

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA NO. 130/2004

This the 26th day of APRIL, 2005

**HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K.MALHOTRA, MEMBER (A)**

1. National Federation of the blind
through its General Secretary
having its registered office at
2721, Chowk Sangtrashan,
Paharganj, New Delhi.
2. Rakesh Chander Malasi
S/o Shri Sachidanand Malasi
R/o G-96, Shastri Park,
Street No.4, P.O. Seelam Pur,
Delhi-53. Applicants

(By Advocate: Sh. S.K.Rungta)

Versus

Kendriya Vidyalaya Sangathan
through its Chairman
having its office at
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi. Respondents

(By Advocate: Sh. S.Rajappa)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

The present OA is filed for the following relief:-

“Quash the recruitments of PRTs/TGTs & PGTs in the respondent organization for the years 1999-2000, to 2004-2005 as well as advertisement dated 13th to 19th September, 2003. Consequently direct the respondent to give entire backlog of vacancies in favour of blind and low vision to the extent of at least 1% against the post filled in the recruitment years in question in the present recruitment exercise in accordance with Section 33” of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short ‘the Act’).

Reserve

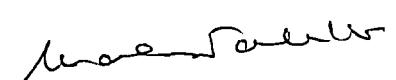
2. Applicant No.1 is alleged to be an apex organization working for the protection of the rights of the persons with disability of blindness. Applicant No.2 is a blind and its member. The grievance of the applicants is that the respondent Kendriya Vidyalaya Sangathan (KVS, in short) is making recruitment to the post of PRTs, TGTs and PGTs in its organization without making reservation and recruitment against the 1% quota reserved for blinds in accordance with Section 33 of the Act. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 came into force on 7.2.96. Prior to that similar protection and reservation was made for the category of persons with disabilities in Group 'C' and 'D' posts to the extent of 3% (1% each for blind, deaf and locomotor disability) by the Government by Office memorandum issued in 1979 and subsequent thereto. Applicants alleged that posts of TGTs and PGTs were Group 'C' posts and the provision of the Act were applicable on them. Section 32 of the Act made it obligatory upon the respondent to identify the post in every establishment, which is reserved for the persons with disability, and review it at a periodical intervals not exceeding three years. As per Section 33 of the Act, 3% of the posts in all group of posts were reserved for persons with disability of which 1% each was reserved for persons suffering from

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor disability or cerebral palsy.

3. Section 36 of the Act, on the other hand, provided that where in any recruitment year any vacancy under Section 33 could not be filled up due to non-availability of a suitable person with disability or, if any other sufficient reason such vacancy would be carried forward in the succeeding recruitment year and if in that succeeding recruitment year also suitable persons with disability were not available it would first be filled up by interchange among the three categories and only when no person with disability was available for the post in that year, the employer would fill up the vacancy by appointment of persons other than a person with disability. The Assistant Commissioner of the



respondent notified the backlog of reserved vacancies for blind against teaching post in the Sangathan by his letter dated 18.10.2000, details of which were mentioned in para 9. The respondents advertised the post of PRT, TGT and PGT in different subjects vide advertisement published in employment news dated 24-30.11.2001. The result of the recruitment revealed that there were 419 posts of PGTs. 12 posts out of them ought to have been reserved for persons with disability and 6 should have been given to the blind and 6 to the persons suffering from locomotor disability. The persons suffering from hearing impairment were not eligible to be appointed on those posts. Though 12 disabled persons were selected but the division of the posts in the category of disability was not in terms of Section 33 of the Act as 11 posts were given to persons suffering from locomotor disability and only one blind person was selected as PGT (English). Similarly, there were 202 candidates selected for the posts of TGTs. The reservation for persons with disability should have been 6 posts out of which 3 posts should have been given to the blind and 3 to the persons suffering from locomotor disability. 6 persons with disability were selected but in contravention of Section 33 of the Act, 5 posts were given to persons suffering from locomotor disability and only one blind person was selected. The respondents instead of giving the backlog of reserved vacancies to persons suffering from blind or low vision, have appointed persons suffering from locomotor disability on all the reserved vacancies during the recruitment year 2002-2003 which was illegal and is in contravention of procedure of Section 36 of the Act. Respondents had issued another advertisement between 26.10.2002 and 1.11.2002 notifying the vacancies of PGTs, TGTs and PRTs. Applicant No.2 was eligible and applied for the post of TGT (S.St.). He was successful in the written test and was also called for interview but he was not appointed against the reserved vacancy for blind and low vision candidates. Total numbers of successful candidates were 628, which included six posts reserved for persons with disability. All the 10 posts were filled by persons with locomotor disability. Applicant, as such, has not only contravened the



provisions of the Act but has also infringed the fundamental right of equality of opportunity enshrined in Article 16(1) of the Constitution of India.

4. The respondents contested the OA. It was stated that KVS was making centralized recruitment of the staff during the years 1999-2000, 2002-03 and 2004-05. On all the above occasions due reservation was given to all the eligible categories including physically disable and blind. KVS has various categories of teachers such as Primary Teachers, Trained Graduate Teachers in six subjects, Post Graduate Teachers in 12 subjects, teaching staff, non-teaching staff, post of officers etc. Respondent in para 7 of the counter gave the details of physically disable and blind candidates who were recommended for issue of offer of appointment recruitment yearwise in the form of a statement. As regards applicant No.2, it was alleged that he had applied for the post of TGT (S.St.). He cleared first and second stage of examination and was called for interview. As per recruitment rules as given in the advertisement, the essential qualification for the post of TGT (S.St.) was second class Bachelors degree with at least 50% marks in the concerned subject and in aggregate including elective and languages in the combination of subjects. The combination of subjects for TGT (S.St.) in any two subjects from History, Geography, Economics and Political Science of which one must be either History or Geography. Applicant No.2 had secured less than 50% marks in History in Graduation which was an essential qualification. He did not fulfill the prescribed educational qualification for the post. He was not eligible for the post as a result the Selection Committee did not recommend his name for appointment to the post of TGT (S.St.). In Part II of the advertisement it was abundantly made clear that all applicants must fulfill the essential requirements of the post applied for and other conditions stipulated in the advertisement as on 1.1.2003. They were advised to satisfy themselves before applying that they possess, at least, essential qualification prescribed for various posts. Applicant had filed a Civil Writ Petition before the Hon'ble High court and in the rejoinder all these facts were stated by the respondents there. Applicant No.2 in the rejoinder referred

Leave granted

to the case of Shri Harish Kumar Jhaldiyal, a blind candidate who had also secured less than 50% marks in one of the two subjects. The Hon'ble High Court was told on 28.1.2004 the full facts. The Hon'ble Court was convinced that applicant did not fulfill the minimum eligibility requirement as per the recruitment rules as given in the advertisement and also that applicant was not eligible for the post. There was no provision for relaxation in the qualification and/or minimum number of marks/grade as per DOPT instructions. Appropriate administrative action is being taken in the matter of appointment of Shri Harish Kumar Jhaldiyal. Applicant No.2 as such did not fulfill the minimum eligibility requirement. Therefore, it would not be possible for the respondent to issue offer of appointment to him. Other allegations made by the applicant in their OA about the contravention of Section 33 or 36 were also refuted. It was submitted that every effort was made to fill up the reserved post of physically ortho and blind including the backlog vacancies. Enough eligible candidates of both the categories were required. If such candidates were not available, it was not possible to keep the post vacant for longer periods. Hence, the same was filled up with physically ortho for the smooth functioning of the Vidyalayas. For the post of PGTs enough eligible candidates under physically disabled category, i.e. PH-Ortho and blind were not available and under these circumstances, it was difficult to keep the post vacant since Vidyalaya could not be run without teachers.

5. In the rejoinder, applicants have reiterated their own case and denied the allegations of the respondents.

6. We have heard the learned counsel for the parties.

7. The grievance of the applicant is that the respondents while making recruitment to the post of teachers in its Vidyalaya were not recruiting the persons with disability, in particular, the persons with disability of blindness or low vision in accordance with the provisions of Section 33 and 36 of the Act. It was vociferously argued by Sh. Rungta, counsel for applicants, that Section 33 provided reservation of 3% of the post for the persons with three categories of disabilities reserving 1% for each of them. These categories are the persons with disabilities of (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy. In para 9 of the OA and para 7 of the counter a statement showing the number of vacancies for which recruitment

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was made and the number of persons with disability in category (i) and (iii), who were appointed has been given. It is submitted that the persons with disability of hearing impairment were not eligible for recruitment to the post of teachers in the respondent, KVS. Sh. Rungta pointed out that the persons with disability of blindness or low vision were not appointed as per their quota and backlog of these reserved posts which remained unfilled have also not been filled in during subsequent recruitments. He claimed that most of the reserved vacancies for the persons with disability have been filled up by persons with disability of locomotor depriving the persons with blindness or low vision disability, their due share in the number of vacancies. He, therefore, prayed that a direction be given to the respondents as prayed in the OA.

8. Sh. Rajappa, counsel for respondents, at the outset, raised a preliminary objection that applicant No.1 is a Federation of Blinds and has filed the present OA as a public interest petition which the Tribunal has no jurisdiction to entertain. It is argued that applicant No.2, a blind, has indeed been joined as a petitioner but he was ineligible for the recruitment and this has already been held by the Hon'ble High court in the Civil Writ Petition filed by the applicants. It is submitted that relief, which has been claimed in the OA, is not for applicant No.2 specific. Rather the recruitment for the post of PRTs, TGTs and PGTs in the KVS during the year 1999-2000, 2002-2003 and 2004-2005 are sought to be quashed and it is also prayed that a general direction be given to the respondents to fill in entire backlog of the vacancies reserved for the persons with disability of blindness and low vision to the extent of 1% of the total posts in the future recruitment.

9. Sh. Rungta in reply argued that the applicants had filed CWP No.1681/2002 for identical relief but the respondent in the reply to the petition had argued that this Tribunal had the jurisdiction since the provision of the Administrative Tribunals Act, 1985 have been extended to the KVS also. He argued that the respondent cannot be allowed now to argue that the Tribunal did not have jurisdiction to grant the relief prayed in the OA.

10. Counsel for applicant has fairly admitted that this Tribunal does not have jurisdiction to entertain an application which is in the nature of a public

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interest petition. Clause (b) of sub-Rule 5 of Rule 4 of CAT (Procedure) rules, 1987 permitted the Tribunal to grant permission to an Association representing the persons desirous of joining in a single application provided that the application would disclose the class/grade/category of persons on whose behalf it has been filed and further that at least one affected person has joined such an application. Applicant No.2 is a blind and is a member of the applicant No.1 Association. He was also a candidate for the recruitment of the post of TGTs but is not a person affected. Obviously for this very reason no relief has been claimed for him in the present OA. In the rejoinder filed by the applicants, they have admitted that applicant No. 2 was not eligible to apply for the post of TGT having not secured 50% of marks in the desired subject. The counsel for the applicants, however, contended that the respondents should have granted relaxation in qualifying marks in the subject. Therefore, it could not be said that rejection of the candidature of the applicant No.2 was illegal or improper. Further more, it is neither pleaded nor it is argued that the applicant No.2 was deprived of a chance of recruitment to the post of TGTs because of the respondents' non compliance with the mandate of the provisions of Section 33 and 36 of the Act. As a result the applicant No.2 being ineligible for recruitment cannot be said to be a 'person affected' within the purview of sub clause (b) of rule 4(5) of the CAT (Procedure Rules).

11. Applicants have filed the present OA complaining that the respondent KVS is violating the mandate of the provisions of Section 33 and 36 of the Act while recruiting teachers for its Vidyalayas. Their prayer is that KVS be directed to make reservation for persons with disability of category No. (i), i.e., blindness and low vision to the extent of 1% of the vacancies and that the backlog of unfilled vacancies of this category should be filled in by the respondents in future recruitment. Their grievance is also that the vacancies reserved for disability of blindness and low vision were being interchanged with the persons with disability of locomotor with impunity, which is a clear contravention of Section 36 of the Act. The applicant Federation's grouse may be perfectly legitimate that the respondents in successive recruitments of

present matter

teachers are disregarding the mandatory requirements of the provision of Section 33 and 36 of the Act and they are not reserving 1% of posts for persons with disability of blindness or low vision or they are not carrying forward the unfulfilled quota reserved for this category for 3 years before inter-changing it with other category of persons with disability thereby prejudicially and adversely affecting the prospects of its members. But question is whether it can file an application before this Tribunal for grant of relief which can be claimed in a public interest petition and which to our considered view this Tribunal has no power and jurisdiction to entertain. In view of the authoritative pronouncement of Hon'ble Supreme court in Dr. Duryodhan Sahee & Others Vs. Jitendra Kumar Mishra & Ors. (1998) 7 SCC 273) this Tribunal has no power and jurisdiction to entertain in public interest petition.

Sub section (1) of Section 19 of the Administrative Tribunals Act, 1985 has provided as under:-

“Applications to Tribunals-(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation – For the purposes of this sub-section, order”means an order made-

- (a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government;or
- (b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society) referred to in clause (a).””

The above provision spelt out (i) only a ‘person aggrieved’ by an order can approach the Tribunal, (ii) he should file the application for the redressal of his grievance and (iii) the order of which he is aggrieved must pertain to any matter within the jurisdiction of the Tribunal. The expression ‘person aggrieved’ has to be construed in the context of the statute and the facts of the case. Vide Thammamma Vs. K. Veera Reddy (1980(4)SCC 62) the meaning of the expression ‘person aggrieved’ may vary according to the context of the Statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongly deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In

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Jasbhai Motibhai Desia Vs. Roshan Kumar (1976(1)SCC 671). Hon'ble Supreme Court in regard to expression 'personal aggrieved' observed:-

".....It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent injury suffered by him."

12. Powers and jurisdiction of the Tribunal are limited to the four corners of the Statute which has created it. Section 15 of the Administrative Tribunals Act provides for the jurisdiction, powers and authority of the Tribunal. It is apt to reproduce here Section 15 as under:-

"15. Jurisdiction, powers and authority of State Administrative Tribunals –
(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court ***) in relation to –

- (a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;
- (b) all service matters concerning a person (not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of Section 14) appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation (or society) owned or controlled by the State Government;
- (c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation (or society) or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment."

13. It is clear from the above provision that the Tribunal may exercise power and authority exercised earlier by civil Courts except the Supreme Court in relation to, inter alia, recruitment and matter concerning recruitment to any civil service of the State or to any civil post under the State. Reading the provision of Section 19(1) and 15 conjointly we may say, shortly speaking, that the expression 'person aggrieved' connotes a person who is prejudicially affected or had suffered an injury by an order of administrative authority in relation to, inter alia, recruitment and matter concerning recruitment to any civil service or posts under the Government.

14. Invocation of Section 19 of the Administrative Tribunals Act has to be for 'redressal of the grievance' of an 'aggrieved person'. If the applicant does not seek to redress a grievance of his own and not some body else's grievance, the application shall

Leave under the

not be maintainable before the Tribunal. Further more the grievance for redressal of which a person aggrieved approaches the Tribunal must pertain to a matter which the Tribunal has jurisdiction, power and authority to adjudicate i.e. covered by Section 15.

15. Viewed in the backdrop of the above principle it may be held that any application which does not fulfill the triple conditions laid down in Section 19, which are discussed above, shall not be maintainable before the Tribunal. When we examine the facts of the present case we notice two salient features. Firstly, none of the two applicants is a 'person aggrieved' within the ambit of Section 19 of Administrative Tribunals Act and secondly, the applicant No.1 could not file the application before the Tribunal because the applicant no.2, who had been joined to satisfy the condition imposed by sub clause (b) of Rule 4(5) of CAT (Procedure) Rules is by no stretch of reasoning could be held to be a 'person affected'.

16. Expression 'person aggrieved' as stated earlier would be construed in the context of the statutory provision and the facts of the case. If this expression is given meaning divorced from the provisions of the Administrative Tribunals Act certainly the applicant No.1 who is an association of persons with disability of blindness and is formed with the devout object of canvassing the cause and protecting the interest of its members is a body which is aggrieved if the provisions of Section 33 and 36 of the Act are not implemented by the respondent Sangthan in true letter and spirit. In broad spectrum of the expression the applicants may be called aggrieved since according to them the respondent in the matter of recruitment of teachers is not discharging its statutory obligations assigned in the Act. But viewed in the context in which it is used in Section 19 of the Administrative Act none of the two applicants individually or jointly could be 'person aggrieved' of the order of the respondent impugned in this OA. The applicants in their OA do not allege that any of the eligible member of applicant No.1 Federation was prejudicially affected or was deprived of an opportunity to apply for recruitment of teacher in the respondent organization by non implementation of Section 33 and 36 of the Act by the respondent. Unless there is infringement of legal rights of the members of the applicant No.1 or applicant No.2 they will not be 'person aggrieved' and maintain application under Section 19 of Administrative Tribunals Act for 'redressal of his grievance'. Simply because the respondent has not filled in full quota of reserved posts to the extent 1% of

Deo Aanand Singh

the posts advertised for recruitment as per Section 33 or backlog of the reserved post was not carried forward for filling up in future recruitments as per Section 36 of the Act the applicants could not become 'person aggrieved' and file application for redressal of their grievances within the purview of Section 19 of Administrative Tribunals Act. The applicants have to allege and prove that the respondents' act or omission has caused prejudice or injury to some legal right of the applicants. In case adequate member of persons with disability of blindness or low vision are not able to fulfill eligibility conditions prescribed by the respondents for appointment of teachers in the Sangathan or they are not able to qualify the prescribed test it is improper to blame the respondent for recruitment of lesser number of such disabled persons than prescribed by law.

17. In the present case the grievance of the applicants is general in nature. It is not a grievance for redressal of which they can approach this Tribunal. The application is in the nature of a public interest petition which the Tribunal has no jurisdiction, power and authority to entertain and grant relief.

18. The learned counsel for the applicants Shri Rungta has argued that in the Writ Petition filed before the Hon'ble High Court the respondents had submitted that the provisions of the Act had been extended to cover the respondent and application could be filed before this Tribunal and the Writ Petition was disposed off on this submission. Indeed in normal circumstances the respondents could not have been allowed to aprobate and reprobate and question the jurisdiction of this Tribunal. But as observed earlier in the order the Tribunal is creature of a special statute, i.e., the Act and its power and jurisdiction is circumscribed by the provision of the statute which has created it. It cannot assume jurisdiction which it does not have. So we are unable to agree with the arguments of the learned counsel.

19. We accordingly hold that the present OA is not maintainable, firstly, because it does not satisfy the requirement of Rule (b) of Rule 4(5) of CAT (Procedure) Rules and secondly because the application being in the nature of public interest petition is not maintainable before the Tribunal.

20. As a result, the petition is rejected but with no costs.

S.K. Malhotra
(S.K. Malhotra)
Member(A)

M.A. Khan
(M.A. Khan)
Vice-Chairman(A)