated 11.09.2013 in favour of applicant stating that she has permanent disability of 25%. Thereafter, respondent No.1 issued an interview letter and she was interviewed on 14.10.2013 and on 08.02.2014.

7. Respondent No.1 issued Office Memorandum/Call letter to the applicant and was pleased to offer her temporary post of Sister Grade-II. Previously applicant was working as Nurse in HCL Life Care Limited, HLL Bhavan, Poojappura, Thiruvananthapuram, Kerala and drawing a salary of Rs. 9,783-. The applicant reported before Respondent No.1 on 27.02.2014 and she was asked to come on the next day with a photo depicting her name and date, which was

deposited on 28.02.2014. Thereafter, she had undergone Medical fitness test and passed the same and her certificates were verified by the Respondent No.1.

8. To the utter shock and dismay of the applicant, and in order to cause delay in issuing a letter of joining to her, the Respondent No.1 stated that certain new rules have come into force under which she is found ineligible. The applicant most humbly submits that at no point of time, the said rules were made known to her. Moreover, the percentage of disability of the applicant was well within the knowledge of the Respondent No.1 at the time of submission of her application form on 21.04.2014.

9. Respondent No. 1 has issued a communication to her stating that appointment to the post of Sister Grade-II has been cancelled/withdrawn as her percentage of disability in the certificate is 25%, and she is not eligible for selection under vacancies reserved for persons with disability. Respondent No.1 was aware about the disability of the applicant right from beginning of the selection process. Due to negligence and callous attitude of erring officers of Respondent No.1 in recruitment, applicant and her family is leading a life in the lurch and she had to undergo inexplicable sufferings and damage as she is the sole earning member for her family consists of four dependent souls.

10. Respondent No.1 has filed counter reply. It was stated that vide OM dated 21.4.2014, the candidature of the applicant was cancelled as her percentage of disability as per her disability certificate was 25%, and, therefore, she is not eligible for selection under vacancies reserved for persons with disability in the light of DOP&T OM No. 36035/3/2004-Estt (Res) dated 29th December, 2005, and therefore, she was not permitted to join the post of Sister Grade-II on the basis of said letter. The facts that the applicant appeared in the examination and she was interviewed, and, thereafter a call letter dated 08.12.2014, offering her temporary post of Sister Grade-II, was communicated, are not disputed by the respondents.

11. We have heard the learned counsel for the parties and perused the record.

12. Learned counsel for the applicant contended that right from the beginning of the selection process, the percentage of the disability of the applicant was well within knowledge of the Respondent No.1 and during the course of selection she produced her original documents, a copy of which she has filed in this TA also. After receiving offer of appointment, she resigned her previous job also. Therefore, Memorandum dated 21.04.2014 issued by the Respondent No.1 cancelling her appointment is totally arbitrary and illegal.

13. Learned counsel for the respondents argued that there can be no estoppel against the law because a person having only 25% disability cannot claim reservation under PH(OL) quota.

14. Now, the only question arises for our consideration is whether a person suffering with 25% permanent disability is entitled to be considered under PH(OL) quota for reservation. Clause (t) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is as under :-

“person with disability” means a person suffering from not less forty per cent of any disability as certified by a medical authority.”

15. A bare reading of this definition reveals that a person having less than 40% of disability cannot be called a person with disability. Clause 9 of the OM No. 36035/3/2004-Estt (Res.) dt. 29th December, 2005 issued by the Ministry of Personnel, Public Grievances & Pensions Department of Personnel & training reads as under :-

“Degree of disability for reservation : Only such persons would be eligible for reservation in services/posts who suffer from not less than 40 per cent of relevant disability. A person who wants to avail of benefit of reservation would have to submit a Disability Certificate issued by a competent authority in the format given in Annexure I”

17. According to the provisions of this OM only persons who suffer from not less than 40% of relevant disability can avail the benefits of reservation. Therefore, under law a person having less than 40% disability has no right of reservation under PH(OL) quota. The applicant

has only 25% permanent disability as per certificate filed by her, therefore, she is not entitled for reservation under PH(OL) quota.

18. It is settled law that the promissory estoppel cannot be used for compelling the government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the government or the public authority to make. The doctrine of promissory estoppel being an equitable doctrine, it must yield place to equity, if the larger public interest so requires and if it can be shown by the Government or public authority, having regard to the facts as they had transpired, that it would be inequitable to hold the government or public authority to the promise or representation made by it.

19. Under these circumstances, the cancellation of offer of appointment of the applicant cannot be held illegal.

20. We find no merit in this TA and the same is liable to be dismissed accordingly. No costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member(A)