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

% ***Judgment Dated: 13th July, 2016***

+ W.P.(C) 7984/2015 & CM.APPL 16211/2015(stay)

DESHRAJ

..... Petitioner

Through Mr. S.K. Rungta, Senior Advocate
with Mr. Prashant Singh, Advocate
versus

UPSC & ANR.

..... Respondents

Through Mr. Naresh Kaushik with
Ms. Jyomoti Mize, Advocates for
respondent no.1.
Mr. Santosh Kumar Tripathi, ASC for
GNCTD/respondent no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. With the consent of the parties, the writ petition is taken up for final hearing and disposal.
2. Challenge in this writ petition is to the order passed by the Central Administrative Tribunal (hereinafter referred to for short as 'the Tribunal') dated 21.07.2015.
3. Necessary facts to be noticed for disposal of this writ petition are that the petitioner was employed as a Medical Officer on contractual basis with the respondent no.2 under NRHM Scheme (North East Zone) in the year 2010. On 04.07.2012, the petitioner resigned from the said zone as he was offered appointment under the same Scheme in East

Zone by the same respondent and consequently, he joined the East Zone. On 13.07.2013, respondent no.1 issued an advertisement notifying various vacancies to be applied on line for different Departments, including 679 posts of Medical Officers (general duty Medical Officer, sub-cadre) for recruitment in respondent no.2; reserving 36 posts for orthopaedically handicapped/locomotor disability/cerebral palsy by doing a further classification within the said category of disability of orthopaedic disability/locomotor disability or cerebral palsy. On 26.07.2013, the applicant, petitioner herein, claiming himself to be eligible, applied on line but his form was returned on the ground “PH CATEGORY: BOTH LEGS AFFECTED BUT NOR ARM, PH SUBCATEGORY: ORTHOPAEDICALLY HANDICAPPED OR LOCOMOTOR DISABILITY OR CEREBRAL PALSY, PERCENTAGE-50%..”

4. Aggrieved by the act of the respondents rejecting his application, the petitioner approached the Tribunal on 28.07.2013. By an interim order on 30.07.2013, the petitioner was permitted to submit offline application and to appear in the selection test provisionally. When the OA was heard finally, the same was dismissed by an order dated 21.07.2015, which has led to the filing of the present writ petition.
5. Mr. Rungta, learned Senior Counsel appearing for the petitioner submits that there is error apparent on the face of the judgment passed by the Tribunal. It is contended that the OA filed by the petitioner stands dismissed on the ground that the petitioner did not challenge the advertisement issued by the UPSC and while relying on the judgment in the case of *Dhananjay Malik and Others v. State of Uttarakhand and Others*, reported at AIR 2008 SC 1913, the Tribunal dismissed the OA on the ground that the petitioner had participated in the process of

selection and having been unsuccessful he cannot challenge the same. Mr. Rungta submits that the petitioner had challenged the advertisement which is evident from the fact that the petitioner appeared in the examination pursuant to the interim orders passed by the Tribunal dated 30.07.2013 and thus, the learned Tribunal fell in grave error by dismissing the OA on this ground. Another ground on which the OA has been dismissed is that the petitioner did not challenge the Notification issued by the Ministry of Social Justice and Empowerment which was accepted by the Government of India, therefore, the respondent no.1 could not have been faulted for providing the sub-classification since the same is based on the Notification of the Ministry of Social Justice and Empowerment. Mr. Rungta contends that this Notification of the Government of India was notified subsequent to the advertisement, i.e. 29.07.2013, and post filing of the OA which fact has also not been considered by the Tribunal. Mr. Rungta submits that the Tribunal lost track of this important aspect. Mr. Rungta also submits that the Tribunal has failed to consider that the petitioner is, in fact, working on the same post with respondent no.2 on contract basis since 2010 which would prove that a person with disability in both legs is competent to work at the post which had been advertised and the subsequent Notification of the Central Government is misplaced and against the very objective and principle laid down under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

6. At this stage, it is agreed by counsel for the parties that the impugned order of the Tribunal be set aside and the matter be remanded back to the Tribunal for fresh hearing based on the pleadings already on record.
7. For the reasons stated above and having regard to the fact that the

petitioner challenged the advertisement and participated only on the basis of an interim order, thus, it cannot be said that since the petitioner participated in the process of selection, the OA would be misplaced. We also direct the Tribunal to take into account the fact that the Notification of the Central Government was issued post the advertisement and after the filing of the OA. The Tribunal would consider the effect thereof as it cannot be said that the respondent was guided by the Notification on the question of the suitability of a person with disability to the post in question.

8. Resultantly, the writ petition is allowed. The impugned order dated 21.07.2015 is quashed. The matter is remanded back to the Central Administrative Tribunal for fresh hearing.

9. Parties to appear before the Tribunal on 01.08.2016.

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10. As agreed, the interim order granted in favour of the petitioner will continue till the disposal of the OA.

11. The application is disposed of accordingly.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 13, 2016

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