

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3420/2013

Reserved on : 01.11.2018
Pronounced on : 22.11.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Ganatra Komal Pravinbhai
D/o Pravin Bhai Ganatra,
R/o Komal Vila, Opp. Magiya Street,
Hapani St. Savarkundla.
Distt. Amreli-344515,
Gujarat.

... Applicant

(By Mr. S. K. Rungta, Senior Advocate, and with him Mr.
Prashant Kumar, Advocate)

Versus

1. Union of India through Secretary,
Ministry Personnel, P.G. & Pensions,
North Block, New Delhi.
2. Union Public Service Commission
through its Chairman,
Dholpur House, shahjahan Road,
New Delhi-110003.
3. Office of the JS (Trg.) & CAO,
Ministry of Defence,
Room No.170, E-Block, C-II Hutments,
Dalhousie Road, New Delhi.
4. Shailaja Sharma,
R/o H.No.37-a-35-1 Madhu Nagar,
Agra, U.P.-282001.

5. Lipin Raj MP
R/o Maruthickal House,
Naranganam West PO,
Naranganam West, Pathanamthitta,
Kerala-689642. ... Respondents

(By Mr. Hanu Bhaskar, for Respondent No.1; Mr. Rajeev Kumar, for Respondent No.3; Mr. K. K. Rai, Senior Advocate with Mr. R. V. Sinha, Mr. Amit Sinha, and Mr. Vaibhav Pratap Singh, for Respondent No.4; and Mr. Padma Kumar S., with Ms. Uma Prasuna Bachu, for Respondent No.5, Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :

Union Public Service Commission, the 2nd respondent herein, notified 1037 vacancies in the All India Services for the year 2012. Certain vacancies were reserved in favour of physically handicapped candidates, including those suffering from visual handicap. The applicant participated in the recruitment process as a visually handicapped candidate. The results of the selection were declared on 03.05.2013, and the applicant was assigned rank No.592. On that basis, she was allocated to the Armed Forces Headquarters (AFHQ) Service. This OA is filed challenging the action of the respondents in allocating the applicant to the AFHQ. It is stated that the applicant is entitled to be allocated to the Indian Administrative Service (IAS), and despite that, candidates who are otherwise not entitled, are allocated to IAS. A direction is sought to the

respondents to re-consider the allocation of the applicant, and to allocate her to IAS of the 2012 batch.

2. At a later stage, the applicant impleaded respondents 4 and 5, who too were visually handicapped candidates, and were allocated to IAS.

3. It is stated that the 4th respondent was subjected to medical test in accordance with the procedure, and though the medical board and the appellate medical board declared her to be not eligible for reservation, a further examination was conducted, in deviation from the procedure, and on the basis of certification made therein, she was allocated to IAS. Though the applicant impleaded the 5th respondent, no relief is pressed against her.

4. Separate counter-affidavits are filed by various respondents. According to them, the applicant was assigned the relevant ranking on the basis of the marks secured by her in the written test and interview, and the allocation was done duly following the ranking as well as the principles of reservation in favour of the visually handicapped candidates. The 4th respondent stated that the procedure at the relevant point of time provided for Redressal of the grievance by the

Ministry of Health, and that on consideration of her case, she was referred to a board, which certified her handicap. It is also stated that her rank in the Civil Service Examination is fairly superior to that of the applicant, and that no exception could be taken to her allocation to IAS. Objection is also raised on the grounds of non-impleading of the affected parties, and other procedural aspects.

5. We heard Shri S. K. Rungta, learned Sr. Advocate for the applicant, and Shri Hanu Bhaskar, Shri Rajeev Kumar, Shri K. K. Rai, Senior Advocate, Shri R. V. Sinha, Shri Padma Kumar S. and Ms. Uma Prasuna Bachu, learned counsel for the respondents.

6. The dispute is about allocation to All India Services of the batch of 2012. In view of the mandate contained in the “Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, the 1995 Act), reservation is provided in favour of three categories of handicap, i.e., visual, hearing and orthopedic. The applicant claimed the benefit under the visually handicapped category. Neither the applicant nor the 4th respondent are totally blind

candidates. Their handicap is certified to be above the stipulated level.

7. As observed earlier, the applicant was allocated to the AFHQ based upon her rank. No irregularity as such is pointed out about this allocation, in view of the rank of the applicant. The grievance is about the allocation of the 4th respondent to IAS. The applicant contends that though the 4th respondent is superior to her in the merit list, eligibility was conferred upon her for reservation in deviation of the prescribed procedure.

8. At the stage of submission of applications, the verification about genuineness of the claim as to the handicap of a candidate, up to a level, is undertaken. It is only on the candidate being cleared in such verification, that the special facilities, such as giving assistance of scribe, or providing extra time, are extended to such candidates. However, the verification is not final. In case the candidates that are treated as eligible for reservation at the initial level, secure rank to the level of being selected, the verification is done by requiring them to appear before the medical board. The result of such

verification did not pose any problem in respect of the applicant.

9. As regards the 4th respondent, the medical board found her handicap to be below the prescribed level. The appellate medical board also confirmed the same. It is thereafter that she availed the remedy under the 1995 Act. The file was processed at various levels. The Ministry of Social Justice and Empowerment issued notification dated 01.06.2001, setting up Committees as required under the provisions of the 1995 Act "for evaluation of various disabilities and procedure for certification". Para 8 of the said notification reads as under:

"8. The Director General of Health Services, Ministry of Health and Family Welfare will be the final authority should there arise any controversy/doubt regarding the interpretation of the definitions/classifications/evaluations tests etc."

The annexures are very elaborate in their content, stipulating the percentage of disabilities, and the manner of verification. The 4th respondent availed the remedy under this, and on being certified to be suffering handicap to the prescribed level, she has been allocated to IAS. Though the rules framed by UPSC do not contain such facility, there is nothing in those rules

which prohibits the mechanism provided for under the 1995 Act. When the reservation itself owes its existence to the provisions of the Act, we cannot ignore the mechanism provided thereunder, in the context of determination of the level of handicap. Therefore, we do not find any error in the allocation of the 4th respondent to IAS.

10. Assuming that there is any defect in the allocation of the 4th respondent to IAS, the applicant does not get any immediate benefit. There are other candidates who too were extended the benefit of reservation to visually handicapped candidates, and allocated to various Services. The applicant did not make an effort to identify them, much less impleaded them as parties to the OA. The allocation of candidates in All India Services is a complicated process. Shifting of one candidate from one cadre to another would have its own cascading effect. In the instant case, the change is sought not to a different cadre within the same Service, but to a different Service altogether. Six years have lapsed since the allocations were made. The complications involved in disturbing the allocations in various Services at this stage, would virtually be beyond imagination.

11. We do not find any basis to grant relief to the applicant. The OA is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/