

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10077 of 2024

- =====
1. Union Of India through the Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi, Pin Code - 110011.
 2. All India Institute of Medical Sciences, represented through it Director, Phulwarisharif, Patna, Bihar, Pin Code - 801507.

..... Petitioner/s

Versus

Dr. Sadia Fatima Daughter of Late Ahmed Ali Bhukhri, Resident of Near Pista House, Charminar, District - Hyderabad, Pin Code - 500002.

..... Respondent/s

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Selection and Appointment---Constitution of India---Article 14, 16, 41---Rights of Persons with Disabilities Act, 2016---section 2(r)---Rights of Persons with Disabilities Rules, 2017---Chapter V, Rule 11---Reservation for the Persons with Benchmark Disabilities---Core issue involved in the present lis is whether 2nd petitioner (AIIMS, Patna) is empowered to cancel the advertisement for recruitment to the post of Medical Officer (Unani) with reference to error committed insofar as inviting application from open competition and reserved for disable persons or not?--- In order to meet Article 14 and 16 of the Constitution read with reservation policy, the second petitioner has carried out cancellation of advertisement and re-notifying the same while rectifying the post is reserved for (UR-PwBD) and not for (UR-01) and it is a valid reason to cancel and re-notify---CAT has been constituted under the Constitution and it is a Tribunal and it is a statutory body. Therefore, CAT need not be necessary and proper party to the present writ---respondent has no right of selection and appointment till the process of selection and appointment is completed---a candidate placed in the select list gets no indefeasible right to be appointed even if vacancies are available, however, Competent Authority has to justify its decision not to proceed with selection process---Competent Authority is empowered to cancel the process of selection and appointment, however, it should not be arbitrary and valid reasons must be assigned---there is no arbitrariness

*insofar as cancellation of the advertisement in present case while re-notifying the same insofar as implementaton of social reservation to the post in question----*The vacancy or post of Medical Officer (Unani) was to be reserved for UR-PwBD in terms of rules of recruitment read with social reservation, which is a sound reasoning---impugned order set aside---2nd Petitioner directed to proceed with the 2nd advertisement and complete the process within a reasonable period of six months. **(11-13, 17, 19, 20)**
 (2010) 7 SCC 678**Relied Upon.**

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... .. Respondent/s

Appearance :

For the Petitioner/s

:

Dr.K.N.Singh, ASGI
Mr.Binay Kumar Pandey, Advocate
Mr.Shivaditya Dhari Sinha, Advocate

For the Respondent/s

:

Mr.Bhargava Pandey, Advocate
Md.Ghulam Mustafa, Advocate
Mr.Satyabhama Rao, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-01-2025

The present writ petition is presented on behalf of the Ministry of Health and Family Welfare and All India Institute of Medical Sciences, Patna in assailing the CAT order dated 26.04.2024 passed in O.A. No. 050/00479/2023.



2. 2nd Petitioner – AIIMS issued an advertisement on 29.06.2019 to fill up one post of Medical Officer (Unani) (UR-01) in the institute on direct recruitment basis. Candidates who have applied for the post were subjected to written test on 29.09.2019. Thereafter, 2nd petitioner had shortlisted and invited for verification of documents for the purpose conducting interview on 19.12.2019. Thereafter, meeting is stated to have been conveyed by the 2nd petitioner to rectify the error committed in the advertisement dated 29.06.2019 insofar as reservation of the advertised vacancy as (UR-01) is to be rectified as (UR - PwBD) (Person with Benchmark Disability). It is defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 (for short ‘Disabilities Act’). In other words, after taking note of Disability Act read with the relevant rules governing Medical Officer (Unani) post was required to be filled up by candidate of UR-PwBD. Thereafter, 2nd respondent cancelled the advertisement dated 29.06.2019 on 28.03.2023. Some of the candidates feeling aggrieved by the action of the 2nd petitioner – AIIMS, Patna, invoke remedy before this Court by filing CWJC No. 25504 of 2019 (Ziaul Haque and three others vs. All India Institute of Medical Sciences, Patna & Ors.) which was withdrawn on 15.03.2023. Thereafter, respondent – *Dr. Sadia Fatima* has filed an



O.A. No. 050/00479/2023 with a relief insofar as quashing notification dated 28.03.2023 by which earlier advertisement was cancelled and consequential directions have been sought to appoint the respondent to the post of Medical Officer (Unani) in the 2nd petitioner's institute while further granting seniority and other benefits.

3. During pendency of the Original Application before the CAT, Patna Bench, Patna (for short 'CAT'), 2nd petitioner had re-notified the post while issuing advertisement on 26.10.2023. The same was taken note of by the CAT while deciding Original Application and proceeded to pass order to the extent that cancellation of recruitment notification dated 28.03.2023 and later advertisement dated 26.10.2023 are quashed and set aside and allowed the Original Application of the respondent - *Dr. Sadia Fatima*. Feeling aggrieved by the order of the CAT dated 26.04.2024, petitioners are before this Court by filing the present writ petition.

Submissions on behalf of the petitioners

4. Learned counsel for the petitioners – Dr. K.N.Singh, ASGI submitted that there is a serious error in the first advertisement insofar as non-consideration of social reservation roster point, while ignoring the fact that Unreserved one post was



earmarked for UR-PwBD. On the other hand, advertisement dated 29.06.2019 is for open competition irrespective of disability persons. In the guise of rectifying the first advertisement, 2nd petitioner has taken a policy decision to cancel the advertisement dated 29.06.2019 and intended to issue a fresh advertisement and it was issued on 26.10.2023.

5. Learned counsel for the petitioners submitted that CAT has committed error in not appreciating the reasons for cancellation and re-notifying the post of Medical Officer (Unani) to the extent that it is Unreserved - PwBD. In other words, it is not open for the general candidate to participate in the process of selection and appointment. This exercise has been undertaken in the light of The Rights of Persons with Disabilities Act, 2016 read with the Rules, 2017 and reservation policy, the same has not been appreciated by the CAT. In Para 20 and 21, CAT has drawn inference that there is no difference between the first advertisement dated 29.06.2019 and second advertisement dated 26.10.2023. Therefore, action of cancellation of the first advertisement dated 29.06.2019 and re-notifying on 26.10.2023 is held to be bad is incorrect. In order to meet Article 14 & 16 of the Constitution read with reservation policy for the disabilities, it was the duty of the Appointing/Selecting Authority to rectify the error



committed in the first advertisement dated 29.06.2019 and it is a serious error with a valid reason and that has been rectified by means of cancellation of advertisement and re-notifying the same. This valid rectification has been side tracked by the CAT in its order dated 26.04.2024.

6. Learned counsel for the petitioners submitted that respondent during pendency of Original Application has failed to appraise further development insofar as issuance of second advertisement dated 26.10.2023 and it was not produced before the CAT and there is no challenge to it. In other words, Interlocutory Application should have been filed insofar as production of second advertisement dated 26.10.2023 and followed by amendment of Original Application insofar as challenge to the second advertisement dated 26.10.2023. This contention has been specifically pleaded in the present writ petition at ground number – XVII. The respondent has filed the counter affidavit in which respondent has not countered the ground number – XVII insofar as non-challenge to the second advertisement dated 26.10.2023. On these counts CWJC No. 10077 of 2024 is to be allowed while quashing CAT order and affirm 2nd advertisement.



Submissions on behalf of the respondent

7. Learned counsel for the respondent raised a preliminary issue to the extent that the present writ petition is not maintainable in view of the fact that CAT, Patna Bench, Patna has not been arrayed as necessary and proper party. It is submitted that there is no much difference between the first advertisement and the second advertisement and what has been incorporated as against vacancy earmarked is UR(PwBD). If the post is reserved for UR-PwBD, the petitioners can only segregate selection process restricting only to such of those candidates who are eligible to apply under UR-PwBD. He has also pointed out Para 8.2 of the official memorandum dated 15.01.2018 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel Training. Para 8.2 is relating to benchmark disability and it is a guideline to the employer how to fill up the vacancy of appointment of a person other than a person with benchmark disability. He has relied on Para 4 of the aforementioned official memorandum dated 15.01.2018 and it relates to adjustment against unreserved vacancies.

8. It is further submitted that the cancellation of notification dated 28.03.2023, which is an unreasoned order or a



decision for the reasons that reason assigned for cancellation is administrative issue. This reasoning is conclusive and not supported by reasons. It is also submitted that meeting was conveyed to cancel the advertisement dated 29.06.2019. There was no proper agenda with reference to any issue relating to cancellation of advertisement and supported by reasons.

9. It is further submitted that for giving effect to the first advertisement dated 29.06.2019 and to confirm the order of the CAT dated 26.04.2024, he is relying on provisions of the Disability Act, namely, Section 20(1), Section 3(2) and Section 3(3) read with Article 41 of the Constitution.

Analysis

10. Heard learned counsels for the respective parties.

11. Core issue involved in the present *lis* is whether 2nd petitioner – AIIMS, Patna is empowered to cancel the advertisement dated 29.06.2019 for recruitment to the post of Medical Officer (Unani) with reference to error committed insofar as inviting application from open competition and reserved for disable persons or not? Facts are not disputed insofar as issuance of advertisement to the post Medical Officer (Unani) on 29.06.2019 to the extent that in the advertisement dated 29.06.2019 we are concerned with the two columns, namely:-



S.No.	Name of the Post, Pay Scale and Essential Eligibility Criteria	Group	Age Limit	Number of vacancies(s) and reservation	Category of Disability for which post is identified suitable	Process of Selection
1.	Medical Officer Unani Level-11 In Pay Matrix (Rs. 56100-177500) Rs. 15600-39100 with GP 5400/- (Pre-revised)	A	21-35 Years	1 (UR-01)	OA/OL (OA-One Arm, OL-One Leg)	Written Test & Interview

The aforementioned defect was rectified with reference to 2nd advertisement dated 26.10.2023 as under:-

S.No.	Name of the Post, Pay Scale and Essential Eligibility Criteria	Group	Age Limit	Number of vacancies(s) and reservation	Category of Disability for which post is identified suitable	Process of Selection
1.	Medical Officer Unani Level-10 In Pay Matrix (Rs. 56100-177500) Rs. 15600-39100 with GP 5400/- (Pre-revised)	A	21-35 Years	1 (UR-PwBD)	OA/OL (OA-One Arm, OL-One Leg)	Written Test & Interview

12. The error committed while issuing the first advertisement on 29.06.2019 is in respect of not reserving one and only post of Medical Officer (Unani) to UR(PwBD). 1st advertisement issued on 29.06.2019, it has been shown as (UR-01) is not in accordance with rules of recruitment read with social reservation policy, in particularly Chapter V of Rights of Persons with Disabilities Rules, 2017 deals with vacancies for persons with



Benchmark Disabilities. Rule 11 deals with computation of vacancies. Rule 11 of Rules, 2017 reads as under:-

“11. Computation of vacancies.- (1)

For the purposes of computation of vacancies, four per cent of the total number of vacancies including vacancies arising in the identified and non-identified posts in the cadre strength in each group of posts shall be taken into account by the appropriate Government for the persons with benchmark disabilities: Provided that the reservation in promotion shall be in accordance with the instructions issued by the appropriate Government from time to time.

(2) Every Government establishment shall maintain a vacancy based roster for the purpose of calculation of vacancies for persons with benchmark disabilities in the cadre strength as per the instructions issued by the appropriate Government from time to time.

(3) While making advertisement to fill up vacancies, every Government establishment shall indicate the number of vacancies reserved for each class of persons with benchmark disabilities in accordance with the provisions of Section 34 of the Act.

(4) The reservation for persons with disabilities in accordance with the provisions of Section 34 of the Act shall be horizontal and the vacancies for persons with benchmark disabilities shall be maintained as a separate class.”

In other words, one and only Medical Officer (Unani) post was to be reserved for (UR-PwBD). Thereby unnecessarily open competition among the eligible candidates for recruitment to the post of Medical Officer (Unani) have been invited. This could have been segregated insofar as Unreserved without disability and



with disability of OA/OL. However, in order to meet Article 14 and 16 of the Constitution read with the provisions of Disability Act and reservation for disability 2nd petitioner – AIIMS, Patna has taken a positive steps in re-notifying the post of Medical Officer (Unani) while rectifying the advertisement to the extent that one and only Medical Officer (Unani) post is to be reserved for (UR-PwBD). In other words, second advertisement is required to be restricted to only such of those candidates with UR-PwBD and it is not for open competition. PwBD is a class of persons. It is to be noted that some of the PwBD candidates may not have applied for the post pursuant to 1st advertisement dated 29.06.2019 on the presumption that it is for open competition. For disable candidates only category of disability for which post is identified and for suitable to OA/OL (one arm and one leg) has been indicated in the 1st advertisement. In other words, the one and only Medical Officer (Unani) has not been reserved for (UR-PwBD). In order to meet Article 14 and 16 of the Constitution read with reservation policy, the second petitioner has carried out cancellation of advertisement and re-notifying the same while rectifying the post is reserved for (UR-PwBD) and not for (UR-01) and it is a valid reason to cancel and re-notify. The CAT has inferred that there is no much of difference between 1st advertisement dated 29.06.2019 and 2nd



advertisement dated 26.10.2023 is incorrect. Resultantly, CAT has committed error in allowing the Original Application.

13. Learned counsel for the respondent vehemently contended that the present petition is not maintainable in non-impleadment of CAT, Patna Bench, Patna as necessary and proper party. CAT has been constituted under the Constitution and it is a Tribunal and it is a statutory body. Therefore, CAT need not be necessary and proper party to the present CWJC, therefore, the aforementioned contention stands rejected.

14. Learned counsel for the respondent relied on Para 4 and 8.2 of O.M. dated 15.01.2018, it is in respect of reservation for the persons with benchmark disabilities. Para 4 and 8.2 has nothing to do with the advertisement dated 29.06.2019 read with the 2nd advertisement dated 26.10.2023. Similarly, in not assigning the reasons in the cancellation notification dated 28.03.2023 and mentioning administrative issue need not to be interfered. At the best respondent should have sought for calling the relevant records in order to ascertain from the file what are the reasons assigned.

15. Be that as it may, reasons are forthcoming from the records to the extent that in the advertisement dated 29.06.2019, it was inadvertently the post was unreserved and it was an open competition and so also reservation candidates can apply. On the



other hand, when the post is earmarked for Unreserved (PwBD) in such an event there is a sea of change insofar as 1st advertisement and 2nd advertisement, the same has not been apprised by the CAT.

16. Learned counsel for the respondent submitted that meeting stated to have been conveyed for the purpose of cancellation is not with proper agenda, the same cannot be adjudicated for the reasons that the petitioners have come up with specific contention and valid reasons for cancellation of advertisement dated 29.06.2019 and re-notifying the same.

17. Learned counsel for the petitioners relied on the following provisions of the Disability Act and Article 41 of the Constitution it reads as under:-

“Section 20. Non-discrimination in employment.—(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

3. Equality and non-discrimination. -

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.



Article 41. Right to work, to education and to public assistance in certain cases - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

The aforementioned provisions are not applicable to the case in hand. Further, respondent right has not been taken away insofar as cancellation of advertisement dated 29.06.2019. On the other hand, he has been provided one more opportunity to participate in the process of selection and appointment to the post of Medical Officer (Unani) against Unreserved (PwBD). In fact, respondent has no right of selection and appointment till the process of selection and appointment is completed. Court's have held from time to time that a candidate placed in the select list gets no indefeasible right to be appointed even if vacancies are available. However, Competent Authority has to justify its decision not to proceed with selection process. The selection process pursuant to first advertisement, it has not attained finality insofar as publishing select list.

18. Learned counsel for the petitioner submitted that there is no challenge to the 2nd advertisement dated 26.10.2023. On this point, respondent counsel could not answer as to why respondent has not filed any interlocutory application insofar as



production of 26.10.2023 notification and to challenge the same and it relates to 2nd advertisement. Even in the present petition in the counter affidavit by respondent insofar as ground no. XVII of the petitioners is silent. It is to be noticed that CAT has proceeded to interfere with the 2nd advertisement dated 26.10.2023 in the absence of challenge to the 2nd advertisement dated 26.10.2023 on behalf of the respondent. In the absence of specific relief insofar as challenge to 26.10.2023 -advertisement the Tribunal exceeded its jurisdiction insofar as interfering with 2nd advertisement dated 26.10.2023.

19. Time and again, Courts have held that Competent Authority is empowered to cancel the process of selection and appointment, however, it should not be arbitrary and valid reasons must be assigned. In this regard, the Hon'ble Supreme Court decision in the case of **East Coast Railway & Anr. vs. Mahadev Appa Rao & Ors.** reported in **(2010) 7 SCC 678**. The relevant Paras 14 to 16 and 31 are as under:-

“14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus



a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

15. To the same effect is the decision of this Court in UT of Chandigarh v. Dilbagh Singh [(1993) 1 SCC 154 : 1993 SCC (L&S) 144 : (1993) 23 ATC 431] where again this Court reiterated that while a candidate who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules entitling him to the same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a mala fide manner. That was also a case where the selection process had been cancelled by the Chandigarh Administration upon receipt of complaints about the unfair and injudicious manner in which the select list of candidates for appointment as conductors in CTU was prepared by the Selection Board. An inquiry got conducted into the said complaint proved the allegations made in the complaint to be true. It was in that backdrop that action taken by the Chandigarh Administration was held to be neither discriminatory nor unjustified as the same was duly supported by valid reasons for cancelling what was described by this Court to be as a “dubious selection”.

16. Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in-aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for mala fide reasons or in an arbitrary manner.

31. So also whether the competent authority ought to have conducted an enquiry into



or verification of the allegations before passing an order of cancellation is a matter that would depend upon the facts and circumstances of each case. It may often depend upon the nature, source and credibility of the material placed before the authority. It may also depend upon whether any such exercise is feasible having regard to the nature of the controversy, the constraints of time, effort and expense. But what is absolutely essential is that the authority making the order is alive to the material on the basis of which it purports to take a decision. It cannot act mechanically or under an impulse, for a writ court judicially reviewing any such order cannot countenance the exercise of power vested in a public authority except after due and proper application of mind. Any other view would amount to condoning a fraud upon such power which the authority exercising the same holds in trust only to be exercised for a legitimate purpose and along settled principles of administrative law.”

20. In the present case, we find that there is no arbitrariness insofar as cancellation of the advertisement dated 29.06.2019 while re-notifying the same insofar as implementation of social reservation to the post in question. The vacancy or post of Medical Officer (Unani) was to be reserved for UR-PwBD in terms of rules of recruitment read with social reservation, which is a sound reasoning.

21. In the light of these facts and circumstances, the petitioners have made out a case so as to interfere with the CAT order dated 26.04.2024 passed in O.A. No. 050/00479/2023 and it is set aside.



22. 2nd Petitioner – AIIMS, Patna is hereby directed to proceed with the 2nd advertisement dated 26.10.2023 and complete the process within a reasonable period of six months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

abhishekk/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.01.2025
Transmission Date	NA

