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

+ **W.P.(C) 9801/2018**

JADHAVAR VISHWAS HARIDAS Petitioner
Through **Mr.Colin Gonsalves, Sr. Adv. with**
Ms.Nabila Hasan, Adv.

versus

UNION PUBLIC SERVICE COMMISSION
AND ANR Respondents
Through **Mr.Naresh Kaushik, Adv. with**
Mr.Omang Gupta, Adv. for
Respondent No.1/UPSC.
Mr.Dev P. Bhardwaj, Adv. with
Ms.Akanksha Mishra, Adv. for
Respondent No.2/UOI.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER
% 18.09.2018

1. The petitioner is aggrieved by the order dated 03.08.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, dismissing OA No.2083/2014, filed by him challenging his debarment order dated 16.01.2014 issued by the respondent no.1/Union Public Service Commission (UPSC), whereby his candidature for the Civil Services Examination 2012 (in short, 'CSE 2012') was cancelled and he has been debarred from appearing in all the examinations to be conducted and the selections to be made by the UPSC for a period of 10 years, reckoned from 13.01.2014.

2. The present case has a chequered history. The petitioner who states that he is suffering from Obsessive-Compulsive

Disorder (OCD) had participated as an OBC candidate on seven occasions in the CSE Examination conducted by the respondent no.1/UPSC between 2004 to 2010. While he did not qualify in the preliminary examinations for the CSEs 2004 & 2005, he had qualified in the preliminary examinations for the CSEs 2006, 2007, 2009 & 2010 but failed to qualify in the main examinations. As for the CSE-2008, the petitioner had qualified in the preliminary examinations and the main examinations, but after appearing in the interview, he could not make the grade due to the fact that the last recommended candidate in the 'OBC' category had scored higher marks than him. Thus, all the seven attempts available to the petitioner as an OBC candidate stood exhausted by the end of year 2010.

3. The averments made in the present petition reveal that in the year 2011, the petitioner had filled up the form, under the 'OBC' category for attempting the CSE-2011 for the eighth time, but the same was rejected by the respondent no.1/UPSC on the ground that he had already exhausted all the seven attempts available to him as an OBC candidate. On 25.08.2011, a Fitness Certificate was issued by the Doctor treating the petitioner at the Poona Hospital & Research Centre, Pune, declaring *inter alia* that he was "*medically fit for any duty*". In the year 2012, the petitioner submitted an application form for participating in the CSE 2012 but while doing so, he suppressed the fact that he had already exhausted all his seven attempts between the years 2004 & 2010. Further, against the column of "*physically challenged category*" mentioned in the application form, the petitioner stated that his case came under the disability of "Deaf-Mute".

4. It is noteworthy that at the time of filling up his application

form for participating in the CSE-2012, the petitioner wrote his name as “Jadhavar Vishwas Haridas” whereas in the CSE-2006 Examination, he had filled up the form giving his name as “Vishwas Haridas Jadhavar”. Based on the aforesaid incorrect information furnished by him, the petitioner managed to participate in the CSE 2012. It is an undisputed position that the petitioner qualified in the preliminary examination as also the main examination. Thereafter, before the stage of the interview when the respondent no.1/UPSC scrutinized his documents along with other candidates, they served a notice to show cause dated 18.10.2013, calling upon the petitioner to explain as to why punitive action may not be taken against him under Rules 4 & 14 of the Rules of the Civil Services (Main) Examination, 2012, by enumerating the following suppressions made on his part:-

“4(a) You had knowingly suppressed in your application, the information regarding your previous candidature of the Civil Services (Pre.) Examinations held in 2004, 2005, 2006, 2007, 2008, 2009 & 2010.

(b) You made incorrect statements in your application regarding your previous candidature intentionally, in order to get unauthorised admission to the Civil Services Examination, 2012.

(c) Whereas as an OBC candidate you are entitled to only 7 attempts as per rule 4 of the examination and consequently the attempt of Civil Services (Preliminary) Examination, 2012 was your 8th attempt which was not allowed to you as per the rules of the examination. You had also admitted through your original affidavit that the attempt of Civil Services (Preliminary) Examination, 2012 was your 8th attempt.”

5. The petitioner duly replied to the notice to show cause on

02.11.2013, refuting the allegations of his violating any of the rules and went on to state that since the UPSC does not accommodate any candidate who is suffering from a mental illness and in view of the fact that the said condition is not covered under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short 'PWD Act'), he was compelled to make an eighth attempt for participating in the CSE 2012 by wrongly describing his disability as a "*Hearing Impairment*".

6. After examining the said reply, the respondent No.1/UPSC passed the impugned order dated 16.01.2014, rejecting the explanation offered by the respondents as unsatisfactory and debarring him from appearing in all the examinations to be conducted and selections to be made by the UPSC for a period of ten years, reckoned from 13.01.2014.

7. Aggrieved by the aforesaid order, the petitioner filed the aforesaid Original Application before the Tribunal, stating *inter alia* that though he had appeared in the CSE from the year 2004 onwards, he had mentioned in the application form submitted for the CSE-2012 that it was his first attempt for the reason that as an OBC candidate, he wanted to claim reservation in the category of physically handicapped persons; that he is suffering from a mental illness and had submitted a detailed representation to the UPSC on 15.04.2011, before participating in the subject examination, pointing out that they had not made any provision for reservation in respect of persons suffering from mental illness and, therefore, he was compelled to furnish incorrect information in his application form that he was deaf and mute.

8. The aforesaid petition was vehemently opposed by the

respondents before the Tribunal. A detailed counter affidavit was filed by the respondent no.1/UPSC stating *inter alia* that the petitioner had withheld material information and failed to furnish the correct information and that at the time of participating in the CSE 2012 Examination, he did not reveal that he had already attempted CSE Examinations and had exhausted all the seven attempts that were permissible for an OBC candidate. It was also stated that there is no provision in the PWD Act for relaxation under the mental illness category for the petitioner to have applied thereunder.

9. After hearing learned counsel for the parties, the Tribunal rejected the Original Application filed by the petitioner with the following observations:-

“6. The UPSC conducts examinations for various civil services. A candidate is required to fill every information in the form correctly. Depending upon the categories to which the candidates belong, the number of attempts are restricted. In case of the applicant, it is seven attempts. It is not in dispute that he attempted seven times by the year 2011. However, while submitting the application form in 2012, he mentioned the number of attempts in column no.24 as ‘one’. Similarly, in Part I of the form, against the column “Physically Challenged Category”, it is mentioned as “Deaf-Mute”. It is thus established beyond any pale of doubt that the applicant indulged in suppression of facts and mentioned totally incorrect facts. It is a case of *suppressio veri* and *suggestio falsi*. The candidates, on being selected in the Civil Services Examination, are entrusted with the duty of the administration of the State. Obviously, for that reason, every measure is taken to ensure that the candidates are not only of adequate intelligence, but also of highest

integrity. The applicant, if at all anything, has exhibited dishonesty as regards furnishing of particulars. It indicates that he felt that he can go to any extent in his anxiety to get into the civil services. We do not find any basis to interfere with the impugned order.

7. Though several other contentions were also advanced at the Bar in support of OA, we do not find it necessary to deal with the same. For instance, by filing CP No.467/2018, the applicant made an attempt to appear for Civil Services Examination 2018. As a matter of fact, an interim order was also passed in his favour. However, when it becomes clear that the applicant has exhausted all attempts by 2011 itself, the question of his appearing in subsequent years does not arise. We, therefore, recall the order dated 1.03.2018 and make it clear that it does not confer any right whatsoever in favour of the applicant.

8. In view of above, both OA as well as CP are dismissed. There shall be no order as to costs.”

Aggrieved by the aforesaid order, the petitioner has filed the present petition.

10. Mr. Gonsalves, learned Senior Advocate appearing for the petitioner submits that the petitioner never intended to suppress any information from the respondent No.1/UPSC and in his letter dated 15.4.2011, he had disclosed the fact that he had appeared in the CSE on seven occasions. He states that on 31.5.2014, the respondent No.1/UPSC had increased the permissible number of attempts for ‘OBC’ category and persons with disabilities from seven, to nine. This development had taken place when O.A. No. 2083/2014 was still pending. We may note that on the amendment of the PWD Act in the year 2016, Section 34 that provides for reservation for persons with benchmarks disabilities, includes

under sub-section 1(d), disabilities relating to autism, intellectual disability and specific learning disability and mental illness. It is therefore submitted that the petitioner, who is an 'OBC' candidate, suffering from a mental illness, is now entitled to two more attempts, over and above the seven attempts provided for earlier in the CSE but the Tribunal having refused to interfere in the debarment order passed by the respondent No.1/UPSC, he would be deprived of the said opportunity.

11. Mr.Kaushik, learned counsel appearing for the respondent no.1/UPSC on advance notice, opposes the present petition. He states that even if the petitioner claims that he is entitled to two more attempts in the CSE, it cannot be a ground to overlook the false information provided by him in the CSE 2012 form, wherein he had deliberately furnished his incorrect name by changing the order of the first name, middle name and family name. Further, the petitioner had purposely described himself as 'deaf and mute' in the disability column of the application form, knowing very well that he did not suffer from the said disability. Lastly, it is contended that the petitioner had deliberately failed to reveal that he had already participated in the CSE on seven occasions, between the years 2004 to 2010.

12. We have considered the arguments advanced by learned counsel for the parties and have examined the records.

13. Before dealing with the submissions made by learned counsel for the parties, it is relevant to note that in the year 2013, the petitioner had filed a writ petition under Article 226 of the Constitution of India in the High Court, for seeking directions to the respondents/UOI to amend Section 33 of the PWD Act to the extent that persons with mental illness be also included in the list

of disabilities for being eligible for reservation and employment and further, to consider his candidature under the disability quota of CSE, 2008. Vide order dated 28.01.2013, the captioned writ petition, registered as W.P.(C) 447/2013, was dismissed by the learned Single Judge stating *inter alia* that the Parliament has to bring in a legislation for the petitioner to claim any entitlement and it does not lie in the jurisdiction of the Court to lay out a time schedule for the Legislature to pass such an Act.

14. Aggrieved by the aforesaid order, the petitioner had filed an intra-court appeal, registered as LPA 222/2013, which was disposed of by the Division Bench vide judgment dated 27.10.2016, directing the respondents therein and the Central Government to study the problems with the aid of subject experts in mental illness and disorders that has resulted in denial of the benefits of Section 33 of the PWD Act to persons suffering from mental illness and also determine if the threshold of 40% under the PWD Act needs to be revisited. However, coming to the specific grievance raised by the petitioner (appellant in LPA 222/2013), the Division Bench noted that he had availed of seven chances and had not raised a grievance when persons with a notified disability had been selected with lower marks than him. Thus, the ground raised by the petitioner for considering his candidature under the disability quota for the CSE, 2008 was rejected by the Court as meritless. As for the penalty of bar from appearing in public employment in terms of the order dated 16.01.2014, passed by the respondent No.1/UOI, the Division Bench opined that his remedy lies before the Central Administrative Tribunal. After the aforesaid judgment was pronounced on 27.10.2016, the petitioner filed a review petition (535/16), which was rejected vide order dated

10.03.2017.

15. It is noteworthy that during the pendency of the captioned LPA, the respondent no.1/UPSC had issued the show cause notice dated 18.10.2013 to the petitioner and after considering his reply, passed the order dated 16.01.2014, debarring him. Initially, the petitioner had challenged the said order by filing a miscellaneous application in the LPA. But later on, he had withdrawn the said application on 02.05.2014, with liberty to file proceeding before the appropriate forum. The petitioner had then approached the Tribunal and filed O.A. No.2083/2014, praying inter alia for quashing the Notification for debarment dated 16.01.2014 issued by the respondent No.1/UPSC.

16. On 13.02.2018, during the pendency of the captioned O.A., the petitioner had filed a miscellaneous application (M.A. 873/2018) seeking permission to submit his application form for the CSE, 2018 and appear in the said examination the final outcome of the petition on the ground that the Ministry of Social Justice and Empowerment, Government of India had issued a Notification dated 15.06.2017, whereunder the Union of India had amended the PWD Act, which was notified on 28.12.2016 and Section 34 now provides for not less than four percent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one percent each was required to be reserved for persons with benchmark disabilities including *inter alia* disabilities of “autism, intellectual disability, specific learning disability and mental illness”. Vide interim order dated 01.03.2018, the Tribunal had allowed the aforesaid application with directions to the respondent No.1/UPSC to entertain the petitioner’s application but

on the condition that it will not confer any right in his favour and the same would be subject to the final orders in the O.A. Later on, the O.A. came to be dismissed by the impugned order dated 03.08.2018.

17. The scope of the present petition is limited to examining the legality of the order dated 03.08.2018, passed by the Tribunal, rejecting petitioner's Original Application wherein he had challenged the debarment order dated 16.1.2014 issued by the respondent No.1/UPSC. The petitioner has not denied the fact that by the time he had submitted his application form for participating in the CSE-2012, he had already exhausted all the seven attempts available to him as an 'OBC' candidate by participating in the CSE examinations conducted from 2004 to 2010. However, at the time of submitting his application form for the CSE-2012, the petitioner consciously suppressed the said fact and mentioned that the number of attempts on his part was only "one". Knowing very well that he did not fall under the category "deaf" or "mute", the petitioner consciously went on to fill up his status in the column of "Physically Challenged Category", as "deaf and mute". Going by the medical certificate dated 25.8.2011 (Annexure P-2), issued by the Doctor treating the petitioner at Poona Hospital and Research Centre, Pune that declared that he is "*medically fit for any duty*", even his claim that he was suffering from a mental illness in the year 2012, becomes questionable. Further, the record reveals that the petitioner has tried to trifle with the sequence of his 'first name' 'middle name' and 'last name', which fact was highlighted by the respondent No.1/UPSC in its Show Cause Notice dated 18.10.2013 wherein, it was observed that when he had appeared in the CSE (Preliminary Examination) 2006, he had given his name '*Vishwas*

Haridas Jadhavar’ instead *‘Jadhavar Vishwas Haridas’* in the application form.

18. In his reply dated 02.11.2013, the petitioner did not deny any of the aforesaid allegations leveled by the respondent No.1/UPSC. Instead, he referred to the writ petition that he had filed in the High Court followed by the LPA before the Division Bench and sought to urge that he had disclosed the facts about his earlier attempts of CSE in the said proceedings. But that cannot give the petitioner a licence to furnish incorrect information in his form for CSE-2012 wherein he mentioned the number of attempts made earlier as “one”. Regarding the wrong submission of his name in the CSE form, the petitioner simply described it as an “*inadvertent mistake, not tainted with any malafides*”. Further the petitioner claimed that it was because the respondents did not recognize mental illness as a disability, that he had to fill up the “physically challenged” column in the online form, by describing his disability as a “*hearing impairment*”. In other words, while admitting to the fact that he had suppressed material facts and furnished incorrect information while filling up the form for attempting the CSE-2012, the petitioner has tried to justify his conduct.

19. Rule 14 of the Rules of the Examination had clearly stated that any information that is found to be false or any ineligibility that is detected before or after the examination, can entail an action against a candidate by the UPSC. Despite the petitioner being cautioned about the serious consequences of furnishing false information, he went on to affirm that he had read the Rules and Instructions and then proceeded to flout the same by declaring in his form that he had not exhausted the number of attempts admissible to him under the Rules.

20. In this background, the Tribunal cannot be faulted in observing that the petitioner had indulged in suppression of fact and exhibited dishonesty, while furnishing material particulars, resulting in the dismissal of the Original Application. During the pendency of the OA, an interim order dated 01.3.2018, was passed in favour of the petitioner directing the respondent No.1/UPSC to entertain his application form for the CSE-2018 and permit him to participate in the said examination, but the Tribunal had made it clear even then, that the said order was provisional in nature and did not confer any right or equity in favour of the petitioner and that the said order would be subject to the final order passed in the O.A.. Merely because the petitioner had been permitted to participate in the CSE-2018 on the strength of the interim order dated 01.03.2018, cannot be a ground to urge that he should be permitted to sit in the main examination as well scheduled between 29.9.2018 to 06.10.2018, when he has failed to point out any illegality or perversity in the department order issued by the respondent No.1/UPSC.

21. For the aforesaid reasons, we do not find any infirmity in the impugned order dated 03.8.2018, passed by the Tribunal, that warrants interference in judicial review. As a result, the present petition fails and is dismissed as devoid of merits.

HIMA KOHLI, J

C. HARI SHANKAR, J

SEPTEMBER 18, 2018/aa.