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OA No. 17 of 2023

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No. 17 of 2023

Date of Order : 15th March, 2023.

**CORAM : JUSTICE M.G.SEWLIKR, MEMBER (J)
DR. BHAGWAN SAHAI, MEMBER (A)**

Mrs.Puja Diliprao Khedkar,
Age-32 years,
Working at – Nil at present,
R/o A/8, Chanakya Housing Society,
Near Deep Bunglow, Pune-16,
Email ID-poojakhedkar@gmail.com
Mobile No.9850565000

- Applicant

(By Advocate Mr.V.Y.Kulkari)

Versus

1. The Union of India, Through
Ministry of Social Justice and the Empowerment,
Department of Empowerment of the Persons with
Disabilities (Divyanga Jan), New Delhi.
2. Ministry of Personnel, Public Grievance and the
Pension Department of Personnel and Training,
North Block, New Delhi.
3. Union Public Service Commission, Through
Commissioner, Having its office at :
Dhoulpur House, Shahajan Road,
New Delhi – 01.

Respondents

By Advocate Mr. R. R. Shetty for R-1 & R-2
(By Advocate Mr.V.B.Joshi for R-3)

ORDER
(Per : Justice M.G.Sewlikar, Member (J))

The applicant in this application is challenging advertisement dated 02nd February, 2022, issued by Union Public Service Commission (UPSC) and seeking a declaration that bench mark disability be provided for in category (d) of Section 34 of Rights of Persons with Disabilities Act, 2016, and direction that she may be considered in category (e) as she is suffering from multiple disabilities.

2. The applicant contends that she is suffering from low vision and mental ill-health, hence she is also covered under Section 34(1) (e) of Rights of Persons with Disabilities Act, 2016 (PwD Act, 2016). On 15.01.2018 Office Memorandum was issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training on categories of specified disabilities covered under reservation in posts and services of the Central Government vis-a-vis the category-wise percentage of reservation is specified in a table. In the advertisement ~~was~~ issued on 02nd February, 2022 by the UPSC, reservation was not provided for the categories specified in Section 34(1)(d) & (e) of PwD Act, 2016. The applicant appeared for Civil Services preliminary examination, 2022, she cleared it, then she appeared for the Civil Services Main examination

and she was shortlisted for interview. On 27th December, 2022 show cause notice was issued to the applicant by the 3rd Respondent, UPSC calling upon her to explain as to how she is eligible for applying for this examination under Multiple Disabilities category in accordance with Rule-25 read with Appendix-IV of CSE Rules, 2022. Show cause notice states that her disability does not fall in any of the categories mentioned in PwD Act, 2016. The applicant has challenged this show cause notice in this application.

3. The applicant contends that she is suffering from low vision and mental illness which fall under section 34(1) (d) & (e) of Section 34(i) of PwD Act, 2016. She further contends that reservation is not provided for category (d) of Section 34(1) of PwD Act, 2016. Mental illness, falls under category (d) of Section 34(1) of PwD Act, 2016, and low vision falls under category (e) of Section 34(1) of PwD Act, 2016. She seeks a declaration that reservation be provided in the advertisement in the category Section 34 (1)(d) & (e) of Section 34 of PwD Act, 2016. But the applicant is also claiming that she should get the benefit of reservations made for multiple sufferings under category (e) of Section 34(1) of PwD Act, 2016.

4. We have heard Shri Surana, learned counsel for the applicant, Shri R R Shetty, learned counsel for Respondents 1 & 2 and Shri V.B.Joshi, learned counsel for Respondent No.3, UPSC. By the order dated 30th January, 2023, this Tribunal directed Respondent No.4 to decide applicant's representation dated 27th December, 2022 within a period of four weeks by passing a reasoned order. Accordingly Respondent No.3 has allowed the applicant to appear in personality test / interview of CSM-2022 on provisional basis, subject to final determination of the aspect of her disability in Multiple Disabilities category by the competent Medical Board constituted by DoP&T / Govt.

5. Learned counsel for the 3rd Respondent Shri V.B.Joshi submits that the UPSC has allowed the applicant to appear for P.T./Interview and therefore nothing survives in this application. Learned counsel for the applicant submits that the applicant has challenged the advertisement contending that reservation be provided for categories (d) and (e) of Section 34(1) of PwD Act, 2016, and therefore cause of action of the application still survives. Learned counsel for the Respondents 1 and 2 Shri R.R.Shetty submits that the applicant has challenged the advertisement at a belated stage. He submits that the applicant had filled up the application form, appeared in the preliminary and in the main

examinations and after issuance of the show cause notice, she has challenged the notification. Shri R R Shetty, relies on the decision of the Hon'ble Supreme Court in the case of **Sunitha Aggarwal Vs. State of Haryana & Others (2002 (2) SCC 615)**. In para-4 of this judgment, following observations are made :-

“ We have heard learned counsel for the parties. Narration of the aforesaid facts would show that the appellant had disintitiled herself to seek relief in the writ petition filed by her before the High Court. The appellant did not challenge the order of the Vice-Chancellor declining to accord approval to her selection and, on the contrary, she applied afresh for the said post in response to readvertisement of the post without any kind of protest. Not only did she apply for the post, but she also appeared before the Selection Committee constituted consequent upon readvertisement of the post and that too without any kind of protest, and on the same day she filed a writ petition against the order of the Vice-Chancellor declining to accord his approval and obtained an ad interim order. In the writ petition she also did not disclose that she had applied for the post consequent upon the second advertisement. The appellant having appeared before the Selection Committee without any protest and having taken a chance, we are of the view that the appellant is estoppd by her conduct from challenging the earlier order of the Vice-Chancellor. The High Court was justified in refusing to accord any discretionary relief in favour of the appellant. The writ petition was rightly dismissed.”

The observations of the Hon'ble Supreme Court squarely apply to the facts of the case at hand. The applicant not only filled in the form, she also appeared in the preliminary examination and main examination. When interviews were to be held, at that time show cause notice came to

be issued by the 3rd Respondent to the applicant calling upon to explain as to how she fits in the categories enumerated in Section 34(1)(d) and (e) of PwD Act, 2016. It is worth noting that in the advertisement, the disabilities enumerated in Clause (d) and (e) of Section 34(1) of PwD Act, 2016 have not been included. The applicant did not challenge the advertisement immediately after it was published. She appeared for the examinations without any protest. At the fag end of the selection process, that too when show cause notice was issued, she has challenged the advertisement. She has by her own conduct dis-entitled herself to any relief she is seeking. We, therefore, agree with the submissions of learned counsels Shri R.R.Shetty and Shri V.B.Joshi that nothing survives in this application.

6. Shri Surana, learned counsel for the applicant apprehends that the order passed by the Department of Personnel and Training on the applicant's representation will also lose its force. We do not agree with this submission. The 3rd Respondent has not mentioned that the applicant is permitted to appear for the P.T./Interview subject to the outcome of the Original Application. The 3rd Respondent has permitted to appear the applicant in the P.T. / Interview provisionally subject to final determination of the aspect of her disability in Multiple Disabilities

category by the competent Medical Board constituted by DoP&T/Govt.

The apprehension expressed by the learned counsel is therefore without any basis.

7. Since nothing survives in the application, the same stands disposed of. No order as to costs.

(Bhagwan Saha)
Member (A)

(Justice M.G.Sewlikar)
Member (J)

Dated : 15th March, 2023.

Dictated in Open Court.

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JD
27/03/23

