

**Central Administrative Tribunal
Principal Bench**

OA No.789/2018

New Delhi, this the 30th day of July, 2018

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

Ashutosh Ajay Soman
S/o GP Capt. Ajay G Soman
Aged about 29 years
R/o 73, Rakshak CHS
Pimple Nilakh Road
Aundh Camp, Pune-411027. Applicant

(By Advocate: Shri Abhishek R Shukla)

Vs.

1. Union Public Service Commission
Through its Secretary
Dholpur House, Shahjahan Road
New Delhi-110001.
2. Ministry of Urban Development
Central Public Works Department
Through Its Secretary
Nirman Bhawan, New Delhi.
3. Ministry of Social Justice and Empowerment
Through its Secretary
201, C-Wing Shastri Bhawan
New Delhi. ...Respondents

(By Advocates: Shri R.K. Jain, Shri R.V. Sinha with Shri
Amit Sinha and Shri Gaurav Ahlawat for Shri Naresh
Kaushik)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman:-**

The Central Public Works Department(CPWD) proposed to fill 22 vacancies of Assistant Architects. Reservation was also prescribed for these posts. Accordingly, an indent was forwarded on 14.12.2015 to the UPSC. The latter in turn issued an advertisement dated 16.01.2016. Two posts are reserved in favour of the physically handicapped persons. Various categories of physically handicapped persons, that are eligible to apply, were also mentioned. So far as the hearing impairment is concerned, it was mentioned that the disability should be 'partial' in nature.

2. The applicant is a person with hearing impairment. The extent of his impairment is certified as 100%. He submitted the application in response to the advertisement, claiming reservation. He mentioned himself as partially deaf. However, in the next column, relating to PH percentage, he mentioned the percentage of his disability as 100%. His application was processed and he was permitted to take the written examination. He was qualified therein. At the

stage of interview, the UPSC dis-qualified him on the ground that , his disability is 100%.

3. The applicant filed representation before the Court of Chief Commissioner for Persons with Disabilities. The said authority, in turn, issued notice to the concerned department and passed a detailed order dated 30.05.2017. It was mentioned that the posts may be re-indented. This OA is filed with a prayer to call for the records pertaining to the issue and to quash the order dated 30.05.2017 passed by the Commissioner. Another prayer is for restoration of the candidature of the applicant.

4. The applicant contends that once the concerned authority in the Central Government issued a notification to the effect that persons with physical hearing impairment can be appointed as Architects, there was absolutely no basis for the CPWD to restrict the eligibility of such candidates only to those with partial disability. Other grounds are also urged.

5. The UPSC filed a detailed counter affidavit. It is stated that the applicant filled particulars which are

inconsistent with each other. It is stated that once it is mentioned in the advertisement that only the persons with partial hearing impairment are entitled to apply, there was no basis for the applicant, to apply and thereafter to challenge the selection process.

6. We heard Shri Abhishek R Shukla, learned counsel for the applicant, Shri R.V. Sinha and Shri J.P. Tiwari, learned counsel for the respondents, in detail.

7. The relevant column in the advertisement reads as under:-

“Of the two posts reserved for Physically challenged Persons with disabilities, one post is reserved for Physically Challenged Persons with disability viz. Orthopaedically Handicapped/Locomotor Disability/Cerebral Palsy with One Leg affected(Right or Left) (OL) and remaining one post is reserved for Physically Challenged Persons with disability viz. Hearing Impairment {Partially Deaf (PD)}. The posts are suitable for Physically Challenged Persons with disability viz. Orthopaedically Handicapped/Locomotor Disability/Cerebral Palsy with One Leg Affected (Right or Left) (OL) OR Hearing Impairment{Partially Deaf (PD)}.”

8. From the above, it is clear that though only two posts are reserved for persons with disabilities, over a dozen categories are mentioned therein. The description of each disability would clearly indicate that the appointing authority sought to maintain a balance

between the requirement of the job on the one hand, and provision of opportunity to the physically challenged persons, on the other hand. It hardly needs any mention that each job has its own specifications. Though persons with a level of handicap may be able to handle the responsibility of a particular post it would not be possible for the persons with 100% disability to meet the requirements.

9. In case the applicant was of the view that the stipulation of partial disability in respect of hearing impaired persons, mentioned in the advertisement, is untenable, particularly when he suffers from 100% disability, it was expected of him to challenge the condition and the occasion would have arisen for us to examine the alleged unreasonableness of the condition on the one hand, and fulfillment of obligation towards physically impaired persons, on the other hand. That, however, was not done.

10. In the application form, he has stated that he is partially disabled, but in the column relating to percentage of disability, he mentioned it as 100%. This itself is a contradiction. The permission accorded to the

applicant to participate in the written examination was on account of the processing of the application through on-line system. It was only when the manual inspection of the records and the form was done, that his contradiction was noticed.

11. The Commission for Disabled Persons was also not sure that the persons with 100% hearing impairment can handle the responsibility of the post, but observed that the post needs to be re-indented. Still one of the reliefs claimed in this OA is to set aside that order. Once the applicant has acknowledged the conditions stipulated in the advertisement, he cannot challenge the outcome thereof. At any rate, the Tribunal is not the authority to decide the legality or otherwise of the Order passed by the Commissioner.

12. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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