

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3809 OF 2013

New Delhi, this the 27th day of October, 2016

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Monu Kumari (OBC),
Roll NO.2201076075,
Constable (Ex.) in Delhi Police,
PIS No.28090444,
aged about 25 years,
d/o Sh.Ramanand,
R/o Vill: Dhani Radha,
PO: Ahrod, Rewari,, Haryana

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Applicant

(By Advocate: Mr.Anil Singal)

Vs.

1. Staff Selection Commission,
through its Chairman,
C.G.O.Complex, Lodhi Road,
New Delhi 110003
2. Secretary, DoP&T,
North Block, New Delhi.
3. Secretary, MHA,
North Block, New Delhi.
4. Commissioner of Police,
PHQ, IP Estate, New Delhi

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Respondents

(By Advocate: Mr.S.M.Arif for R-1)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

The brief facts of the applicant's case are that Respondent no.1-
Staff Selection Commission (SSC), vide its notice published in the

Employment News dated 16.3.2013, invited applications from eligible persons for recruitment to the posts of Sub Inspector in Delhi Police and Central Armed Police Forces, Assistant Sub Inspector in Central Industrial Security Force, and Intelligence Officer in NCB. The last date for submission of application was 12.4.2013, and the dates of the written examination were 10.6.2013 (Paper-I) and 18.8.2013 (Paper II). Paragraph 10(D), Note II, of the recruitment notice stipulated as follows:

“The candidature of female candidates who are pregnant at the time of Physical Endurance Test will be rejected as they cannot undergo PET. No appeal/representation will be entertained against such rejection.”

In response to the employment notice, the applicant made application. She appeared in the written examination. On the basis of her performance in Paper I of the written examination, respondent-SSC, vide letter dated 20.9.2013 (Annexure A/2), informed the applicant that she was provisionally qualified for Eligibility Test, Physical Endurance Test (PET) and Medical Examination (ME), and that PET and Medical Examination would be held from 9.10.2013 onwards. Accordingly, she was requested by the respondent-SSC to report to the DIG, Group Central, CRPF, Golf Course Road, Ajmer (Rajasthan), on 28.10.2013 at 7.00 A.M. for PET, and on 29.10.2013 at 7.00 A.M. for ME. Paragraph 5 of the said letter dated 20.9.2013 was to the following effect:

“Candidates appearing for PET/Medical examination should satisfy himself/herself that he/she fulfils all the eligibility conditions like age, educational qualifications, and Physical and medical standards as laid down in the notice of the examination. Candidature of female candidates who are pregnant at the time

of PET will be rejected as they cannot undergo PET. No appeal/representation will be entertained against such rejection.

The applicant states that in the second half of the month of May 2013, she had come to know about her pregnancy. After receipt of the letter dated 20.9.2013, *ibid*, she approached the office of respondent-SSC. The office of respondent-SSC refused to entertain any written application from her, and directed her to go to the venue of PET, and to submit her application to the authorities conducting PET/ME. Therefore, she filed the present O.A. on 28.10.2013 seeking the following reliefs:

1. To quash and set aside the impugned Note-II in Para 10(D) of Recruitment Advertisement-2013 and consequent Para 5 of Call letter dt.20.9.2013 holding it to be bad in law.
2. To direct the respondents to treat the candidature of the applicant as valid for Recruitment Advertisement-2013 for the further process of recruitment like declaration of result of Paper II and interview by declaring her result of Paper-II. In case she gets cut off marks and if she gets finally selected on the basis of her marks, reserve one post for her against which she stands selected, then allow her to qualify the PET and Medical Tests after 6 weeks of her confinement and if she is found fit, she be given appointment a SI against which she stands selected.
3. To award costs in favour of the applicants and pass any order or orders which this Honøble Tribunal may deem just & equitable in the facts & circumstances of the case.

2. It has been contended by the applicant that the impugned condition is against the O.M. No.14034/5/75/Estt.(D) dated 19.7.1976 issued by the Government of India, Cabinet Secretariat, Department of Personnel &

Administrative Reforms, as well as the law laid down by the Honøble Supreme Court in **Air India Vs. Nargesh Meerza**, (1981) 4 SCC 335.

3. Respondent-SSC has filed a counter reply resisting the claim made by the applicant. It has, *inter alia*, been contended by the respondent-SSC that it considers its recruitment notice most sacrosanct, and conducts the recruitment examination and makes the selection strictly within the ambit of the recruitment notice. The Commission as well as all the candidates are bound by the provisions of the recruitment notice. It has also been contended by the respondent-SSC that the O.M. dated 19.7.1976, *ibid*, has no application to the facts and circumstances of the present case.

4. In her rejoinder reply, the applicant has more or less reiterated the same stand as taken by her in the O.A.

5. We have heard Mr.Anil Singal, the learned counsel appearing for the applicant, and Mr.S.M.Arif, the learned counsel appearing for the respondent-SSC.

6. It was submitted by Mr.Anil Singal, the learned counsel appearing for the applicant that if a married woman is eligible to apply, get selected, and appointed, pregnancy being the natural consequences thereof, the impugned condition for rejection of her candidature in the event of her being pregnant at the time of PET is clear-cut case of an outrage on the dignity of the fair sex and is *per se* unreasonable. The impugned condition compels the married women candidates not to have any children till the date of PET/Medial Examination who may not have even a choice to get or not to

get pregnant looking at the Indian society and its mind set, thus and thereby interfering with and diverting the ordinary course of human nature. The impugned condition is extremely detestable and abhorrent to the notions of civilized society, and apart from being grossly unethical, smacks of a deep rooted sense of utter selfishness at the cost of all human values. Therefore, the impugned condition is not only manifestly unreasonable and arbitrary, but contains the quality of unfairness and exhibits naked despotism, which is violative of Article 14 of the Constitution of India. In support of his submissions, Mr. Anil Singal invited our attention to the O.M. dated 19.7.1976 (ibid), the guideline under the caption: "Recruiting Women who are pregnant or on maternity leave" contained in the Equality Act 2010 Guidance for employers, Vol.1 of 7, published by the Equality & Human Rights Commission, and the observations made by the Honorable Supreme Court in **Air India Vs. Nargesh Meerza** (supra). Mr. Anil Singal also invited our attention to the decision of the Honorable Kerala High Court in **Kerala Public Service Commission Vs. SINI**, 2015(1) KLT 179.

7. The O.M. No.14034/5/75/Estt.(D) dated 19.7.1976 issued by the Government of India, Cabinet Secretariat, Department of Personnel & Administrative Reforms, reads thus:

Subject:-Employment of women candidates in a state of pregnancy and declared as temporarily medically unfit.

The undersigned is directed to invite a reference to the Ministry of Home Affairs O.M.No.5/2/57-RPS dated the 22nd July, 1957 which provides for retention of Government servants declared "temporary unfit" in service for a specified period, under certain circumstances. In regard to female Government servants the Ministry of Health and Family Planning have issued another orders vide their O.M.

No.5/21/68-MA dated the 12th December 1968 in which it is mentioned that a woman candidate who as a result of tests is found to be pregnant of 12 weeks standing or over, should be declared temporarily unfit until the confinement is over. She should be examined for a fitness certificate six weeks after the date of confinement, subject to the production of a medical certificate of fitness from a registered medical practitioner.

2. It has been noticed that certain Ministries/Departments have not strictly followed the instructions contained in the Health Department's O.M. dated 12.12.1968 and certain women candidates were appointed even while they were in advanced stage of pregnancy. In order to avoid recurrence of such instances it has been decided that a woman candidate who as a result of tests is found to be pregnant of 12 weeks standing or over shall be declared temporarily unfit and her appointment held in abeyance until the confinement is over.

3. She should be re-examined for a fitness certificate six weeks after the date of confinement, subject to the production of medical certificate of fitness from a registered medical practitioner. The vacancy against which the woman candidate was selected should be kept reserved for her. She should be re-examined for medical fitness six weeks after the date of confinement. If she is found fit she may be appointed to the post kept reserved for her and allowed the benefit of seniority in accordance with para 4 of the annexure to Ministry of Home Affairs's O.M. No.9/11/55-RPS, dated 22nd December, 1959.

4. Ministry of Finance etc. are requested to bring the above instructions to the notice of all concerned.

8. The guideline under the caption: "Recruiting Women who are pregnant or on maternity leave" contained in the Equality Act 2010 Guidance for employers, Vol.1 of 7, published by the Equality & Human Rights Commission, reads thus:

"You must not refuse to employ a woman because she is pregnant, on maternity leave or because she has (or has had) an illness related to her pregnancy.

Equality law does not say that a woman applying for a job with you has to tell you that she is pregnant. This is because you must not base your decision about whether or not to employ her on whether she is pregnant but on whether she has the skills to do the job. If a woman does not tell you that she is pregnant and you give her the job, you must not dismiss her when she tells you about her pregnancy.

For example:

A woman applies for a job as a training instructor. On the basis of her application form and her interview, the employer decides she is the best person for the job and offers the job to her. She has just discovered she is pregnant and tells the employer this when she accepts the job offer. If the employer changes their mind and withdraws the job offer, this would be direct discrimination because of pregnancy and cannot be justified.

You can find more help with this situation in the Equality and Human Rights Commission's New and expectant parents toolkit.

9. In **Air India Vs. Nargesh Meerza** (supra), the question that was considered by the Honøble Supreme Court was whether the provisions relating to (i) termination of service on first pregnancy, (ii) restriction on marriage within the first four years, and (iii) early retirement at 35 years, extendable to 45 years at the option of the Managing Director, applicable for Air Hostesses of Air India and Indian Airlines Corporation were violative of Article 14 of the Constitution of India, as being discriminatory, unreasonable and arbitrary. The Honøble Supreme Court held that in considering the fundamental right of equality of opportunity, a technical, pedantic or doctrinaire approach should not be made. Article 14 forbids hostile discrimination but not reasonable classification. It applies where equals are treated differently without any reasonable basis. But where the class or categories of service are essentially different in purport and spirit, e.g., where different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts, Article 14 cannot be attracted. Since the Air Hostesses form a separate category, the circumstances, namely, (i) termination of service on first pregnancy, (ii) restriction on marriage within

the first four years, and (iii) early retirement at 35 years, extendable to 45 years at the option of the Managing Director, do not violate Article 14 of the Constitution of India on ground of discrimination. While holding that the restriction on marriage within the first four years of service did not suffer from unreasonableness or arbitrariness, the Honøble Supreme Court observed that the provision according to which the services of Air Hostesses would stand terminated on first pregnancy was unreasonable and arbitrary. The Honøble Supreme Court observed that conferment of wide and uncontrolled power on the Managing Director to extend or not to extend the service of an Air Hostess suffered from the vice of excessive delegation of powers and was, therefore, violative of Article 14 of the Constitution. Accordingly, the provision giving option to the Managing Director to extend the service of an Air Hostess was struck down as invalid.

10. In **Kerala Public Service Commission Vs. SINI** (supra), the request made by some of the pregnant women candidates to reschedule the date of their physical efficiency test for the posts of Excise Guards and Women Police Constables was turned down by the petitioner-KPSC. The Tribunal interfered with the decision of the KPSC, and directed the KPSC to reschedule the date of physical efficiency test and consider the candidatures of the said women candidates. Upholding the Tribunal's decision, the Honøble High Court of Kerala observed that the Nation has to protect the human rights of pregnant ladies, and PSC must issue guidelines

to deal with cases of ladies in advanced stage of pregnancy for physical endurance test.

11. After having given our thoughtful consideration to the facts and circumstances of the case and the rival contentions, we have found no substance in the contentions of the applicant. As already noted, Note II, below paragraph 10(D) of the recruitment notice dated 16.3.2013, stipulated that the candidature of female candidates who would be pregnant at the time of PET would be rejected as they could not undergo PET, and no appeal/representation would be entertained against such rejection. Before making their applications, the applicant and other women candidates were fully aware of the said provision contained in the recruitment notice. Thus, agreeing to the terms and conditions of the recruitment notice, the applicant applied and offered her candidature as a woman candidate. Therefore, she cannot be allowed to challenge the legality and validity of paragraph 10(D), Note II, of the recruitment notice. Furthermore, it is the case of the applicant that in the second half of May 2013, i.e., one month after the closing date for receipt of applications, she came to know about her pregnancy. The terms and conditions of the recruitment notice being binding on the respondent-SSC and the applicant as well, there was nothing wrong on the part of the respondent-SSC to reject the applicant's candidature because she was pregnant at the time of PET. Had the respondent-SSC accepted the applicant's request to postpone the date of her PET until a date after six weeks of her confinement, the respondent-SSC would not only have relaxed

and/or acted contrary to the terms and conditions of the recruitment notice, but also their action would have been violative of Articles 14 and 16 of the Constitution of India. There might be some other women candidates, like the applicant in the present case, whose candidatures might have been rejected by the respondent-SSC. Non-grant of similar opportunity to those candidates would have been discriminatory. A process of selection and appointment to a public office should be absolutely transparent, and there should be no deviation from the terms and conditions contained in the Advertisement issued by the recruiting agency during the recruitment process and the rules applicable to the recruitment process in any manner whatsoever, for a deviation in the case of a particular candidate amounts to gross injustice to the other candidates not knowing the fact of deviation benefitting only one or a few. The procedure should be same for all the candidates. In this regard, we would like to refer to the decision of the Honøble Supreme Court in **Ashok Kumar Sharma & others Vs. Chander Shekhar & another**, (1997) 4 JT (SC) 99, where it has been held that an advertisement or notification issued/published calling for applications constitutes a representation to the public, and the authority issuing it is bound by such representation and cannot act contrary to it. We would also like to refer to the decision of the Honøble Supreme Court in **Bedanga Talukdar Vs. Saifudaullah Khan**, (2011)12 SCC 85, where it has been held that there cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved

in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. The Honøble Supreme Court has further held that the relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

12. The Government of India, Cabinet Secretariat, Department of Personnel & Administrative Reforms, O.M dated 19.7.1976, which has been reproduced in paragraph 7 above, is applicable to a case where, after her selection, and at the time of her appointment, a woman candidate is found to be in the advanced stage of pregnancy. As per the O.M. dated 19.7.1976, a woman candidate who as a result of tests is found to be pregnant of 12 weeks standing or over shall be declared temporarily unfit and her appointment shall be held in abeyance until the confinement is over. She should be re-examined for a fitness certificate six weeks after the date of confinement. The vacancy against which the woman candidate was selected should be kept reserved for her. She should be re-examined for medical fitness six weeks after the date of confinement. If she is found fit she may be appointed to the post kept reserved for her and allowed the benefit of seniority. The guideline under the caption "Recruiting Women who are pregnant or on maternity leave" contained in the Equality Act 2010 Guidance for employers, Vol.1 of 7, published by the Equality & Human Rights Commission, to which our attention has been drawn by Mr. Anil Singal, the learned counsel appearing for the applicant, cannot be said to be

applicable to a case where a woman candidate has not been selected for any job or where her candidature has been rejected in accordance with any provision of the recruitment notice. As per the said guideline, a woman candidate, who has been found fit and selected through a process of selection, should not be denied employment by the employer on the ground of her being pregnant. In **Air India Vs. Nargesh Meerza** (supra), the Honøble Supreme Court has held that the provision according to which the services of Air Hostesses would stand terminated on first pregnancy was unreasonable. In the instant case, the applicant's candidature having been rejected on account of her being pregnant at the time of PET, the decision in **Air India Vs. Nargesh Meerza** (supra) does not come to her aid. In **Kerala Public Service Commission Vs. SINI** (supra), there was no stipulation in the recruitment notice that the candidature of female candidates who were pregnant at the time of physical efficiency test would be rejected as they could not undergo PET, and that no appeal/representation would be entertained against such rejection. In the instant case, the recruitment notice having clearly stipulated that the candidature of female candidates who are pregnant at the time of PET will be rejected as they cannot undergo PET, and that no appeal/representation will be entertained against such rejection, and the applicant's candidature having been rejected in accordance with the said stipulation, the decision in **Kerala Public Service Commission Vs. SINI** (supra) does not come to her aid.

13. In the light of our above discussion, we have no hesitation in holding that the O.A. is devoid of any merit. Accordingly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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