



\$~42

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

%

Date of decision: 20th August, 2024

+

W.P.(C) 11414/2024 & CM APPL.47363-64/2024**RAJEEV PAL**

.....Petitioner

Through: **Mr. Aayush Shukla and Mr. Vikash
Kumar, Advocates**

versus

**UNION OF INDIA, MINISTRY OF HEALTH AND FAMILY
WELFARE & ORS.**

....Respondents

Through: **Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Kushagra Kumar, Advocate
and Mr. Abhinav Bhardwaj, GP for
UOI
Mr. Mohinder J.S. Rupal and Mr.
Hardik Rupal, Advocates for
University of Delhi****CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T (oral)**

1. The present petition has been filed by the petitioner under Article 226 read with Article 227 of the Constitution of India praying as under:

“a) To issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the Impugned Order dated 09.08.2024 passed by the Ld. Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 3129/2024, titled “Rajeev Pal V/s. Health & Family Welfare & Ors”.

AND/OR

b) To issue a writ, orders or direction in the nature of mandamus/certiorari quashing the impugned notice dated 11.07.2024 having F. No. A/820/2023-RR-Part(3)/141 issued by the Respondents;

AND/OR



c) To issue a writ, orders or direction in the nature of mandamus/ certiorari directing the Respondents to consider the application and candidature of the Petitioner herein under OBC/ PWD for OH category taking into account the Petitioner has scored highest marks in the written test under the said category;

AND/OR

d) To issue a writ, orders or direction in the nature of mandamus/ certiorari directing the Respondents to include the name of the Petitioner in fresh notice that Respondents will subsequently issue declaring the provisionally shortlisted candidates and calling their attendance for physical verifications of documents in Nursing Attendant Level 1 post under PWD OH category in the pay matrix 18000 – 56900 in LHMC and KSCH; AND/OR

e) Call for records pertaining to OA No. 3129/2024, titled “Rajeev Pal V/s. Health & Family Welfare & Ors” and adjudicate the same;

AND/OR

f) To issue a writ, orders or direction in the nature of mandamus directing the Respondents to pay to the Petitioner compensation for denying the statutory rights of the Petitioner under Rights of Persons with Disabilities Act, 2016 and under the Constitution of India;

AND/OR

g) Pass such other further order(s) as this Hon’ble Court may deem fit and proper.”

2. The case of petitioner before learned Tribunal was that vide Advertisement/Nursing Attendant/ Admn-III/2021/1349 dated 12.02.2021 issued by the respondents, applications for the post of Nursing Attendant Level I in the Pay Matrix 18000-56900 in LHMC and Smt. S.K. Hospital, New Delhi were invited. The petitioner applied for the said post under



OBC/PWD for OH category in KSCH. The said advertisement had clarified that one post is earmarked for person with benchmark disability (PWD) for OH category.

3. Learned counsel for petitioner submits that the result for the said post was declared and petitioner's name was listed at Serial No.39 having secured 94 marks whereas another candidate namely Salim, who scored 75 marks, was listed at Serial No.69.

4. It is pertinent to mention vide notice No.F. No. A/820/2023-RR-Part(3)/20 dated 04.05.2024, result for the post of Nursing Attendant LHMC qua aforementioned advertisement was declared, however, there was no candidate from PWD for OH category in that result. Subsequently, the impugned Notice F. No. A/820/2023-RR-Part(3)/141 dated 11.07.2024 was issued by the respondents declaring the provisionally shortlisted candidates calling their appearance on 19.07.2024 for physical verifications of documents for the said post. However, petitioner's name was not found in the said list even though he had scored the highest number in PWD with OH category.

5. Being aggrieved, petitioner sent a representation dated 12.07.2024 to the respondents, which was not responded to. Thereafter, petitioner preferred writ petition being W.P.(C) 10602/2024 before this Court. Vide order dated 02.08.2024, the said petition was disposed of without expressing any opinion on the merits of the case however liberty was granted to the petitioner to approach the learned Central Administrative Tribunal (the Tribunal), Principal Bench. Pursuant thereto, the petitioner preferred OA No.3129/2024 before the learned Tribunal, which was dismissed vide order dated 09.08.2024, *inter alia* holding as under:-



“Heard. The OA is dismissed.”

6. The challenge to the aforesaid order dated 09.08.2024 passed by learned Tribunal by the petitioner is on the ground that the learned Tribunal has passed a non-speaking order, without even detailing the contentions of the petitioner. Petitioner has placed reliance upon decision in ***Cyril Lasrado Vs. Juliana Maria Lasrado*** (2004) 7 SCC 431 wherein it is held that howsoever brief the order is, it should indicate application of mind. Petitioner has averred that the Tribunal did not consider that he had scored highest marks in PWD/OH category in the examination held on 25.02.2024 and despite the advertisement dated 12.02.2021 mentioned that 01 post was earmarked for PWD for OH category, yet his name was not shortlisted and he was not called for physical verification.

7. The Hon’ble Supreme Court in ***Jagtamba Devi Vs. Hem Ram***, (2008) 3 SCC 509 while dealing with a case wherein a non-speaking order was passed by the High Court, observed as under:-

“9. The order of the High Court reads as follows:

“Heard. Dismissed.”

It is absolutely non-reasoned. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind. The absence of reasons has rendered the High Court's judgment unsustainable.

10. *“6. ... Even in respect of administrative orders, Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 2 QB 175 : (1971) 2 WLR 742 : (1971) 1 All ER 1148 (CA)] observed : (All ER p. 1154h) ‘The giving of reasons is one of the*



fundamentals of good administration.’ In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120] it was observed: ‘Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.’ Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the ‘inscrutable face of the sphinx’, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The ‘inscrutable face of a sphinx’ is ordinarily incongruous with a judicial or quasi-judicial performance.”

8. Having heard learned counsel for the parties and after going through the impugned order dated 09.08.2024, this Court finds that in the impugned order, learned Tribunal has neither recorded the contentions raised by the petitioner nor given any reasoning as to on what grounds his pleas have been dismissed. In our opinion, a non-speaking order is no order in the eyes of law.

9. Accordingly, we hereby set aside the order dated 09.08.2024 passed



by learned Tribunal in OA No.3129/2024 and direct Hon'ble the Chairman of learned Tribunal to list the OA on 22.08.2024 before another Bench wherein Dr. Sumeet Jerath, Member (A) and Ms. Harvinder Kaur Oberoi, Member (J) are not members.

10. Learned counsel for petitioner has informed this Court that there was one post of PWD for OH category, however, in the notice dated 11.07.2024, it shows that no candidate from PWD for OH category has been selected.

11. In view of above, we hereby direct the respondents that the said vacancy shall not be filled-up till the OA No.3129/2024 is decided by the learned Tribunal. We expect from the Bench to decide the OA expeditiously.

12. With the directions as aforesaid, the present petition and pending applications are disposed of.

13. Registry is directed to transmit copy of this order to learned Tribunal for information and compliance.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 20, 2024
rk/r