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

*Reserved on: 30.01.2025*
*Date of Decision: 29.05.2025*

\+ W.P.(C) 5904/2023 & CM APPL. 23090/2023

COMPTROLLER AND AUDITOR GENERAL OF INDIA .....Petitioners

Through: Dr. S.S. Hooda, Adv.

versus

AMIT YADAV & ANR. .....Respondents

Through: Mr. Kaoliangpou Kamei and Ms. Snigdha Jayakrishnan, Advs. for R-1 Ms. Pratima N. Lakra, CGSC with Ms. Kashish G Baweja, Adv. for R-2/UOI Mr. Raghav Sabharwal, Mr. Ayush Shrivastava and Mr. Harsh Vardhan Singh, Advs. for Intervenor.

**CORAM:**
**HON'BLE MR. JUSTICE C.HARI SHANKAR**
**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT**

**% 29.05.2025**

**AJAY DIGPAUL, J.**

**Brief facts**

**1.** The present petition under Articles 226 read with 227 of the Constitution of India has been filed on behalf of the petitioner namely Comptroller & Auditor General of India[1] seeking quashing of the order

[1] Hereinafter "CAG"

dated 23.01.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 339/2022[2].

**2.** The relevant facts that led to the filing of the present petition are as under:

i. The instant case arises out of the denial of appointment to respondent no. 1 namely Amit Yadav, a candidate (Rank 10521, Roll No. 2201130804) in the Staff Selection Commission's Combined Graduate Level Examination, 2018[3], who had applied for the post of *Auditor (Post Code D33)*[4] in the CAG. Amit Yadav had applied under the Persons with Disabilities - Other category[5] and Other Backward Class[6] category.

ii. The SSC CGLE 2018 was notified on 05.05.2018 to fill various Group 'B' and 'C' posts in various Ministries/Departments/Organizations in the Government of India. Thereafter, tentative list of vacancies as on 27.12.2019 for SSC CGLE 2018 was notified by the Staff Selection Commission[7] in which under entry no. 24, 2 vacancies were earmarked for the post of Auditor in CAG for 'Other PwD'.

iii. As part of the application process and selection norms, candidates belonging to reserved categories were required to furnish

[2] Hereinafter "CAT/Tribunal"
[3] Hereinafter "SSC CGLE 2018"
[4] Hereinafter "subject post"
[5] Hereinafter "Other PwD"
[6] Hereinafter "OBC"
[7] Hereinafter "SSC"

certificates of disability in the prescribed format issued by competent medical authorities as per the relevant government notifications.

iv. Respondent no. 1 is stated to have been issued a disability certificate dated 02.05.2018, by the Department of Empowerment of Persons with Disabilities, Ministry of Social justice and Empowerment, Government of India, which states that the respondent's case pertain to 'mental illness' and that he has 55% of disability.

v. Pursuant to respondent no. 1 clearing Tier I and II stages of the SSC CGLE 2018, Tier-III stage was conducted and its result was declared on 30.09.2020 by the SSC for appearing in Skill Test/Document Verification, i.e., Tier-IV (final round of tests) of the said examination.

vi. At the time of Tier-IV (final round), on 27.02.2021, the respondent no.1 was asked to mention the posts preference of eligible posts where he selected *inter alia* the post of Auditor (D33). Thereafter, a final list of vacancies as on 15.03.2021 stood notified by SSC, again containing Auditor - post coded as D33 at entry no. 24, where 2 vacancies were earmarked for the Other PwD category. Pursuant to the same, on 01.04.2021, the final merit list was uploaded on the website where respondent no. 1 stood recommended for the post of Auditor (D33).

vii. However, on 28.09.2021, the CAG declared a State/Office Allocation List. In the said list, it was conveyed that the dossiers of

certain candidates, including that of Amit Yadav, were being returned to the SSC. The dossier was returned due to the reason that the post of Auditor was identified as not suitable for PwBD - *mental illness* against which respondent no. 1 was recommended. This was followed by a formal letter dated 30.09.2021 from the Office of CAG to SSC, whereby, the rejection of respondent no. 1's candidature was reiterated on the aforementioned ground.

viii. In response, respondent no. 1 submitted a detailed representation dated 29.09.2021 to the SSC, asserting that the rejection was arbitrary. Subsequently, respondent no. 1 filed two grievances before the Department of Personnel and Training[8], bearing Registration Nos. DOPAT/E/2021/09996 and DOPAT/E/2021/09998, on 08.10.2021, followed by an email communication dated 23.10.2021 addressed to the Assistant CAG, reiterating his eligibility and requesting appointment. Despite multiple representations, no affirmative action was taken by either the SSC or the CAG, and respondent no. 1 remained unappointed to the subject post.

ix. Aggrieved by the inaction and the return of his dossier, respondent no. 1 filed Original Application No. 339/2022 before the CAT invoking his rights under the Rights of Persons with Disabilities Act, 2016[9].

[8] Hereinafter "DoPT"
[9] Hereinafter "RPwD Act"

x. Before the CAT, reliance was placed on Gazette Notification No. 38-16/2020-DD-III dated 04.01.2021 of the Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disabilities (Divyangjan)[10]. Respondent no. 1 had contended that the said notification explicitly includes mental illness as a benchmark disability suitable for the post of Auditor. This inclusion is reflected at 'Page 1824'of the Notification dated 04.01.2021, which is corresponding to the subject post.

xi. By a final order dated 23.01.2023[11], the learned Tribunal allowed the said Original Application directing the CAG to constitute a Medical Board to assess his fitness for the duties associated with the post of Auditor. The learned Tribunal further directed that in the event respondent no. 1 is found fit by the Medical Board, he shall be given appointment to the post in question. Challenging the said order, the CAG has filed the instant writ petition.

**Submissions on behalf of the petitioner**

**3.** Dr. S.S. Hooda, learned counsel appearing on behalf of the CAG made the following averments to challenge the impugned order:

i. It is submitted that respondent no. 1 was recommended through SSC CGLE 2018 under the Other PwD Category, specifically citing 55% benchmark disability due to mental illness. Upon receiving the dossier of respondent no. 1, the petitioner evaluated the post of "Auditor" and found it unsuitable for the benchmark disability i.e.,

[10] Hereinafter "Notification dated 04.01.2021"

mental illness; in terms of minutes of meetings dated 07.12.2017, letter dated 09.07.2018 (along with the list of identified suitable posts), letter dated 14.09.2018 along with OM dated 15.01.2018 and minutes of the meeting dated 14.05.2018 as well as due to the fact that the 'mental illness' category was not earmarked for the subject post in the SSC CGLE 2018 advertisement. There was no specific reservation for persons suffering from 'mental illness' for any post whatsoever in the advertisement of SSC CGLE 2018 itself. Consequently, by official communication dated 30.09.2021, the dossier of respondent no. 1 was returned by the CAG to the SSC in light of the nature of the disability and its unsuitability.

ii. The learned Tribunal's directive to constitute a Medical Board amounts to judicial overreach into a domain that squarely falls within administrative discretion.

iii. Learned counsel submitted that taking into consideration of Sections 33 and 34 of the RPwD Act as well as minutes of meetings dated 07.12.2017, an expert committee was constituted to identify suitable posts in the petitioner department. Based on the physical requirement and functional classification for discharge of the duties for respective Group 'B' and 'C' posts, suitable posts for Persons with Benchmark Disabilities[12] were identified and prescribed.

iv. Accordingly, SSC was intimated vide letter dated 09.07.2018 (along with the list of identified suitable posts) and letter dated

[11] Hereinafter "impugned order"
[12] Hereinafter "PwBD"

14.09.2018 along with OM dated 15.01.2018, about the posts suitable for PwBD in which vacancies were to be filled. Pertinently, the subject post was not identified for the benchmark disability – mental illness. The Annexure to the aforesaid letters and OM shows that for the post of Auditor in Indian Audit and Accounts Department[13], the permitted benchmark disabilities are – 'deaf and hard of hearing; locomotor disability; leprosy cured; dwarfism; acid attack victims and multiple disabilities from the mentioned disabilities'. Evidently, the disability of 'mental illness' does not find a mention as one of the specified disabilities.

v. The learned Tribunal failed to consider the minutes of meetings dated 07.12.2017, letter dated 09.07.2018 (along with the list of identified suitable posts), letter dated 14.09.2018 along with OM dated 15.01.2018 and minutes of the meeting dated 14.05.2018, wherein a detailed job-function analysis was conducted by IA & AD, and it was concluded that the post of Auditor is not suitable for candidates who fall under the PwBD - *mental illness*.

vi. The learned Tribunal erred in directing appointment subject to determination of suitability by a Medical Board, when the appointment itself was never processed owing to non-availability of a suitable vacancy for the subject post since the same was not identified by the concerned department.

vii. Further, reliance is placed on a decision dated 27.03.2023 by the Chief Commissioner for Persons with Disabilities, wherein it was

[13] Hereinafter "IA & AD"

held that the Notification dated 04.01.2021 cannot retrospectively apply to vacancies advertised prior to its issuance (i.e., SSC CGLE 2018).

viii. Dr. S.S. Hooda submitted that primary takeaway from the aforesaid meetings and letters/OM is that if a particular sub-category of disability cannot be accommodated, a conscious decision can be taken to exclude that category. Further, if exemption is sought from all five categories of disabilities (in terms of Section 34 of the RPwD Act), only then consultation with the Chief/State Commissioner is necessary and that even if any particular sub-category is excluded, the mandate of 4% reservation is required to be followed.

ix. It is to be noted that the petitioner has not sought any relaxation/exemption and thus, no consultation was necessary and the department was empowered to make a conscious decision. Thus, it is prayed that the impugned order, being bad in law, may be set aside.

**Submissions on behalf of respondent no. 1**

**4.** *Per Contra*, Mr. Kaoliangpou Kamei, learned counsel appearing on behalf of respondent no. 1 advanced the below mentioned contentions:

i. It is submitted that respondent no. 1 was duly recommended through the SSC CGLE 2018 under the Other PwD Category, with a certified benchmark disability of 55% and had opted for post code

D33 – Auditor. He was declared successful and all requisite formalities, including document verification and submission of disability certificate, were completed.

ii. Data Verification Sheet dated 27.02.2021 explicitly declared his eligibility for the post code D33. The final result notification dated 01.04.2021 included his name in the merit list under Other PwD Category. However, vide letter dated 30.09.2021, the CAG returned his dossier to SSC, stating that his disability is not suitable for the subject post. The respondent submitted that this was an arbitrary action on the petitioner's part.

iii. Respondent no. 1 has placed strong reliance on the Notification dated 04.01.2021. It is argued that Note 5 of the said notification clarifies that posts with similar job profiles and work environments are deemed suitable even if not explicitly named. The respondent specifically relies upon Page 1824 of the aforementioned notification, which includes the post of "Auditor" as expressly suitable for persons with mental illness, subject to standard working conditions.

iv. It is argued that the petitioner's contention that the said Gazette Notification cannot be retrospectively applied to the CGLE 2018 recruitment process is misconceived. Respondent no. 1 emphasizes upon the fact that the final result of SSC CGLE 2018 was declared by SSC only on 01.04.2021, by which date the Gazette Notification dated 04.01.2021 was already in force. Further, the Data Verification Sheet issued on 27.02.2021, authenticated by SSC,

confirmed that the respondent was eligible for the post of Auditor under post code D33. Therefore, the claim of prospective inapplicability is factually untenable and legally unsustainable.

v. Learned counsel submitted that respondent no. 1 also filed two online grievances on 08.10.2021 before the DoPT bearing Registration Nos. DOPAT/E/2021/09996 and DOPAT/E/2021/09998, highlighting that the Data Verification Sheet itself mentioned that he was eligible for post code D33, and that the CAG's unilateral decision to return the dossier violated the statutory safeguards conferred under the RPwD Act, particularly Sections 3, 20, and 34 thereof. However, no redressal was granted.

vi. The impugned order has been passed rightly and in accordance with the law since it reiterates that the Notification dated 04.01.2021, which was in force at the time of final selection and allocation, is binding on all departments including the CAG, and cannot be overridden by departmental minutes or internal assessments, especially when mental illness was officially included in the suitability matrix under the Act.

vii. It is argued that the refusal to constitute a Medical Board, and the unilateral rejection of his candidature without any individualized assessment, violates his rights enshrined under the Constitution of India, which prohibits exclusion of any person with disability from employment opportunities on the ground of disability alone. The learned Tribunal's direction merely requires the petitioner to

conduct a medical and functional assessment of his suitability for the subject post, which is both reasonable and procedurally fair.

viii. However, no Medical Board was ever constituted to examine whether his specific condition affects his functional suitability. Thus, the return of his dossier without individualized assessment amounts to discrimination based on generalized assumptions. Therefore, the impugned order may be upheld and the instant petition be dismissed.

**Submissions on behalf of the intervenor/Sudhanshu Kardam**

**5.** Mr. Rajan Sabharwal, learned counsel appeared on behalf of the intervenor, a similarly placed candidate, whose dossier was also returned by the CAG and whose Original Application is pending before the CAT (Original Application no. 2563/2021).

**6.** Learned counsel submitted that the intervenor is a similarly placed candidate suffering from 'specific learning disorder'. He was also declared successful and recommended for appointment to the post of Assistant Audit Officer.

**7.** Learned counsel has further made submissions which are similar to what respondent no. 1 has submitted and has also placed strong reliance on the Notification dated 04.01.2021. It is argued that the petitioner has erroneously and conveniently presumed that if exemption is sought only for a particular disability and not for the entire five categories of disabilities, then the consultation with Chief/State Commissioner was not

necessary and the Department was empowered to make a conscious decision as to persons with what disabilities are suitable for the work. The said interpretation is also contrary to the OM dated 15.01.2018 which specifically provides that reference and notification are required to be made whether exemption is sought fully or partly, and not only in cases of full exemption from all five categories mentioned in Section 34 of the RPwD Act.

**8.** Heard the learned counsel appearing on behalf of the respective parties and perused the material available on record.

**Analysis and findings**

**9.** Before delving into the adjudication of the matter at hand, we find it prudent to discuss the findings of the impugned order since the same is under challenge herein. For the sake of convenience, the relevant portion of the same is reproduced as under:

> *"..4.1 SSC initially did not mention vacancies reserved for applicant"s category "Other PwD". The SSC in its official advertisement dated 05.05.2018 just extended the right of reservation to these newly recognized disability categories but did not mention specific posts reserved for these new categories. The advertisement provided that vacancies will be notified in due course and the candidates belonging to new categories were asked to apply under "Other PwD category". The post of Auditor remained recognized for other PwD which includes Mentally Ill in both the lists of vacancies notified in due course. The first ever list of vacancies containing tentative vacancies were notified by the SSC on 27.12.2019 in which 2 seats for the post of Auditor in CAG stood earmarked against this "Other PwD" category and 4 seats for another senior post Assistant Audit Officer in CAG a Group „B" post stood earmarked for Other PwD. Thereafter, in the Final List of vacancies dated 15.03.2021, the above mentioned posts again stood earmarked for the Other PWD category. In the final*

*list of vacancies, the post of Auditor was coded as D33 at entry no.24. Thus, the post of Auditor remained recognized for the Other PwD category in both the list of vacancies the final being dated 15.03.2021.*

*4.2 Therefore, the recruitment process completed only after recommendation of the applicant on 01.04.2021 and final list with firm number of vacancies got notified on 15.03.2021 meaning the right of reservation was extended on 05.05.2018 but fructified and got fortified only on 01.04.2021 during which the notification was effective and a binding law on all departments under Central Government for the purposes of suitable posts identification for different categories of PwD.*

*4.3 The internal communication dated 30.09.2021 by CAG to SSC is contrary to letter and spirit of provisions of the Disability Act.*

*4.3 The internal communication dated 30.09.2021 by CAG to SSC is contrary to letter and spirit of provisions of the Disability Act.*

*4.4 This Tribunal vide record of proceedings granted interim relief to the effect that "In the facts and circumstances of the case, as an interim measure, it is ordered that the respondents shall not create any third party interest against the post, for which the applicant has been selected, till the next date of hearing.*

*xxx xxx xxx*

*4.7 In the present case, the applicant cannot be faulted since the Appropriate Government ie (UOI in present case) had not identified the post in respondent department till 1.4.2021(date on which merit list was upload on website and the applicant stood recommended), the applicant had filed up his preference as on 27.2.2021 based on the merits.*

*4.8 Post of "Auditor" in CAG not identified /earmarked for mental illness was within the realm of the SSC and CAG for which he had no knowledge or notice. Therefore, the applicant had filed his preference as per merits for which otherwise he fulfilled all other eligible criterion. Even assuming for sake of arguments, that the applicant could not have given post of Auditor in CAG due to "Mental Illness "but at the same time he ought to have been put to notice by SSC to give suitable prefernce for alternative suitable post.*

*xxx xxx xxx*

*7. It is noticeable character in the facts of the present case, the only medical expert member in the meeting Dr. Deshpande*

*recommended that Mentally Ill persons are also fit for the group B & C posts. Ironically, while all the members of the meeting were of the opinion that Mentally Ill along with other sub categories under Sec 34(1) (d) person be excluded from group B & C posts of the CAG, it is Dr. Deshpande who dissented in Point no.7 of the minutes of the meeting. Dr. Deshpande in fact, recommended that mentally ill persons be considered for the CAG. In this manner, CAG excluded all persons under sub category of Sec 34 (1)(d) from CAG group B&C posts and retained only multiple disability candidates.*

*8. As noticed above, the applicant is working as PO in Bank. The contention of respondent/CAG is that they have duly provided reservation as per Section 34 of the RPWD Act by providing total 4% reservation. Out of which requirement of providing 1% for the categories under clause (d) and (e) of the Section 34 has been complied with because they have provided 1% reservation to the PwDs falling under (e) clause and now even if they excuse PwDs from (d) clause it will not be a violation of law. It is contrary to law laid down by the Hon"ble Apex Court in Ravinder Kumar Dhariwal & Anr. (supra). Section 34 clearly rules that there has to be one percent reservation for the PwDs categorized under clauses (d) and (e) and not (d) or (e) i.e. reservation has to be made available to both the categories under clauses and not either of the two. Therefore, the correct course of action would have been to provide reservation to both the categories i.e. under clause (d) and (e) jointly whoever amongst them secures merit would be allotted the post. In this case, the applicant has been recommended as per correct interpretation of law because he was also qualified in the merit list along with other candidates under Multiple disability falling under clause (e). Thus, in the correct course of action, both should have been appointed against one percent reservation.*

*9. It is submitted that vide order dated 01.04.2021, final result with list of recommended candidates and allotted departments, was notified by the SSC with Auditor post coded as D33.*

*xxx xxx xxx*

*18. In view of the above discussion, the return of dossier vide communication dated 30.09.2021 is bad in law and is hereby quashed and set aside. The OA is allowed. The applicant is also entitled to the protection of Section 20(4) of the RPwD Act. The applicant"s suitability on medical grounds can be assessed by an Independent Medical Board set up by CAG for the post of "Auditor". Based on such medical assessment, applicant may be offered appointment to the post of Auditor. The said exercise be carried out within a period of two months from the date of receipt of the certified copy of the judgment.*

*19. In the event, applicant is found unsuitable for the post of "Auditor" by the Independent Medical Board, he shall be entitled to alternative offer of appointment to alternative suitable equivalent assignment/post in another department in consultation with Ministry of Social Justice and Empowerment and SSC while re-assigning/re-allocating the applicant to an alternative post, it become necessary that his pay, emoluments and conditions of service must be protected.*

*20. OA is allowed in aforesaid terms. No order as to costs.."*

**10.** Upon perusal of the aforesaid extracts of the impugned order, it is observed that the learned Tribunal recorded that the final result of SSC CGLE 2018 was declared on 01.04.2021, where the name of respondent no. 1 herein appeared under the recommended candidates for the post of Auditor (post code D33) in the office of the CAG. However, it was noted that by communication dated 30.09.2021, the office of the CAG had returned his dossier to the SSC, stating that the post of Auditor was not found suitable for PwBD - *mental illness*.

**11.** The learned Tribunal took notice of the Notification dated 04.01.2021, which identifies various posts suitable for PwBD. The post of Auditor was explicitly included in the list in the aforesaid notification as suitable for PwBD - *mental illness*. The learned Tribunal referred to this statutory notification to emphasize that the denial of appointment on the ground that his disability rendered him unsuitable was *prima facie* inconsistent with the express inclusion of the post in the suitability list.

**12.** The learned Tribunal further recorded that the Data Verification Sheet generated and authenticated by the SSC during document verification specifically indicated that he was eligible for post code D33 (Auditor) and that all due verification formalities had been completed.

**13.** It was observed that no individual assessment was carried out by the CAG or any Medical Board to determine whether he has specific medical condition which would substantially impair the discharge of essential functions of the post of Auditor. The learned Tribunal held that in the absence of such a personalized medical evaluation, the rejection of the candidature lacked procedural fairness and contravened the principles of natural justice.

**14.** In its conclusive findings, the learned Tribunal held that respondent no. 1 herein, having been validly recommended by SSC under the Other PwD category, and the post being identified as suitable for PwBD - *mental illness* (vide the Notification dated 04.01.2021), could not have been denied appointment without recourse to individualized assessment. It was held that blanket denial of appointment solely on the basis of internal departmental assessment and minutes of meetings, particularly when contrary to a Central Government Gazette Notification, could not be sustained. Accordingly, the OA was allowed and the following operative directions were issued:

i. The petitioner herein was directed to constitute a Medical Board to assess whether respondent no. 1, considering his disability of 55% mental illness, is functionally fit to perform the duties and responsibilities attached to the post of Auditor.

ii. In the event the Medical Board finds the applicant suitable, he shall be appointed to the post of Auditor. If found unsuitable for the post of Auditor, he shall be entitled to an alternative offer of appointment to alternative suitable equivalent assignment/post in

another department in consultation with Ministry of Social Justice and Empowerment and SSC while re-assigning/re-allocating the applicant to an alternative post, it becomes necessary that his pay, emoluments and conditions of service must be protected.

**15.** Upon meticulous examination of the pleadings, documents, and submissions advanced by learned counsel for the parties, the issue that falls for adjudication before this Court is whether the learned Tribunal was correct in quashing the communication dated 30.09.2021 and in directing the constitution of a Medical Board for the assessment of respondent no. 1's suitability for appointment to the post of Auditor, in light of the Notification dated 04.01.2021 issued under the RPwD Act.

***Advertisement dated 05.05.2018 and its binding effect-***

**16.** It is imperative to note that the advertisement issued by the SSC on 05.05.2018 formed the foundation of the recruitment process in question. Respondent no. 1 did not challenge the advertisement at any stage.

**17.** A perusal of page no. 4, Column 24 of the advertisement reveals that the post of Auditor was specifically identified as suitable for PwBD falling under categories OA (One Arm), OL (One Leg), BL (Both Legs) and HH (Hearing Handicapped). There is no mention, whatsoever, of 'mental illness' as an identified disability for the subject post in the said advertisement. Relevant portion of the advertisement is as under:

| ***S No*** | ***Name of Post*** | ***Ministry/ Department/ Office/ Cadre*** | ***Classification*** | ***Grade Pay (GP)*** | ***Nature of Physical Disabilities permissible for the post*** | ***Age Limit*** |
|---|---|---|---|---|---|---|
| *24* | *Auditor* | *Offices under C&AG* | *Group "C"* | *2800* | *OA, OL, BL & HH* | *18-27 years* |
| *25* | *Auditor* | *Offices under CGDA* | *Group "C"* | *2800* | | *18-27 years* |
| *26* | *Auditor* | *Other Ministry/ Departments* | *Group "C"* | *2800* | | *18-27 years* |

**18.** We are of the view that respondent no. 1 has attempted to rely upon Note (iii) at page 5 of the advertisement which provides that candidates with benchmark disabilities can apply for various posts, if eligible. However, this clause is clearly prefaced by a conditional caveat that appointment shall be subject to identification of posts suitable for such categories of disabilities and the availability of reported vacancies by the indenting departments. Relevant portion of Note III of the advertisement reads as under:

> *"..Note-III: As the "Rights of Persons with Disabilities Act, 2016" has come into force with effect from 19.04.2017, and beside OH, HH and VH categories, new categories of disabilities such as Autism, Dwarfism, Acid Attack victims, Muscular Dystrophy, Intellectual Disability, Specific Learning Disability, Mental Illness and Multiple Disabilities, etc have been included. Therefore, the candidates with such disabilities may also apply giving detail of their disabilities in the online Application Form. However, their selection will be subject to identification of posts suitable for these categories as well as reporting of vacancies by the Indenting*

*Departments. Candidates suffering from various disabilities as identified vide DoP&T OM No: 36035/02/2017-Estt (Res) dated 15-01-2018 (para-2.2) may select following PwD categories in the online Registration/ Application Form at http://www.ssconline@nic.in:..”*

**19.** The said Note (iii) cannot be interpreted to imply that all categories of benchmark disabilities, including mental illness, are eligible for every advertised post. The clause merely facilitates applications from such candidates, subject to the constraints of identified posts and reported vacancies. Thus, no enforceable right could be claimed by the respondent under Note (iii) in the absence of identification of the post of Auditor as suitable for mental illness. It is well within the discretion of the department concerned to figure out as to what all categories of PwBD would be suitable for a particular post bearing in mind the administrative exigencies, and the nature of job, and its responsibilities.

***Conduct of respondent no. 1 and absence of challenge to advertisement-***

**20.** Respondent no. 1, by his own admission, was previously employed in a nationalized bank and is thus presumed to possess a degree of prudence and rationality. It is not his case that the advertisement was ever challenged by him for failing to identify the post of Auditor as suitable for “mental illness.” On the contrary, he proceeded to participate in the recruitment process with full knowledge of the specified eligibility criteria.

**21.** Despite being aware of the express exclusions in the advertisement, respondent no. 1 willingly participated in the recruitment process. There is no material on record to indicate that he had, at any point, challenged the non-inclusion or non-mentioning of his disability category (mental illness)

for the subject post. In light of this, the settled principle of law is attracted, namely, that a candidate who participates in a selection process without demur cannot be permitted to challenge the criteria or procedure after being unsuccessful. The Hon'ble Supreme Court also in ***Manish Kumar Shahi v. State of Bihar***[14], observed that a candidate, after having participated in the selection process on the basis of recruitment notification, later on, in the event his name is not found in the merit list or is declared unsuccessful despite being in the merit list, cannot invoke the extraordinary writ jurisdiction to contend his entitlement in the selection, by challenging the recruitment notification, since the said candidate took part in the recruitment process being completely aware about the criteria. Relevant portion of the said judgment reads as under:

> *"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."*

**22.** The law, as stated above, is no longer *res integra*, that once the eligibility criteria are published and made known to all prospective applicants through a public advertisement, and a candidate voluntarily participates in the recruitment process with full knowledge of such terms, he is estopped from questioning the same at a later stage, especially after

[14] **(2010) 12 SCC 576**

having been declared successful on a post which in the present case, *ex facie*, did not cater to respondent no. 1's disability category. This settled principle of law has been consistently upheld in a catena of decisions of the Hon'ble Supreme Court as well as this Court.

**23.** In the present case, no material has been placed on record to show that the respondent made any contemporaneous representation or protest challenging the absence of reservation for persons with mental illness in the said advertisement. Having participated in the process unconditionally, he cannot now claim a right of appointment by relying on a subsequent notification dated 04.01.2021, which did not govern the recruitment cycle initiated in the year 2018. The absence of any challenge to the advertisement reinforces the legitimacy of the petitioner's stand, as the entire selection process was conducted within the four corners of the published norms, including post identification in terms of Section 33 of the RPwD Act.

**24.** Accordingly, respondent no. 1's subsequent attempt to invoke the Notification dated 04.01.2021 and contend entitlement under a disability category that was never identified for the subject post, not only defeats the sanctity of the recruitment advertisement but also runs afoul of the doctrine of legitimate expectation and settled jurisprudence on estoppel by acquiescence. The non-challenge to the advertisement, therefore, operates as a bar against the respondent's retrospective claim, and the petitioner's action in returning the dossier was fully consistent with the administrative and legal framework applicable at the relevant time.

***Retrospective application of notification dated 04.01.2021-***

**25.** The legal proposition with regard to the retrospective applicability of a rule/notification/legislation is well settled, as per which subordinate legislation, such as notifications, cannot have retrospective effect unless explicitly authorized by the parent statute.

**26.** In ***Union of India v. G.S. Chatha Rice Mills***[15], the Hon'ble Supreme Court elaborated on the legal position concerning the retrospective applicability of subordinate legislation, specifically notifications issued under delegated legislative powers. It was held that a notification issued under a delegated power — such as under the Customs Act, 1962 — cannot have retrospective operation unless the parent statute expressly authorizes such retrospective effect. In the absence of such statutory backing, any subordinate legislation, including a customs notification enhancing duty, becomes effective only from the date and time of its actual publication in the Official Gazette. The Court further emphasized that legal certainty and fairness are essential principles of the rule of law. It reiterated that individuals are entitled to arrange their affairs in accordance with the law as it exists at the time of their action. Any retrospective change, particularly in a fiscal or regulatory regime, can unfairly prejudice those who acted in accordance with the prevailing legal position. The Hon'ble Supreme Court further clarified that a notification that is intended to affect substantive rights cannot override transactions that have already been completed under the earlier regime, unless retrospective application is clearly stipulated and valid under the enabling statute.

[15] **(2021) 2 SCC 209**

**27.** Thus, the above said judgment reaffirms the settled principle that delegated legislation, including government notifications, cannot operate retrospectively unless the legislature has conferred such a power in unambiguous terms. The relevant portion of ***G.S. Chatha Rice Mills (Supra)*** are as under:

> *"103. The above decision was distinguished in New Bank of India Employees' Union v. Union of India [New Bank of India Employees' Union v. Union of India,[16] ("New Bank of India") where the Court held that a scheme framed under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 stands on a distinct footing of being a legislative and not an administrative function. The Court held that the question was not of much relevance in view of its conclusions on the main issues presented for decision. Yet, it considered the question and laid emphasis on the authority entrusted to Parliament to consider, within 30 days, to agree/modify/arrive at any decision with regards to the scheme, only thereafter was the scheme was to have effect. These requirements, qualitatively distinguished from a requirement of mere "laying" under Section 45 of the Banking Regulation Act, 1949, were pivotal in the court's view that a scheme under the 1980 Act has a legislative character. Mr Nataraj sought to emphasise a similar argument, by placing reliance on the provisions of sub-sections (3) and (4) of Section 7 which are made applicable by reason of sub-section (2) of Section 8-A. However, in the absence of a sine qua non for parliamentary sanction before the notification is enforceable, the decision of New Bank of India [New Bank of India Employees' Union v. Union of India (Supra), provides little anchor. For the purpose of the present decision, the point which needs emphasis is that in empowering the Central Government to exercise power under Section 8-A of the Customs Tariff Act, Parliament has not either expressly or by necessary implication indicated that a notification once issued will have force and effect anterior in time. The provisions of sub-sections (3) and (4) of Section 7 of the Customs Tariff Act bring to bear legislative oversight and supervision over the power which is entrusted to the Central Government under Section 8-A. That however does not lead to the inference that a notification under Section 8-A has retrospective effect. Plainly, a notification enhancing the rate of duty under Section 8-A has prospective effect.*
>
> *104. A rule framed by the delegate of the legislature does not have*

[16] **(1996) 8 SCC 407**

*retrospective effect unless the statutory provision under which it is framed allows retrospectivity either by the use of specific words to that effect or by necessary implication. In Hukam Chand v. Union of India [Hukam Chand v. Union of India*[17] *, a three-Judge Bench of this Court held that : (SCC pp. 604-05, para 8)*

> *"8. ... The extent and amplitude of the rule-making power would depend upon and be governed by the language of the section. If a particular rule were not to fall within the ambit and purview of the section, the Central Government in such an event would have no power to make that rule. Likewise, if there was nothing in the language of Section 40 to empower the Central Government either expressly or by necessary implication, to make a rule retroactively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule. The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority and that court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled...."*
>
> *(emphasis supplied)*

*105. The distinction between the plenary power which is entrusted to Parliament and the State Legislatures to enact legislation with both prospective and retrospective effect, and the power entrusted to a delegate of the legislature to frame subordinate legislation has been maintained in a consistent line of precedent of this Court.*

*105.1. In Regional Transport Officer v. Associated Transport Madras (P) Ltd. [Regional Transport Officer v. Associated Transport Madras (P) Ltd.*[18] *, V.R. Krishna Iyer, J. speaking for a two-Judge Bench of this Court with his characteristic eloquence observed : (SCC p. 599, para 4)*

> *"4. The legislature has no doubt a plenary power in the matter of enactment of statutes and can itself make*

[17] **(1972) 2 SCC 601**
[18] **(1980) 4 SCC 597**

*retrospective laws subject, of course, to the constitutional limitations. But it is trite law that a delegate cannot exercise the same power unless there is special conferment thereof to be spelled out from the express words of the delegation or by compelling implication. In the present case the power under Section 4(2) does not indicate either alternative."*

*xxx* *xxx* *xxx*

*106. In Federation of Indian Mineral Industries v. Union of India [Federation of Indian Mineral Industries v. Union of India[19]], a three-Judge Bench of this Court formulated the principles on the subject. Madan B. Lokur, J. observed that the power to frame subordinate legislation is not retrospective unless it is authorised expressly or by necessary implication by the parent statute. The Court observed : (SCC pp. 202-03, para 26)*

*"26. … The relevant principles are:*

*(i) The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorises it to do so. [Hukam Chand v. Union of India [Hukam Chand v. Union of India, (Supra)] and Mahabir Vegetable Oils (P) Ltd. v. State of Haryana [Mahabir Vegetable Oils (P) Ltd. v. State of Haryana[20]] ]*

*(ii) Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect. (Panchi Devi v. State of Rajasthan [Panchi Devi v. State of Rajasthan[21])*

*(iii) As regards a subordinate legislation concerning a fiscal statute, it would not be proper to hold that in the absence of an express provision a delegated authority can impose a tax or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen. [Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla [Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar*

[19] **(2017) 16 SCC 186**
[20] **(2006) 3 SCC 620**
[21] **(2009) 2 SCC 589**

*Pasawalla[22]] and State of Rajasthan v. Basant Agrotech (India) Ltd. [State of Rajasthan v. Basant Agrotech (India) Ltd.[23]] ]"*

*The judgment of Dipak Misra, J. (as he then was) speaking for a two-Judge Bench decision in State of Rajasthan v. Basant Agrotech (India) Ltd. [State of Rajasthan v. Basant Agrotech (India) Ltd., (Supra)] adopts the same position."*

**28.** Bearing in mind the aforesaid settled legal position regarding the retrospective applicability, we are of the considered view that the learned Tribunal committed a manifest error in applying the Notification dated 04.01.2021 retrospectively to a recruitment process initiated in the year 2018.

**29.** The advertisement was issued on 05.05.2018 and the final list of tentative vacancies was published on 27.12.2019. The selection process is governed by the prevailing rules and notifications at the time of initiation at which time the post of Auditor was identified as NOT SUITABLE for *'mental illness'* at that stage.

**30.** Reliance placed by respondent no. 1 as well as the learned Tribunal on Notification dated 04.01.2021 is misplaced. The said notification, although it includes '*Auditor'* as a suitable post for persons with PwBD - 'mental illness', cannot operate retrospectively to alter the eligibility conditions for recruitment processes already in progress.

**31.** Furthermore, the Chief Commissioner for Persons with Disabilities in a detailed decision dated 27.03.2023 categorically opined that the

[22] **(1992) 3 SCC 285**
[23] **(2013) 15 SCC 1**

Notification dated 04.01.2021 cannot be applied retrospectively to vacancies notified prior to its issuance. The said decision, in para 2.2, also talked about the case of the present respondent no. 1 *(order dated 06.12.2021 in case no. 12788/1011/2021, Shri Amit Yadav v. SSC)*. For the sake of convenience, relevant paragraphs of the decision dated 27.03.2023 are reproduced herein below:

> *"2.2 Similar matters have already been adjudicated by this Court and Order dated 06.12.2021 in Case No. 12788/1011/2021 (Shri Amit Yadav Vs SSC); Order dated 09.12.2021 in Case No. 12891/1011/2021 (Shri Bishwadip Paul Vs SSC); and Order 19.12.2022 in Case No. 13351/1011/2022 (Shri Tijo M Thomas Vs SSC) have been passed wherein it was observed by this Court that the vacancies advertised before 04.01.2021 are not governed by MoSJE Notification dated 04.01.2021, hence, no intervention is warranted"*
>
> *2.3 This Court is inclined to observe that the fault is not of the Respondent but of the establishments on behalf of which vacancies were issued by SSC. Before 04.01.2021, list which was prevalent was issued in 2013. In that list no post was identified suitable for Mental Disability category. In RPwD Act, 2016, provision was there to reserve vacancies for Mental Disability category, however till 04.01.2021 only few establishments identified posts suitable for mental disability category."*

**32.** In light of the same, it is observed that if the competent authority, i.e., the Chief Commissioner for Persons with Disabilities, Department of Empowerment of Persons with Disabilities, has passed an order on the issue of applicability of the Notification of the year 2021 in negative, and the law discussed hereinabove confirms the settled position, therefore, the learned Tribunal's reliance on the Notification dated 04.01.2021 is legally unsustainable.

***Departmental deliberations and identification of posts-***

**33.** Insofar the point of applicability and reliance on the minutes of meetings dated 07.12.2017, letter dated 09.07.2018 (along with the list of identified suitable posts), letter dated 14.09.2018 along with OM dated 15.01.2018 *(the said OM also contains the list of identified suitable posts as annexures to it)* and minutes of the meeting dated 14.05.2018 is concerned, we are of the considered opinion that the same clearly show that the CAG, in coordination with its administrative arm — IA&AD — undertook a comprehensive exercise to deliberate upon and identify posts suitable for various categories of benchmark disabilities.

**34.** The outcome of the above deliberations was conveyed to SSC vide letter dated 09.07.2018 which had *list of identified suitable posts* as annexure appended to it. The said *list* states that the post of *Auditor* was considered suitable for persons with benchmark disabilities such as deaf and hard of hearing, locomotor disability, leprosy cured, dwarfism, acid attack victims, and multiple disabilities. It specifically excludes 'mental illness' from the list of suitable disabilities.

**35.** Such identification of posts was made pursuant to the mandate under Section 33 of the RPwD Act. It is well-settled that identification of suitable posts lies within the domain of the expert committee constituted by the appropriate Government and the respective administrative departments. Courts cannot substitute their views in place of expert functional assessments unless it is found arbitrary or perverse. The said view is also

supported by the judgment of the Hon'ble Supreme Court in ***Union of India v. Pushpa Rani***[24]. Relevant paragraphs reads as follows:

> *"..37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration…"*

**36.** Here, we find it imperative to point out that it was argued on behalf of respondent no. 1 that the minutes of meetings dated 07.12.2017, letter dated 09.07.2018 (along with the list of identified suitable posts), letter dated 14.09.2018 along with OM dated 15.01.2018 *(the said OM also contains the list of identified suitable posts as annexures to it)* and minutes of the meeting dated 14.05.2018 were never made available in public

[24] **(2008) 9 SCC 242**

domain and whatever decision was taken in the said documents were never informed to him.

**37.** With regard to the afore noted contention, it is observed by us that vide minutes of meetings dated 07.12.2017, the decision to constitute expert committee for identification of posts suitable for PwBD was taken in furtherance of the objective of the RPwD Act and subsequent rules, and notifications. Thereafter, the OM dated 15.01.2018 was published (which was shared with the IA & AD vide letter dated 14.09.2018), which declared that the post of *Auditor* was suitable for various categories of PwBD but not for PwBD – *mental illness*.

**38.** It is important to mention here that the abovesaid OM was forwarded to all the ministries and departments of the central government, as well as uploaded on the DoPT website and the same is evident from perusal of the contents of the said OM. Therefore, we are of the firm opinion that the aforesaid contention of respondent no. 1 does not hold any water as the details regarding the post identification were clearly available in the public domain and respondent no. 1 has been unable to prove to the contrary. Even otherwise, there is no dispute with regard to the fact that, in the advertisement, *PwBD – mental illness* is mentioned as not suitable for the subject post.

**39.** Moving further, it is also to be considered that arguments were made on behalf of respondent no. 1 to contend that the petitioner erred in seeking relaxation/exemption from the reservation and the same is in violation of Section 34 (1) of the RPwD Act as the petitioner failed to follow the required procedure for seeking relaxation/exemption. On the other hand,

the petitioner submitted that no relaxation/exemption as such has been sought by them.

**40.** At this juncture, it is pertinent to discuss about the reliance placed by the learned Tribunal on the judgment passed by the Hon'ble Supreme Court in ***Ravinder Kumar Dhariwal & Anr. v. Union of India & Ors.***[25]. In the impugned order, the learned Tribunal cited this judgment to buttress the principle of "reasonable accommodation" and 'non-discrimination in employment' under Sections 20 and 34 of the RPwD Act. It referred to the judgment while evaluating the exclusion of persons with *mental illness* from the list of suitable posts and considered that such exclusion amounts to discrimination and violates statutory safeguards under the RPwD Act.

**41.** The aforementioned judgment has also been relied upon by respondent no. 1 to contend to the effect that denial of reservation to the applicant amounts to discrimination under Sections 20 read with 34 of the RPwD Act which provides for the reservation to the PwBD - *mental illness* and exemption is also allowed but only after complying with the mandate under Section 34 of the RPwD Act.

**42.** We are of the view that the said judgment is distinguishable to the facts of the matter at hand due to the following reasons:

i. Respondent no. 1 claimed reservation under Section 34 (1) clause (d) – *mental illness* of the RPwD Act, for the post of Auditor, under the SSC CGLE 2018. However, the advertisement dated 05.05.2018 did not identify the said post for 'mental illness' under clause (d). The CAG, based on prior internal assessment and

administrative communication dated 09.07.2018 and OM dated 15.01.2018, did not notify the post of Auditor as suitable for PwBD - *mental illness*.

ii. Unlike in ***Ravinder Kumar Dhariwal (Supra)***, where no identification exercise or exemption was carried out, in the present case, the IA & AD had conducted a detailed functional assessment (vide OM dated 15.01.2018, and minutes dated 07.12.2017 & 14.05.2018), and mental illness was not found suitable for the duties of Auditor.

iii. The Hon'ble Supreme Court in ***Ravinder Kumar Dhariwal (Supra)*** held that an exclusion was impermissible in the absence of a formal exemption sought by the department under the proviso to Section 34(1) of the RPwD Act. The Hon'ble Court emphasized that reservation under Section 34 is not directory but mandatory, and each sub-category [clauses 'a', 'b', 'c', 'd' and 'e'] is entitled to 1% reservation each, unless specific interchange or exemption is notified by the appropriate government after due process.

iv. In the present case, the petitioner undertook the process of identification of posts suitability for PwBD, in terms of Section 33 of the RPwD Act, and thus, there was no occasion to seek exemption, either partly or fully, under Section 34 of the RPwD Act. Hence, no statutory breach, as alleged by the respondent no.1, occurred in terms of Section 34 of the RPwD Act. In contrast,

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[25] **2021 SCC OnLine SC 1293**

***Ravinder Kumar Dhariwal (Supra)*** was a case of total exclusion of a sub-category without justification, which is not the case here.

**43.** In light of the aforesaid discussions, it is made out that the petitioner was well within its rights while identifying the suitability of posts for PwBD where it did not include 'mental illness' as suitable category for the subject post.

**44.** The petitioner effectively undertook an exercise to identify suitability of PwBD for various posts in terms of statutory mandate under Section 33 of the RPwD Act following which it was decided, bearing in mind the job function and the duties it warrants, that the post of *Auditor* was unsuitable for the PwBD – *mental illness*. After identification of the suitability *qua* the posts, the concerned department reserved vacancies in terms of the statute and thus, *mental illness* category was not considered. Further, it is pertinent to note here that since the subject post was identified as not suitable for the disability suffered by respondent no. 1, he could not have been offered any appointment and thus, no occasion, either for reservation of vacancies for the disability in question or for seeking relaxation/exemption, arose.

**45.** At no point has respondent no. 1 been able to show as to how the petitioner has violated the reservation policy under the RPwD Act. The only inference that can be drawn from the entire facts and circumstances of the case is that the petitioner rightly identified the posts suitability under Section 33 of the RPwD Act and the exemption/relaxation clause is not applicable, and any allegations with regard to not following the procedure

to seek exemption/relaxation from the reservation are unfounded. Further, the same was also observed by the learned Tribunal in para 3.7 of the impugned order.

**46.** Therefore, we are of the view that the petitioner as such did not seek relaxation/exemption from reservation (under Section 34 (1) of the RPwD Act) and has effectively exercised its administrative right under the Act by identifying the suitability of posts for PwBD. Thus, there was no occasion for the petitioner to undertake any exercise of consultation in terms of Section 34 of the RPwD Act.

***Fallacy in the Tribunal's reasoning -***

**47.** The learned Tribunal, in para 4.1 and 4.2 of the impugned order, proceeded on the incorrect premise that the Notification dated 04.01.2021, having come into force before the final result dated 01.04.2021, would govern the appointments.

**48.** The learned Tribunal failed to appreciate that the relevant date for determining eligibility is the date of the advertisement and not the date of declaration of results. The same is apparent from the decision of the Hon'ble Supreme Court in ***Manish Kumar Shahi (Supra)***.

**49.** The learned Tribunal also erred in directing the constitution of a Medical Board to determine the respondent's suitability. This amounts to judicial overreach into administrative discretion and undermines the department's considered assessment that the subject post is unsuitable for PwBD - *mental illness*. Furthermore, even if a candidate is recommended or selected, no right to appointment accrues unless all statutory conditions

are satisfied. The same was observed in ***Shankarsan Dash v. Union of India***[26]. Relevant extract of the said judgment is as under:

> *"..7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha*[27]*, Neelima Shangla v. State of Haryana*[28]*] , or Jatinder Kumar v. State of Punjab] …"*

**50.** Therefore, based on the aforementioned settled legal proposition, we are of the view that the return of dossier by the CAG on the ground of functional unsuitability, based on pre-identified criteria, was a lawful administrative act.

## Conclusion

**51.** The writ jurisdiction of this Court in recruitment matters is narrow and can only be exercised where the impugned decision is palpably arbitrary or contrary to the statutory provisions. Courts cannot assume the

[26] **(1991) 3 SCC 47**
[27] **(1974) 3 SCC 220**
[28] **(1986) 4 SCC 268**

role of administrative authorities in assessing suitability or identification of posts.

**52.** In the present case, the recruitment process for the SSC CGLE 2018 was governed entirely by the advertisement dated 05.05.2018, which expressly did not include *PwBD – mental illness* as a disability identified for the post of *Auditor*. Though Note (iii) to the advertisement allowed persons with newly recognized disabilities to apply, it clearly made such selection contingent upon identification of posts and reporting of vacancies by the concerned department, and as observed in the foregoing paragraphs, at no point did respondent no. 1 challenge the terms of the advertisement.

**53.** Taking into consideration the aforesaid discussions on facts as well as on law, we find sufficient reasons to interfere with the impugned order dated 23.01.2023, under the extraordinary writ jurisdiction of this Court, and hence, the same is hereby, set aside. In view of the same, the official communication dated 30.09.2021 (by virtue of which respondent no.1's dossier was returned), which was quashed by the learned Tribunal, now stands upheld.

**54.** We express our appreciation for the competence with which Mr. Kaimei, a young Counsel, argued the matter. He was commendably conversant with every page of the file, and answered every query put by the Bench with confidence.

**55.** Accordingly, the instant petition is allowed and stands disposed of. Pending application(s), if any, stand also disposed of.

**56.** No order as to costs.

**AJAY DIGPAUL, J.**

**C. HARI SHANKAR, J.**

**MAY 29, 2025**/*an*

*Click here to check corrigendum, if any*