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Central Administrative Tribunal
Principal Bench

OA No. 2082/2002
MA 1702/2002

New Delhi, this the 9th day of August, 2002.

Hon'ble Shri S.A.T. Rizvi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

1. BLIND TEACHERS WELFARE ASSOCIATION
B-225, Near Lilawati School
Opp. Gurudwara Gulabi Bagh
Delhi, through its Secretary
Shri A.K.Singh
2. Surender Pal Singh, Teacher
3/83, Sant Nirankari Colony
Delhi-110009.
3. Shri M.L.Mishra, Teacher
1728, Gulabi Bagh
Delhi-110007.

.... applicants.
(Shri P.T.S.Murthy, Advocate)

Versus

1. Union of India
through Ministry of Personnel
Public Grievance and Pensions
Department of Personnel
Training, New Delhi.
2. Government of NCT Delhi
through Secretary Education
Old Secretariat, Delhi.
3. Director of Education
Government of NCT of Delhi
Old Secretariat, Delhi.

....None

Order (oral)

By Shri S.A.T.Rizvi, Member (A)

Heard.

2. In search of a direction to the respondents to make reservation in the matter of promotions in favour of physically disabled persons, teachers in the present OA, the applicant-Association alongwith one Shri Inderjeet Singh, TGT had approached this Tribunal in OA No. 1807/99 which was decided on 15.7.2000 (Annexure-IV) with a direction to the

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respondents to consider the claim of the applicant in that OA to provide reservation in promotion from TGT to PGT/Lecturer to the limit of 3% with distribution to the extent of 1% each for persons with visual impairment, hearing impairment and locomotor disabilities. In issuing the aforesaid direction, the Tribunal had in turn relied on the judgement of the Chief Commissioner of Disabilities dated 24.12.1999 (Annexure-II), wherein the following observations have been made:

"Therefore, in order to maintain element of reserving at least 3% posts in every establishment, for persons with disabilities, it is necessary that irrespective of method of appointment such as direct recruitment, promotion etc., the provision of reservation up to 3% at least for persons with disabilities as per section 33 of the Disabilities Act, is maintained in letter and spirit by all the establishments covered by the Act."

A period of 4 months was given for implementing the aforesaid direction. Non compliance of the aforesaid direction led to the filing of a Contempt Petition which, as stated by the learned counsel, is still pending.

3. The learned counsel submits that in the period before the 5th Central Pay Commission's recommendations came into force the TGT as well as the PGT were placed in Group 'C'. In consequence of pay hike given by the 5th CPC, both the categories are now placed in Group 'B'. The applicants herein were recruited as TGTs on the basis of 3% reservation for the physically handicapped persons. Now that the very same teachers, whether TGT or PGT, are categorised in Group 'B', the aforesaid reservation evidently continues to be maintained in Gr. 'B'. On this basis, it could not be contended that the

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applicants have been promoted from Group 'C' to Group 'B' posts by extending to them the benefit of the aforesaid reservation policy. It is just that by virtue of pay hike granted by the 5th CPC they stand elevated to Group 'B' and, that being the case, it cannot be argued that the benefit of reservation having been extended once should continue to be extended for further promotion from TGT to PGT and from PGT to Vice Principal and so on.

4. The basic question which still remains to be answered is whether the benefit of reservation in favour of physically handicapped persons can be extended to matters of promotion as well. The Commission for Disabilities has indeed taken a view in the matter and has made the aforesaid observations which are likely to be taken note of by the respondents. From the respondents' letter of 8.9.2000 (Annexure - III) which is sought to be impugned in the present OA, it appears that the respondents have considered the matter in all seriousness by having regard to the recommendations made by the Commissioner for Disabilities as well as the directions given by this Tribunal in OA No. 1807/1999. After considering the matter, this is what they have stated in the aforesaid letter (Annexure III):

Ministry of Law, Department of Legal Affairs has also observed that no provision exists, in the Constitution providing reservation in promotion for persons with disabilities. Therefore, unless a suitable provision is inserted in the Constitution on the lines of Article 16(4A), reservation in promotion cannot be provided to the persons with disabilities.

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5. Having said that the respondents have advised the Govt. of NCT of Delhi to approach Delhi High Court against the order of this Tribunal in OA No. 1807/99, we take it that the matters are being proceeded with accordingly. We do not know the result, however. The learned counsel appearing on behalf of the applicant is also not aware of the further developments in the matter.

6. From the impugned letter (Annexure-III) it is clear, however, ^{that} as of now the respondents are not in a mood to process the matter for a possible amendment in Article 16(4A) with a view to extending the benefit of reservation to the physically handicapped persons in the matter of promotion. These are, in our view, policy matters which are within the realm of the executive and, unless compelling circumstances are found to exist, the courts and the Tribunals are not expected to issue mandamus directing the Government to take a policy decision in any such matter one way or the other. Courts and Tribunals should in our view, desist from issuing mandamus in such cases. Needless to say that it is upto the government to consider the matter in due course and take an appropriate decision.

7. In the light of the aforesated facts and circumstances of this case, we find that the present OA is in the nature of a PIL and we can not, therefore, entertain it. We find no grounds at all to interfere in the matter at this stage. Accordingly, the OA is dismissed.


S. Raju

(Shanker Raju)
Member (J)


S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

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