

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3231/2016

Reserved on 18.10.2019
Pronounced on 04.11.2019

Hon'ble Mr. Ashish Kalia, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)

Priyanka Bansal
D/o Ravinder Kumar Bansal
R/o Flat No. 402, Tower N-5,
Narmada Apartments,
D-6, Vasant Kunj,
New Delhi- 110070

...Applicant

(By Advocate: Sh. Varun Mehlawat)

VERSUS

1. Union of India
Through its Secretary
Ministry of Health and Family Welfare
Department of Health
Nirman Bhawan, New Delhi
2. National Institute of Health and Family Welfare
Through its Director
Baba Gang Nath Marg
Munirka, New Delhi-110067
3. Director
National Institute of Health and Family Welfare
Baba Gang Nath Marg,
Munirka,
New Delhi-110067

4. Dr. Sangita Mishra
W/o Sh. Kaushal Mishra
R/o Flat-K-1007, Amrapali Princely Estate
Sector-76, Noida,
Distt. Guatam Buddha Nagar,
U.P

...Respondents

(By Advocates: Sh. V.S.R. Krishna;
Sh. Vijender Singh for Union of India)

ORDER

Hon'ble Mr. Ashish Kalia, Member (J) :

The applicant had applied for the post of Assistant Research Officer (HG) as un-reserved candidate in pursuance to the post advertised by the respondents in 2013 and written test was conducted on 13.02.2016, which was cancelled in order to comply with Government direction that, there shall be no interview for Group-D, C & Non-Gazetted Group-B post issued on 29.02.2016 by Respondent No. 2.

2. The Respondent No. 2 further clarified vide OM dated 25.02.2016, the current process of recruitment has been cancelled and fresh process of recruitment of all the candidates, who have applied in pursuance to advertisement dated 09.07.2013, would be subject to fresh written examination for selection which would be

strictly as per merit prepared on the basis of marks obtained in the examination.

3. Thereafter, the result of the written examination was declared on 06.05.2016, which was for maximum 147 marks and the following candidates were selected – two for UR and one for OBC vacancies.

S.No.	Name	Category	Marks
1.	Ms. Bhawna Kathuriya	UR	99
2.	Ms. Sangita	UR	77
3.	Sh. Raj Narayan	OBC PH	66

Reserved Panel

1.	Ms. Priyanka Bansal	UR	94
2.	Sh. Nabeel Ahmed	UR	89
3.	Ms. Harmeet Kumar	OBC	96

4. Under this backdrop, the applicant is seeking cancellation of the appointment of Respondent No. 4, Ms. Sangita, who obtained 77 marks in the written exam was given appointment.

5. The respondents took stand that as per Ministry's desire, they have sent relevant documents of the both the written examination on 13.02.2016, which was cancelled and fresh written examination held on 12.03.2016. The merit list was prepared by considering the marks of both

the exams and the highest marks obtained in either of two examinations.

6. The Respondent No. 4 has filed her reply and took stand that the applicant is not fulfilling the eligibility criteria as stated above and she is not having two years' research experience, which is a eligibility criteria for the selection of said post whereas she (Respondent No. 4) is having the research experience even she did the Ph.D. later on. In the previous written examination held on 13.02.2016, the applicant was having 50 marks out of 100 maximum marks whereas she was having 64 marks thus her selection is purely on merit and present OA be dismissed.

7. Heard the counsel for parties present and also the husband of the Respondent No. 4 present in the court and perused the records.

8. The applicant has raised a point to be determined by this Tribunal, i.e., whether higher marks of previous written examination should be taken into account while selecting the candidates when subsequent examination was held after cancelling the same or not.

The answer is in negative for the simple reason that the Respondent No. 2 & 3 had cancelled the exam and the process of recruitment for all the candidates who have applied, would be subject to fresh written examination for selection to the post on the basis of marks obtained in the subsequent written examination which was clarified by Respondent No. 2 vide OM dated 25.02.2016. No where it was stated that the higher marks obtained in the both the examination shall be the basis of selection. If that was criteria, then, it has to be clarified then and there which was not done by the respondents.

In the matter of ***K. Manjushree vs. State of Andhra Pradesh & Anr.*** A/12 2008 SC 1470, reads as under:-

“That the selection criteria has to be adopted and declared at the time of commencement of recruitment process.

The rules of the game cannot be changed after the game is over.”

9. Once the process of written examination is complete, it is final and should be the basis of the recruitment process, it can be changed at later point of time. In all fairness as held by the Hon’ble Supreme Court that once process of selection is started, it can be

changed thereafter. The present action of the respondents is clearly against the law laid down by the Hon'ble Apex Court.

10. In the matter ***Shankarsan Dash Vs. Union of India*** in Civil Appeal No. 8613 of 1983 decided on 30.04.1991 by Hon'ble Supreme Court of India, held as under:-

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Ors. MANU/SC/0400/1973 : (1973) IILLJ266SC ; Miss Neelima Shangla v. State of Haryana and Ors. MANU/SC/0472/1986 : [1986]3SCR785 and Jitendra Kumar and Ors. v. State of Punjab and Ors. [1985] 1 SCR 899.

Incidentally, Respondent No. 4 has approached this Tribunal by filing OA No. 968/2016, reads as under:-

*11. As regards the applicant's claim of her accrued rights, since she was at Sl. No.8 in the Seniority List prepared after the earlier written examination, it may be noted that the Hon'ble Apex Court has in **Shankarsan Dash v. Union of India, AIR 1991 SC 1612**, held that even a finally selected candidate does not acquire any right to issuance of a letter of appointment, and, in the instant case, only the result of the first stage written test had been declared earlier, and the process of the interviews was yet to follow, by which the applicant herself may have perhaps found her to be out of reckoning, on the basis of subjective satisfaction of the Interview Board, which she would now be able to avoid.*

12. Therefore, the OA is rejected in limine, at the admission stage itself, but there shall be no order as to costs.

11. In view of the above discussion of legal position and facts and circumstances, the appointment of Respondent No. 4 is not in accordance with the law laid down by Hon'ble Apex Court, same is liable to be set aside hence we do so and direct the respondents to consider the recruitment for above said post only on the basis of the subsequent written examination held on 12.03.2016 and consider all the eligible candidates for recruitment as discussed herein above including the case of the applicant for appointment to the said post purely on the basis of marks obtained in written test held on 12.03.2016.

12. This OA succeeds and is disposed of with direction to comply with the order within two months' time. There is no order as to cost.

(Aradhana Johri)
Member (A)

(Ashish Kalia)
Member (J)

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