

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1999/2000

New Delhi, this the 17th day of October, 2001

HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMN)

Shri Bharat Lal ..Applicant
(By Advocate: Shri S.K.Rungta)

Versus

Govt. of NCT of Delhi & Anr. ...Respondents
(By Advocate: Mrs. Avnish Ahlawat)

Corum:-

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to Benches of the Tribunal? NO

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
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New Delhi, this the 17th day of October, 2001

Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Shri Bharat Lal
S/O Shri Mool Singh, presently
R/O C/o Shri Ashok Rawat
Residential Complex, H.No.648
Opp. D.E.S.U. Colony, Tihar Jail
New Delhi

...Applicant

(By Advocate: Shri S.K.Rungta)

Versus

1. National Capital Territory of Delhi
Govt. of Delhi
Through its Secretary Education
Old Secretariat, Delhi
2. D.S.S.S.B.
through its Chairman
having its office at
behind Karkardooma courts,
Delhi.

..Respondents

(By Advocate: Mrs. Avnish Ahlawat)

O R D E R

The applicant, an orthopaedically handicapped person (with locomotor disabilities), was an aspirant for one of three posts of Physical Education Teacher (PET) notified by the respondents by their advertisement dated 6.3.1999 (Annexure A-1). The aforesaid three posts, out of a total of 143, had been reserved for being filled by physically (orthopaedically) handicapped persons. The applicant went through the selection process and on being found suitable was selected for appointment. The relevant information was conveyed to him by respondents' OM dated 4.1.2001 (Annexure A-2), and by the subsequent Memorandum dated 9.2.2000 (Annexure A-II). However, by a verbal order given on 17.6.2000 on behalf of respondent No.1, the applicant was not allowed to join his post in the

South-West Distt. The respondents also conveyed that they wished to treat the aforesaid vacancy as de-reserved. Aggrieved by the aforesaid action on the part of the respondent-authority, the applicant has filed the present OA.

2. I have heard the learned counsel on either side and have perused the material placed on record.

3. The respondents have taken the plea that physically handicapped person, including blind persons, cannot perform the duties of the post of PET inasmuch as such duties are required to be performed in the field and for this purpose, the PET must be physically fit with all the four limbs fully in tact as he is expected to impart training to the students in various sports activities. According to them, three candidates, including the applicant in the present OA, succeeded in clearing the examination, as no interview and also no practical test was held after they qualified in the written test. Their names were recommended by the Staff Selection Board for appointment as PET wholly on the basis of their performance in the written test. The mistake thus committed was later discovered. Of the three physically handicapped persons selected, applicant being one of them, a letter of appointment was issued in favour of one Shri Surender Singh but the same was under the process of cancellation following a show cause notice already issued to Shri Singh. It is a different matter that the said Shri Singh succeeded in obtaining an ad-interim order of stay by filing OA-2708/2000. During the course of re-consideration of the matter, the respondent-authority approached the Chief Commissioner of



disabilities, who has, by a letter dated 6.6.2000 (Annexure A-1 to the counter), clarified the position as under:-

"As per the present arrangement for effecting reservation in Group 'A' & 'B' identified jobs for the disabled, it is not possible to appoint any category of persons with disabilities to the post of Physical Education Teacher in the pay scale of Rs.5500-9000."

4. Another plea advanced on behalf of the respondents is that the Govt. has since categorized the post of PET as a Group 'B' post, and this has been done by DOPT's order dated 20.4.1998 (Annexure A-2 to the counter). In view of this, placing of reliance by the applicant on the identified post being in Group 'C' category, will not assist him. The post under consideration falls in Group 'B' as already stated.

5. The next contention raised on behalf of the respondents is that PE is not a subject and for this reason also, the applicant's cause will not be furthered by relying on the post of Primary Teacher identified for physically handicapped persons and falling in Group 'C'.

6. Insofar as the category to which the identified post belongs, the respondents have referred to the decision rendered by the Delhi High Court in a CWP, being CWP No.6954/99 - Delhi Sportsmen Association Vs. Govt. of NCT of Delhi & Ors. That petition was filed in relation to the reservations made in favour of sportsmen. The High Court had noted that reservation for outstanding sportsmen could be made in respect of Group 'C' and Group 'D' posts only and, therefore, since the post of PET was included in Group

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'B', the petitioners (sportsmen) had no claim. The aforesaid decision is dated 20.12.2000 (Annexure R-4).

7. That three posts were set apart as reserved posts to be filled by orthopaedically handicapped persons has not been disputed. That the applicant was duly selected for appointment through the Staff Selection Board is also not disputed. What is contended on behalf of the respondents is that the post of PET could not have been reserved for orthopaedically handicapped persons. They also contend that no such reservation has been made in favour of such persons under the relevant rules. The learned counsel appearing on behalf of the respondents stated that one of the three orthopaedically handicapped persons selected for the post of PET has already been dismissed after considering the representation filed by him in response to the show cause notice served on him by the respondents. A show cause notice has similarly been issued to the applicant as well as the third person selected for the post of PET.

8. The learned counsel appearing on behalf of the applicant has submitted that according to Section 32 of the persons with disabilities (equal opportunity, protection of rights and full participation) Act, 1995 (for short PWD Act, 1995), it is the duty of the appropriate Govt. to identify posts to be reserved for persons with disabilities. Further, as per Section 33 of the same Act, the Govt. is obliged to appoint persons with disability in every establishment upto a percentage which cannot be less than 3%. Out of the said overall percentage, 1% vacancies



are to be filled by persons with locomotor disability. The aforesaid Section further provides that if the appropriate Govt. comes to the conclusion that any department or establishment should be exempted from the obligation cast on them by the aforesaid provision, it would be necessary to issue a notification exempting such a department or establishment from the provisions of Section 33. The learned counsel for the applicant has submitted that no such notification has been issued by the appropriate Govt. in the present case, insofar as the post of PET is concerned, and, therefore, it is futile to argue that orthopaedically handicapped persons cannot be considered for appointment as PET. This would of course be subject to the post of PET being identified for the purpose by the appropriate Govt. as per Section 32 ibid.

9. The learned counsel appearing on behalf of the applicant has further argued that in the absence of a proper notification referred to in the previous paragraph, the respondents cannot rely on the clarification rendered by the Chief Commissioner of disabilities by his letter of 6.6.2000. In support of this contention, the learned counsel has proceeded to place further reliance on the provisions made in the PWD Act, 1995 and, in particular, Section 57 and 58 thereof. Section 57 aforesaid provides for the appointment of Chief Commissioner for persons with disabilities by the Central Government by a notification to be issued for the purpose. Section 58 deals with functions of Chief Commissioner. The same provides as under:-

"58. The Chief Commissioner shall-

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- (a) coordinate the work of the Commissioners;
- (b) monitor the utilisation of funds disbursed by the Central Government;
- (c) take steps to safeguard the rights and facilities made available to persons with disabilities;
- (d) submit reports to the Central Government on the implementation of the Act at such intervals as that Government may prescribe."

10. The learned counsel for the applicant has, in view of the aforesaid provision, correctly argued that it is none of the functions of the Chief Commissioner to issue clarifications such as the one issued by him vide his letter dated 6.6.2000. In the circumstances, the respondents' plea based on the aforesaid letter issued by the Chief Commissioner fails and is rejected.

11. I am, therefore, left to find out whether the post of PET has been identified as one of the posts against which appointments can be made from amongst the orthopaedically handicapped persons. In this regard, my attention was first drawn by the learned counsel for the applicant to the Govt. of India's OM dated 28.2.1986 (Annexure R-3). The same contains a list of jobs identified for being held by physically handicapped persons. Apart from the title of each job, its physical requirements and the categories of disabled person suitable for the job, have also been indicated in the said list. Going through the same, one finds that the post of Higher Secondary & Secondary School Teacher is one of the posts

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identified for the purpose. The aforesaid list (Annexure R-3) also shows that orthopaedically handicapped persons constitute one of the categories found suitable for the job of Higher Secondary & Secondary School Teacher. The aforesaid entry is available at Sl. No.56 in the aforesaid list. The learned counsel appearing on behalf of the respondents has advanced the plea that the aforesaid post identified for being filled by the orthopaedically handicapped persons relates to teaching of various subjects. According to her, physical education is not a subject in that sense and, therefore, the aforementioned entry in the said list (Annexure R-3) will not help the applicant. Lower down in the same list (Annexure R-3), one finds another entry at Sl. No. 58 which refers to the post of Higher Secondary and Secondary School Teachers, other than those listed elsewhere. Against the said entry (Sl.No.58), it is also indicated that orthopaedically handicapped persons also constitute a category found suitable for the job. The learned counsel for the applicant has argued that if the post of PET is not deemed to be included under Sl. No.56 above, the same will necessarily be deemed to have included under Sl. No.58. Thus, there can be no doubt that the applicant, an orthopaedically handicapped person, is suitable for appointment to the post of PET.

12. The aforementioned list issued by the Govt. of India on 28.2.1996 (Annexure R-3) pertains to Group 'C' or equivalent jobs. Thus, the post of PET deemed to be included under Sl.No.58 thereof has to be the one included

in Group 'C', or else, the applicant's case for appointment thereto will fail. The above contention raised on behalf of the respondents is sought to be met by the learned counsel for the applicant by referring to the report of the Expert Committee notified by the Ministry of Social Justice and Empowerment by their notification dated 31.5.2001. The said Expert Committee deals with the identification of posts in Groups A, B, C and D for reservation in favour of persons with disabilities. The Expert Committee, insofar as is relevant for my purpose, made the following recommendations:-

"(b) The nomenclature used for respective jobs in these recommendations shall also mean & include any nomenclature used for the comparable post with identical function of the identified post.

(c).... However, no establishment on its own discretion can exclude any post out of the purview of identified post for effecting reservation under Sec. 33 of the Act. In case any establishment feels that it required exemption from filling up a vacancy against an identified post by the appropriate Govt. the establishment under Sec.33 of PWD Act, 1995 can approach the inter departmental committee constituted for the purpose to look into the matter regarding exemption from Sec.33 of the PWD Act. Other than this no authority has the jurisdiction to accord exemption from filling up a vacancy against an identified post for persons with disabilities.

(d) List of the identified jobs proposed to be notified herein under is in addition to and not in derogation of the earlier list published by Ministry of Personnel Public Grievances and Pensions, Department of Personnel & Training, Govt. of India in the year, 1986. This is in accordance with Sec 72 of Persons with Disabilities Act, 1995.

(e) If at any stage due to change in the pay scale of a post, identified for persons with disabilities gets shifted from one group or grade to another group or grade the post shall remain identified for the purpose of effecting 3%



reservation. For example the post of post graduate teacher, if at the time of identification of post for persons with disabilities is a group 'B' post but due to some policy change if the same post is reduced to Group 'C' the same shall remain identified though its pay scale and grade has been changed.'

13. The abovementioned provisions forming part of the notification dated 31.5.2001 provide answers to the questions posed on behalf of the respondents. From what is contained in the extracts reproduced above, it is clear that a department or an establishment can be exempted from filling up a vacancy by appointing physically handicapped persons only after the appropriate Govt. has considered the report of an inter-departmental committee constituted for the purpose, and further that no authority, not even the Chief Commissioner, has the jurisdiction to accord such exemption. The Chief Commissioner's letter dated 6.6.2000 is thus found to be an invalid document. It is also rendered clear that the jobs already identified in 1986 will continue to be so identified. Accordingly, the post of Higher Secondary & Secondary School Teacher, other than those listed elsewhere, included under Sl.No.58, which would include PET as well, will continue to be an identified post for the purpose of appointment of orthopaedically handicapped persons. Insofar as the change in category is concerned, the matter in that regard has also been clarified in sub-para (e) reproduced above. The change in grouping of the post will not alter the situation, insofar as the identification of a job is concerned. In this view of the matter, the argument made on behalf of the respondents that since the post of PET stands included in Group 'B', the applicant will not

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benefit from the identification earlier made in 1986 when it was included in Group 'C', is also found to be untenable.

14. I have noted in this very context that the post of Higher Secondary and Secondary School Teacher, other than those listed elsewhere, also stands included under Sl.No.76 of the list of Group 'C' posts identified for being filled by orthopaedically handicapped persons, forming part of the aforesaid notification dated 31.5.2001. I have also noted that in the list of Group 'B' posts identified for being held by persons with orthopaedic disabilities forming part of the notification dated 31.5.2001, the posts of Asstt. Teacher, Trained Graduate Teacher and Primary Teacher are included at Sl.Nos. 44, 45 and 46. In the column for nature of the work performed, the following entry has been made in the same list.

Primary School Teacher teaches students.... Maintains school registers and record of attendance..... May conduct extracurricular activities such as hobbies, sports, dramatics, etc..."
(emphasis supplied)

15. The physical requirements of the aforesaid jobs can be met by an orthopaedically handicapped person such as the applicant in the present OA. Viewed thus, an orthopaedically handicapped person is considered suitable for appointment to the posts of Asstt. Teacher, Trained Graduate Teacher and Primary Teacher, all included in Group 'B'.

16. The respondents placing reliance on the decision rendered by the Delhi High Court in the case of Delhi

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Sportsmen Association (supra), will, I find, not help their case. Firstly, the same deals with the reservation made in favour of sportsmen which is not supported by any law. The reservation for sportsmen has been made in accordance with executive instructions issued by the appropriate Govt. On the other hand, reservation in favour of orthopaedically handicapped persons flows from the provisions made in PWD Act, 1995. Further, from what I have discussed above, the post of PET could as well be treated as included in Group 'B'. The aforesaid notification dated 31.5.2001 issued under and in accordance with provisions made in the PWD Act, 1995 enjoys statutory status. The same includes as its integral part the various recommendations made by the Expert Committee which I have reproduced in para 12 above. For this reason also, placing of the post of PET in Group 'B' will not materially alter the situation. The said post will continue to be one of the identified posts to be filled by physically disabled persons. The aforesaid notification dated 31.5.2001 has been issued after the High Court passed the aforesaid orders on 20.12.2000 and has, therefore, not been noticed by the Court. The ratio of the aforesaid judgement will, therefore, not apply in the present case.

16. For all the reasons brought out above, the present OA is found to have force as well as merit. The same succeeds and is allowed. The letter dated 6.6.2000 issued by the Chief Commissioner of disabilities is quashed and set aside and respondent No.1 is directed to appoint the applicant to the post of PET from the date from which he

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would have been appointed but for the aforesaid erroneous view taken by him leading to issuance of show cause notice to the applicant. The said notice, if issued, also stands quashed. The applicant will, therefore, have the advantage of seniority from the date of his appointment as above. Pay etc. will be paid to him, however, only from the date he joins the post of PET.

17. The present OA is partly allowed in the aforesated terms. No costs.

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(S.A.T. RIZVI)
MEMBER (A)

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