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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10164/2018 & C.M. No. 39611/2018**

SARIKA JAIN

..... Petitioner

Through: Mr. Vikas Kumar, Mr. Abhishek Kumar
and Mr. Manish Paliwal, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Suparna Srivastava and
Ms. Nehul Sharma, Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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26.09.2018

1. The petitioner has challenged the judgment dated 17.11.2017, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, dismissing O.A. No. 3875/2017 filed by her for issuing directions to the respondent No.1/UOI and the respondent No.2/Ministry of Social Justice and Empowerment to consider her for appointment in the Indian Administrative Service (hereinafter referred to as "IAS") under the disabled categories, as provided under Section 33 of the Persons with Disabilities Act (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act').

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By:AMULYA

2. A glance at the relevant facts of the case is considered necessary. UPSC issued an Examination Notice No.04/2013-CSP dated 05.03.2013 for conducting the Civil Service Examination-2013 (in short "CSE-2013"). A fascicle of the said Notice is appended at Note-II, which identified the services suitable for physically disabled categories along with the respective functional classifications and physical requirements. For the purpose of present case, the following extract is relevant:-

Sr. No.	Name of the Services	Category(ies) for which identified	Functional Classification	Physical requirements
1.	Indian Administrative Service	i) Locomotor disability	BA. OL. OA.BH MW	S.ST, W,SE, H.R.WT
		ii) Visual Impairment	LV	
		iii) Hearing	PD	

For our understanding, the full form of the abbreviations of the functional classifications mentioned in column 3 (i) of the table above, are as follows:-

BA – Both arms affected

OL - One leg affected (R or L)

OA – One arms leg affected (R or L)

BH – Both hands affected

MW - Muscular weakness

3. The petitioner, who suffers from a disability to the extent of 68 % in both legs, had applied for participating in the CSE-2013. She cleared the preliminary examinations and went on to participate in the main examinations. As per the

result declared by the UPSC on 12.6.2014, the petitioner was successful in the main examinations wherein she achieved rank No.527 in the overall merit list and secured a 2nd rank in the disabled category. Thereafter, the petitioner received a letter dated 03.7.2014 from the respondent No.1 informing her that she had to undergo a medical examination on 07.07.2014, to be conducted by a Medical Board of the Safdarjung Hospital, Delhi specifically constituted for the said purpose. Upon undergoing the medical examination, the petitioner was informed vide letter dated 19.8.2014 that "*she has been declared both legs affected but not arms with 68% disability. However, as per your examination dossier, you are one leg affected with 50% disability*". Though, the petitioner had an option to prefer an appeal against the findings of the Medical Board, no such appeal was preferred by her.

4. Taking into consideration her disability, the respondents allotted the petitioner the cadre of Indian Revenue Service (Income Tax). It is an admitted position that the petitioner had joined service in the cadre of the Indian Revenue. After waiting for about three years, in October, 2017, the petitioner filed an Original Application before the Tribunal stating *inter alia* that the UPSC had issued an advertisement on 31.5.2014, for conducting the Civil Services Examination, 2014 (in short '**CSE-2014**'), which entitled a person with locomotor disability in both legs for reservation in the IAS. Contending that the aforesaid advertisement issued by the UPSC was published on 31.5.2014, before the final results of the CSE-2013 were declared wherein she had participated, the petitioner pleaded that she ought to have been considered by the respondents against the post reserved in the IAS cadre under the locomotor

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disability category in the CSE-2013, which had been given to the respondent No.3, Mr. Kuldeep Sharma. The said plea has however been turned down by the Tribunal on the following grounds:-

"9. Pertinent to mention that the applicant knowing fully well that there is no reservation provided in IAS for persons with locomotor disability in both legs in the UPSC advertisement for CSE-2013, appeared in the said examination. In terms of the ibid advertisement, candidates have been selected by the UPSC for various services in different categories. Simply because in the UPSC advertisement for CSE-2014, there has been some change in the functional classifications of locomotor disability whereby candidates with disability in both legs have also been made eligible for IAS, the case of the applicant cannot be considered for IAS as her case is to be governed strictly in terms of the UPSC advertisement for CSE2013 in which this functional classification was admittedly ineligible for such consideration."

Aggrieved by the above decision, the present petition has been filed.

5. Learned counsel for the petitioner submits that the Tribunal failed to appreciate that as the petitioner fulfils the physical requirements for discharging functions under the IAS cadre, she is entitled for appointment in the said cadre; that sub categorization of the posts reserved for physically handicapped person is impermissible and once the petitioner falls under the category of locomotor disability, then the respondent No. 1/UOI cannot sub-categorize the same by restricting it to persons with one leg disability only and denying eligibility in respect of persons like the petitioner with both legs affected; that the petitioner has been performing her duties very efficiently in the Indian Revenue Service cadre and as both the cadres are non-technical posts, she was equally entitled

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for the IAS cadre.

6. We have heard the learned counsel for the parties and perused the records.

7. It is an admitted position that when the UPSC had issued the Examination Notice for the CSE-2013 on 05.3.2013, the said notice did not include the functional classification of "both legs affected" under the locomotor disability category for allocation of the IAS cadre. It is also undisputed that the Medical Board of the Safdarjung Hospital constituted to conduct a medical examination of the selected candidates in the CSE-2013 had declared that both legs of the petitioner were affected with 68% disability, contrary to her examination dossier, wherein it was stated that her one leg was affected with 50% disability. The petitioner did not dispute the report of Medical Board though, she was entitled to file an appeal against the said findings. When in the CSE-2013, UPSC had declared those services that had been identified as suitable for physically disabled categories along with their respective functional classifications and physical requirements and the petitioner did not challenge the said notice, the plea of the petitioner now that she has wrongly been deprived of the IAS cadre, is found to be untenable.

8. Having participated in the CSE-2013 in accordance with the Rules and Regulations laid down in the Examination Notice No.04/13-CSP and on being declared successful, having been allocated the IRS cadre, which the petitioner had admittedly joined without reserving her right to challenge the said allocation, she is precluded from laying a claim to appointment in the IAS cadre and that too on the strength of the Examination Notice No. 09/2014-CSP,

issued by the UPSC for the CSE-2014. Moreover, even when the petitioner elected to file an Original Application after expiry of three years, reckoned from the date she had been selected in the IRS cadre, she did not challenge the Rules and Regulations governing the CSE-2013. Instead, the prayer made before the Tribunal was for issuing directions to the respondents to consider her for appointment in the IAS under the disabled category, knowing very well that for the next year, UPSC had changed the functional classifications for locomotor disability, thereby, making candidates with disability in both legs eligible for the IAS cadre.

9. That being the position, we do not find any error in the findings returned by the Tribunal to the effect that simply because in the advertisement for the CSE-2014, the UPSC had carried out some changes in the functional classification of locomotor disability and had made candidates with disability in both legs, as eligible for the IAS cadre. A change in the terms and conditions stipulated for the CSE-2014, cannot be a ground for the petitioner to urge that she should be extended the benefit of the said change when her candidature was governed by the Examination Notice No.04/13-CSP declared by the UPSC for the CSE-2013 wherein, the functional classifications for locomotor disability was prescribed for IAS cadre as, "*disability in one leg*" and not in "*both legs*".

10. We are also inclined to agree with the observations of the Tribunal that the rules of the game of selection cannot be changed mid stream. The decision of the Supreme Court in the case of District Collector and Chairman Vizianagaram (Social Welfare) vs. M. Tripura Sundari Devi reported as 1990 (3) SCC 655, clearly backs the findings of the Tribunal in this regard.

11. There are a catena of decisions, wherein it has been held that where a selection process is initiated by issuing an advertisement inviting applications, selections should be regulated by the rules and orders then prevailing and that such norms of selection cannot be altered after commencement of the selection process. [Refer: N.T. Devin Katti vs. Karnataka Public Service Commission reported as (1990) 3 SCC 157 and A.P. Public Service Commission vs. B. Swapna reported as (2005) 4 SCC 154] In State of Bihar and Ors. vs. Mithilesh Kumar reported as (2010) 13 SCC 467, the Supreme Court reiterated that the rules and regulations relating to an examination process must control the selection and any alteration/modification of the rules for a subsequent year will not affect the continuing process by giving the same retrospective effect. On this aspect, we may usefully quote a decision of a three-Judge Bench of the Supreme Court in the case of Ashok Kumar Sharma and Ors. vs. Chander Shekhar and Anr. reported as (1997) 4 SCC 18, wherein it has been observed as follows:-

6. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. 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. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview would be

allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority Judgement.” (emphasis added)

12. In the case of State of Gujarat and Ors. vs. Arvindkumar T. Tiwari and Anr., reported as **AIR 2012 SC 3281**, it was held by the Supreme Court as follows:-

“11. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. [See: Prit Singh v. S.K. Mangal and Ors., **1993(1) SCC (Supp) 714** and Pramod Kumar vs. U.P. Secondary Education Services Commission & Ors., **(2008) 7 SCC 153**]

13. A similar view has been expressed in Pramod Kumar vs. U.P. Secondary Education Services Commission reported as **(2008) 7 SCC 153**, State of Orissa vs. Mamta Mohanty reported as **(2011) 3 SCC 436** and Rakesh Kumar Sharma vs. Govt. (NCT of Delhi) reported as **(2013) 11 SCC 58**.

14. In view of the facts and circumstances of the instant case highlighted above, we decline to interfere in the impugned judgment. The petitioner, who had participated in the CSE-2013 and was allocated the cadre of Indian

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Revenue Service after considering her suitability in the physically disabled category as prescribed for the said examination, cannot lay a claim for being appointed in the IAS cadre by dislodging the respondent No.3, who had participated in the CSE-2013 and was selected in the physically disabled category with a disability in one leg only because the terms and conditions in the CSE-2014 had relaxed the functional classification of locomotor disability thereby resulting in making candidates with disability in both legs eligible for the IAS Cadre.

15. Accordingly, the present petition is dismissed as devoid of merits along with the pending application.



HIMA KOHLI, J



REKHA PALLI, J

SEPTEMBER 26, 2018

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