

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

**MA-615/2017 in
OA-79/2017**

Reserved on : 09.03.2017.

Pronounced on : 14.03.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Ms. Aarti Gupta

Vs.

UOI & Ors.

Present : Sh. Ajesh Luthra, counsel for applicant.
Ms. Avinash Kaur, counsel for respondents No. 1 to 3.
Sh. Yogesh Sharma, counsel for respondent No.7.

O R D E R

Mr. Shekhar Agarwal, Member (A)

MA-79/2017 has been filed by private respondent No. 7 for vacation/modification of the interim order dated 09.01.2017 passed in O.A., which reads as follows:-

“In the meanwhile, one post of Physiotherapist in UR category shall be kept reserved for the applicant till the disposal of OA.”

2. Arguing for misc. applicant learned counsel Sh. Yogesh Sharma submitted that her appointment has been held up by the respondents due to the aforesaid interim order. He further argued that the applicant in the OA was an unsuccessful candidate in the aforesaid selection and has questioned the selection itself in this O.A.

on the ground that the official respondents had deviated from the notified Scheme of the examination by holding a second written test. Sh. Sharma further stated that in case the applicant succeeds then the whole selection itself would be quashed. Therefore, no purpose would be served by keeping one post reserved for her. He further argued that irreparable loss was being caused to the misc. applicant as she was being deprived of getting appointment even though 07 other candidates had joined. Thus, balance of convenience was in favour of the misc. applicant and not in favour of the OA applicant.

3. This prayer was opposed by learned counsel for the applicant Sh. Ajesh Luthra, who drew our attention to para-4 of the reply filed by the misc. Applicant in the OA in which she has stated that the "earlier written test was conducted on different syllabus i.e. general knowledge etc.". He produced a copy of the question paper to assert that this statement was incorrect as the written examination referred to was on the subject itself. Sh. Luthra argued that this raised serious doubts as to whether the misc. applicant actually ever appeared in the examination or someone else had impersonated for her. Sh. Luthra also disputed the contention of the misc. applicant that the candidature of the OA applicant was itself in doubt. He argued that while it is true that OA applicant has been allowed to participate in the examination provisionally under orders of this

Tribunal in OA-2664/2016, yet these directions were given when the Tribunal, prima facie, came to the conclusion that OA applicant deserves to participate in the examination. As such, it was incorrect now to raise doubts about her candidature.

4. We have heard both sides and have perused the material placed on record. We find merit in the contention of the misc. applicant that the OA applicant has challenged the very selection process on the ground that the official respondents have deviated from the notified Scheme of examination by conducting two written tests instead of one. This is evident from our order dated 09.01.2017 itself. Thus, if the OA succeeds then the whole selection will be set aside and appointment of all the appointees including the private respondents herein would have to be cancelled. Under these circumstances, if the interim orders are vacated/modified and private respondent No. 7 is also allowed to be appointed, the interest of the OA applicant would still remain protected.

5. Thus, it is not necessary to keep one post reserve for the applicant. Making the appointments on the post in question subject to the outcome of this OA would suffice.

6. Accordingly, we modify our interim order dated 09.01.2017 to say that the appointments made to the post of Physiotherapist in the

UR category shall remain subject to the outcome of this OA. MA-615/2017 stands disposed of accordingly.

7. Mrs. Avinash Kaur, learned counsel for official respondents has sought two weeks time for filing reply in OA. Allowed. Private respondents may also file reply, if any, within the same time. Rejoinder may be filed within two weeks thereafter. List the OA again on 08.05.2017.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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