

**Central Administrative Tribunal
Principal Bench**

OA No.2232 /2017

New Delhi, this the 07th day of August, 2018

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

Vikash Kumar, Age 27
S/o Shri Yogendra Rai
Bigrahpur, P.O.-G.P.O., P.S. Jakkanpur
Patna, Bihar 800001.Applicant

(By Advocate: Shri Rajan Mani)

Versus

1. Union Public Service Commission
Through its Secretary
Dholpur House, Shahjahan Road
New Delhi-110069.
2. Union of India through its Secretary
Department of Personnel and Training
Ministry of Personnel
Public Grievances
and Pensions, North Block
New Delhi-110001.
3. Union of India through its Secretary
Ministry of Social Justice
and Empowerment
Shastri Bhawan
New Delhi-110001.Respondents

(By Advocates: Shri R.V. Sinha with Shri Amit Sinha and
Shri Vaibhav Pratap Singh for Res. No.1 and Shri
Deepak Bhardwaj for Res. No.2 and 3)

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

The applicant passed MBBS in the year 2016. He intended to pursue his career in Civil Services. It is stated that in the previous year, he made an attempt in Civil Services Examination. In addition to that, he participated in the Combined Medical Services Examination, 2017.

2. A notification was issued for Civil Services Examination, 2018 on 07.02.2018 by the UPSC. The applicant submitted his application. It is stated that he is suffering from disability in the form of Dysgraphia/Writer's Cramp since the year 2015, and that this disorder has been recognized as one of the disabilities under the Persons with Disabilities Act (for short, the Act). His contention is that though the persons having such disability are entitled to be provided the help of a scribe, the Notification issued by the UPSC, and in particular Note-II contained therein, do not provide for it. It is in this context, that he filed the OA seeking the relief in the form of a direction to the first respondent to amend the CSE-2018 Notification so as to provide for a scribe for the

candidates with specific writing disability, such as the applicant. Other consequential reliefs are also claimed.

3. Learned counsel for the applicant submits that his client got the disability in the year 2015, and in view of the recent amendments to the Persons with Disabilities Act, he is entitled to be extended the benefit of the scribe, so that the objectives sought to be achieved under the Act and the rules made thereunder, are fulfilled.

4. Learned counsel for the respondents on the other hand submits that the relief in the form of a direction to amend the rules is totally unknown to law and at the most, the relief could be in the form of a declaration to the effect that failure to make provision in the rules, is in contravention of any law, and that having not been done, the OA is not maintainable at all.

5. The applicant successfully completed the MBBS course despite the fact that he suffers with the disability of Dysgraphia. He approached Dr. Ram Manohar Lohia Hospital which is a designated authority to certify the disability, with a request to issue a

certificate regarding his disability. From the averments made in the OA, it is clear that the hospital refused to issue such a certificate. One cannot understand as to in what manner, the applicant can claim the status of the disability, once the competent authority refused to issue the certificate.

6. Two other factors militate against the applicant. In the CSE for the year 2017, he appeared, but did not claim the benefit of a scribe. Similarly, in his MBBS examination also, he was not extended the benefit of a scribe. Note-II appended to Para 5 of the Notification issued by the UPSC reads as under:-

“NOTE-2: Suitable provisions for information regarding use of scribes by the blind candidates and candidates with Locomotor Disability and Cerebral Palsy where dominant (writing) extremity is affected to the extent of slowing the performance of function (minimum of 40% impairment) have been made in the online application at the time of the initial online application itself.”

7. A perusal of the above Clause discloses that even in cases where persons are suffering from the disability mentioned therein, there must be a certification to the effect that a minimum impairment of 40% exists. The UPSC recognizes the right, with this condition. The

applicant himself did not mention that the competent authority has certified his disability to the extent indicated therein.

8. The applicant relied upon a certificate said to have been issued by Dr. Ravi Yadav of National Institute of Mental Health and Neuro Sciences, Bangalore dated 22.03.2015. We find from the perusal thereof that there are corrections in the date, and in the name of the patient. Added to that, the doctor who is said to have issued the certificate, has failed to mention the extent of disability. On the other hand he expressed his opinion that the person is eligible for getting a scribe. One just cannot take a certificate into account, particularly when the competent authority has refused to issue the certificate.

9. Coming to the nature of reliefs claimed in the OA, the applicant sought a direction to the respondents to amend the relevant notification. It is difficult to understand the legal basis for this. In case the applicant felt aggrieved by any particular clause in the notification, what was expected of him was to seek a declaration to the effect that the clause impugned is

violative of any specific provision of law, if any, and as a sequel to that, the relief as to a direction should have been to amend the rules in accordance with law. That not having been done, we find it difficult to grant any relief to the applicant.

10. Further, the maintainability of the prayers of this nature was dealt with by the Hon'ble Supreme Court in *Mallikarjuna Rao v. State of Andhra Pradesh and Others* [(1990) 2 SCC 707]. Their Lordships observed as under:

"11.....It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowlingly to any such advice."

10. The OA is accordingly dismissed. The interim order passed on 24.05.2018 shall stand vacated. There shall be no order as to costs.

(Aradhana Johri) (Justice L. Narasimha Reddy)
Member(A) Chairman

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