

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

OA-4442/2015

Reserved on : 26.05.2017.

Pronounced on : 04.07.2017.

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

Ridhima Seth
Aged about 29 years
D/o late Dr. Kuldeep Seth,
R/o Flat No. 64, Pocket-C-12,
Sector-3, Rohini,
Delhi-110085.

..... Applicant

(through Sh. P.K. Arya, Advocate)
Versus

1. Union of India through
Ministry of Personnel,
Public Grievances & Pensions,
North-Block,
New Delhi-110001.

2. Department of Personnel & Training, (DOPT)
Through its Secretary,
North-Block,
New Delhi-110001.

3. Union Public Service Commission
Through its Secretary,
Shahjahan Road,
New Delhi.

.... Respondents

(through Sh. L.C. Singhi, Advcoate)

ORDER

Mr. Shekhar Agarwal, Member (A)

The applicant was a candidate for the Civil Services Examination, 2014 in the UR category. She secured rank No. 565 in

the same. She was allotted DANICS as per her preference and merit vide communication dated 14.08.2015. This communication intimated that the allocation of service was final. However, without giving any prior intimation, three months later her allocation was changed to DANIPS instead of DANICS. According to the applicant, there were total 16 vacancies in DANICS out of which only 02 had been allocated to general candidates and the remaining have gone to reserved category. The applicant submitted a representation on 09.11.2015 to the respondents but received no reply to the same. Hence, she has filed this O.A. seeking the following relief:-

"In view of the above facts and circumstances, it is most respectfully prayed that appropriation directions and orders may please be issued/passed whereby setting aside the decision of the respondents allocating DANIPS cadre/post to the applicant as contained in list dated Nil (Annexure-A) and further direct the respondents to allocate DANICS cadre/post to the applicant as allotted to her vide list dated 14.08.2015 (Annexure-B), in the interest of Justice.

Alternatively, allow the applicant to submit her preference for services a fresh, in the interest of justice.

Pass any other order necessary in the facts and circumstances of the case."

2. The contention of the applicant is that the action of the respondents in downgrading the service allocation of the applicant from DANICS was unjust, unsustainable and untenable in the eyes of law. It was highly arbitrary and based on surmises and conjectures.

The respondents being State within the meaning of Article 12 of the Constitution of India were bound to act fairly, transparently and objectively in accordance with law. They have erred by giving more than 50% seats to reserved candidates, which was against the spirit of the Constitution as well as the law laid down by Hon'ble Supreme Court. The respondents have also violated the rights of the applicant as envisaged under Article 21 of the Constitution of India. Their action has resulted into grave injustice to the applicant. It is based on whims and fancies of the authorities.

3. In their reply, the respondents have admitted that the applicant secured rank No. 565 in the Civil Services Examination, 2014. They have further submitted that allocation of candidates recommended by UPSC is not completed in one iteration. This is because many parameters, such as, medical examination, provisional status, remain pending. Therefore, the allocation is done in a number of iterations. In the instant case, the applicant was first allocated DANICS as per her merit, medical status and preference for service given by her. All together, there were 17 vacancies in DANICS in CSE, 2014. Out of these, 07 vacancies were reserved for physically handicapped candidates (03-visually impaired [VI], 02-hearing impaired [HI] and 02-Locomotor disabled and Cerebral Palsey [LSCP]). Till 3rd iteration of service allocation, 06 physically handicapped candidates had been allocated DANICS against UR

vacancies and 01 PH candidate was allocated against SC vacancy.

The details of these candidates are as given below:-

Sl.No.	Rank	Name	Category
1.	1203	Rakesh Singhal	UR, VI
2.	1215	Kishore Kumar Datta	UR, VI
3.	1216	Sanjay Sondhi	UR, VI
4.	1231	Rakesh Das	UR, HI
5.	1232	Abhinav Mishra	UR, HI
6.	305	Manoj Kumar Pandey	UR, LDCP
7.	1187	Bhimasen Hantal	SC, LDC)

Medical examination of one candidate, namely, Sh. Saurabh Sharma (Rank-532) was pending before the Appellate Authority at Dr. RML Hospital. After the aforesaid Appellate Medical Examination, Sh. Sharma was declared as both leg and one arm affected (BLOA with 40% disability). Earlier, before his medical status was finally determined, one post in IFS had been blocked for him commensurate with his rank and preference. However, after his medical status was finally decided, he could not be appointed in IFS as in IFS, only OL, OAL and OA candidates were allowed. In fact, in no other service except IAS and DANICS, vacancies were available for PH candidates of BLOA category. The IAS vacancies had already been allocated to candidates having higher rank than Shri

Sharma. Therefore, in the 4th iteration, the respondents were left with no option but to allocate DANICS to Sh. Saurabh Sharma. Consequently, out of 09 UR vacancies in DANICS, 07 vacancies were given to PH candidates belonging to UR category. Only 02 UR vacancies were thereafter left. These were allocated to UR candidates having higher rank than the applicant. The respondents have submitted that the allocation of services has been done strictly according to rules. The applicant had made a representation to the respondents requesting for change of service preference. However, that was not permissible as per the rules of the Examination and the applicant was informed accordingly.

4. We have heard both sides and have perused the material placed on record. The main arguments advanced by the applicant's counsel were as follows:-

(i) Applicant was allotted DANICS vide communication dated 14.08.2015, which indicated that the allocation was final and not liable to change. Yet, subsequently, the allocation was changed to DANIPS.

(ii) The change was made without giving any opportunity to the applicant to represent against the same being contrary to the principles of natural justice.

(iii) The respondents have erred by providing for excessive reservation in DANICS contrary to the law laid down by Hon'ble

Supreme Court. Thus, out of 09 UR vacancies, only 02 have been given to UR candidates and 07 have been given to PH candidates.

(iv) Had this position been known to the applicant at the time of giving service preference, she would not have opted for DANICS.

5. We have considered each of the arguments advanced by the applicant.

5.1 We have considered whether the respondents have erred in service allocation by providing excessive reservation in DANICS. We have also considered whether any error has been committed in applying the provision for reservation for the PH category candidates by ousting one SC candidate of PH category from DANICS and accommodating one UR PH candidate in his place, namely, Sh. Saurabh Sharma. In this regard, learned counsel for the applicant brought to our notice the Instructions dated 29.12.2005 issued by DoP&T vide their O.M. No. 36035/3/2004-Estt(Res). According to para-19 of this O.M. reservation for seats belonging to SC, ST and OBC is called vertical reservation whereas the reservation for persons with disabilities as well as ex-servicemen is called horizontal reservation. It is further provided in this O.M. that horizontal reservation cuts across vertical reservation and persons selected against the PH category have to be placed in appropriate category, namely, SC/ST/OBC/UR depending upon the category to

which they belong. From these instructions, it follows that persons with disability irrespective of the caste they belong to, are accommodated in the merit list according to the rank secured by them against posts reserved for them. While doing so, they are adjusted in the category to which they belong to. Thus, if a PH candidate belonging to SC category is selected, he will be shown against SC category under the PH quota. Similarly, a UR PH candidate will be shown against UR category. In the instant case, due to unforeseen circumstances mentioned above, Sh. Saurabh Sharma having rank 532, who could not be adjusted in Indian Foreign Service due to his medical condition, was to be accommodated in DANICS. Consequent upon his accommodation as such, Sh. Bhimasen Hantal, a PH candidate belonging to SC category was ousted from the list. This was inevitable since Sh. Saurabh Sharma had rank much higher than him and was also in the Locomotor Disabled and Cerebral Palsey (LDCP) category. After Sh. Saurabh Sharma was accommodated in DANICS the number of UR candidates in DANICS went up from 09 to 10 i.e. one more than the number of vacancies available in this category. Consequently, the applicant was ousted.

5.2 Further, the respondents submitted that the applicant's claim that the number of posts reserved in DANICS was much in excess of 50% ceiling laid down by Hon'ble Supreme Court, was incorrect as

such ceiling was applicable for vertical reservation only and in the instant case the category wise allocation of total 16 vacancies in DANICS is as follows:-

General	OBC	SC	ST	Total
9	6	1	0	16

It was also argued on behalf of the respondents that despite coming into force of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995, Government of India had not provided for reservation for PH category candidates on the ground that posts had not been identified for such persons as required under Section-32 of the Act. This was, however, noticed by Hon'ble High Court of Delhi in the case of **Ravi Prakash Gupta & Anr. Vs. Govt. of India through Secretary & Anr.**, [Writ Petition (Civil) No. 5429/2008] and directions were given to fill all the back log vacancies arising from the year 1996. The aforesaid order was affirmed by Hon'ble Supreme Court of India in **SLP© No. 14889/2009**. Further, the respondents have submitted that the Ministry of Home Affairs, who are the Cadre Controlling Authority of DANICS had intimated to the Commission that starting from the year 1996 upto the year 2014, 07 vacancies were required to be filled by PH category candidates. Accordingly, 07 posts had been allocated for this service in the CSE, 2014.

5.3 We have considered the aforesaid submissions. We are in agreement with the respondents that the allocation of 07 posts to PH category candidates out of total 16 posts was in accordance with the reservation provided for this category under the Disabilities Act, 1995 and in accordance with the directions given by Hon'ble High Court of Delhi as well as Hon'ble Supreme Court. We, therefore, do not find any fault in this allocation.

5.4 The applicant argued that while changing her service allocation no opportunity was given to her to represent against the same. Thus, there has been complete violation of the principles of natural justice. We are not inclined to agree with this argument. This is because even if a show cause notice had been given to the applicant, nothing that she could have said in reply to the same would have altered the circumstances mentioned above due to which her service allocation was changed. These circumstances were beyond the control of the applicant. As such, issue of a show cause notice to the applicant in this case before changing her service would have remained an empty formality and an exercise in futility.

5.5 Next, the applicant had argued that in the communication dated 14.08.2015 by which DANICS was allotted to the applicant, it was indicated that the allocation was final and not liable to change.

However, even then the respondents changed her service to DANIPS. The respondents have explained that service allocation to candidates of Civil Services Examination is completed in various iterations due to various factors, such as, medical status of the candidates, UPSC provisional status etc.

5.6 In the instant case, the applicant's allocation had to be changed in the 4th iteration due to unforeseen circumstances mentioned above, namely, the medical status of one Sh. Saurabh Sharma having rank 532. The respondents submitted that but for this unforeseen development, the allocation of service made to the applicant would have remained final. We find merit in this contention. The extra ordinary circumstances prevalent in this case could not have been foreseen at the time allocation of DANICS was made to the applicant. The respondents cannot now be blamed for changing the allocation due to these developments.

5.7 Lastly, the applicant argued that had she known at the time of applying for the Civil Services Examination and giving her preference that such a large number of vacancies were reserved for PH category candidates in DANICS, she would not have applied for the same. In this regard, the respondents have drawn our attention to the advertisement dated 31.05.2014 issued by the Commission in which it has been clearly stated that the number of vacancies to be

filled on the basis of this examination was expected to be 1291 including 26 vacancies reserved for PH category. It has also been mentioned that the final number of vacancies may undergo a change after getting firm number of vacancies from the Cadre Controlling Authorities. The breakup of vacancies of each service is not mentioned in the advertisement even though the physical disabilities, which are allowed in each service, are mentioned. Under the DANICS, almost all categories of disability have been allowed.

5.8 In view of the provisions of the advertisement, the respondents cannot be faulted for the allocation they have made to PH category candidates in DANICS. The applicant had not questioned this advertisement when it was issued. On the contrary, she has appeared for the examination in response to this advertisement and it is not now open to her to question the same. In this regard, we place reliance on the judgment of Hon'ble Supreme Court in the case of **Madras Institute of Development Studies Vs. K. Sivasubramaniyan**, (2016) 1 SCC 454, in para-19 of which the following is laid down:-

"19. Be that as it may, the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of experts. It was only after he was not selected for

appointment, turned around and challenged the very selection process. Curiously enough, in the writ petition the only relief sought for is to quash the order of appointment without seeking any relief as regards his candidature and entitlement to the said post."

5.9 Lastly, the applicant has sought an opportunity to give revised service preference. This request was rejected by the respondents on the ground that this was against the Scheme of Examination. We agree with the respondents that if this was to be allowed, there would be bombarded by request from several candidates for change of service preference, thereby disturbing the entire service allocation. This obviously cannot be permitted.

6. In view of the above, we do not find any merit in this OA and dismiss the same. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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