

(12)
OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 15th day of January 2002

Original Application no. 350 of 1996.

Hon'ble Mr. Justice R.R.K. Trivedi, VC

Hon'ble Maj Gen K.K. Srivastava, Member (A)

Jai Prakash, S/o Sri Asha Ram,
S.P.M., Darul-Uloom Post Office, Deoband,
Distt. Saharanpur.

... Applicant

By Adv. :: Shri K.P. Srivastava

V E R S U S

1. Union of India through Secretary (Posts),
Ministry of Communication,
Govt. of India,
NEW DELHI.

2. The Director General Posts,
Dak Bhawan,
NEW DELHI.

3. The Chief Postmaster General,
U.P. Circle,
LUCKNOW.

4. The Sr. Superintendent of Post,
Offices, Saharanpur.

... Respondents

By Adv : Km Sadhana Srivastava

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O R D E R

Hon'ble Maj Gen K.K. Srivastava, A.M.

filed

In this OA under section 19 of the A.T. Act, 1985, the applicant Shri Jai Prakash, has prayed that the direction be issued to the respondents to consider the case of the applicant for promotion under one time bound promotion scheme (in short TBOP) in the reserved quota for physically handicapped at roster point no. 33 and promote him with effect from 27.11.1989 the date of D.P.C.

2. The facts in short as per the applicant are that the applicant was recruited as Postal Assistant and has been working in the Department of Post since 6.2.1979. He was declared 50% handicapped by Chief Medical Officer (in short CMO), Muzaffarnagar on 13.11.1980, while the applicant was working in Muzaffarnagar Postal Division. He was later on transferred to Saharanpur Division. The TBOP scheme was introduced by the Govt. of India on 30.11.1983 and the applicant has claimed that he should be treated at par with reserved candidates for grant of higher scale under TBOP scheme and not after 16 years which is applicable for General candidates. He made a representation on 10.8.1994 that he has completed 10 years of satisfactory service in Postal Assistant Cadre against reserved quota which is 3% for Physically handicapped employees. His representation dated 10.8.1994 has been decided by D.G. Post vide their letter dated 25.1.1995 rejecting the claim of the applicant that he should be granted higher scale under TBOP scheme by relaxing standards. The applicant preferred an appeal on 10.4.1995 against the order dated 25.1.1995, which still remains undecided. Hence this O.A. The claim of the applicant has been contested by the respondents by filing counter affidavit.

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3. Sri K.P. Srivastava, learned counsel for the applicant submitted that the Govt. has already provided protection to the physically handicapped officials to the tune of 3% in all the categories of handicapped employees. He further submitted that the Govt. has decided to maintain 100 point roster for physically handicapped officials and, therefore, the vacancies at roster points 33, 67 & 100 are reserved for all three categories of handicapped. It is contended that the Department of Post vide their letter dated 8.7.1992 has directed to provide reservation to the physically handicapped and posts are to be filled up by promotion. Learned counsel for the applicant argued that the applicant is in receipt of handicapped conveyance allowance @ 5% of basic pay w.e.f. 13.11.1980 as approved by C.P.M.G., Lucknow order dated 13.6.1988 and therefore, ^{there} is no doubt about his status that he is a handicapped person and the handicapped persons have to be granted relaxation in service condition as it is available in case of SC/ST employees. Therefore, he is entitled for accelerated grant of higher scale under TBOP scheme after completion of 10 years, which is applicable in case of SC/ST employees. Sri K.P. Srivastava, learned counsel for the applicant finally submitted that as per department of personnel and training OM dated 4.9.1985, a handicapped person is entitled for relaxation in filling up the vacancies as is applicable in case of SC/ST employees.

4. Km. Sadhana Srivastava, learned counsel for the respondents, submitted that the case of the applicant was considered by D.C. Post, New Delhi and ^L DG Post has correctly rejected the claim of the applicant as there is no provision to relax the service condition in respect of physically handicapped person for promotion under TBOP

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scheme. She further submitted that in TBOP Scheme there is provision for SC/ST candidates for grant of higher scale on completion of 10 years, but there is no such provision in respect of handicapped persons. Therefore, the condition of 10 years of service for promotion under TBOP scheme is not applicable in the instant case. She finally submitted that there is no ruling to relax the condition in respect of handicapped person ^{under TBOP scheme} ~~as required under the rules~~ and the roster ~~is being~~ maintained. She also stated that the applicant has already been granted the higher scale after completion of 16 years i.e. in the year 1995.

5. Heard Sri K.P. Srivastava, learned counsel for the applicant and Km. Sadhana Srivastava, learned counsel for the respondents and perused records.

6. We have given careful consideration to the submission made by learned counsel for the parties. We find force in the submission of learned counsel for the respondents that there is no provision for relaxation in grant of higher scale to the handicapped person ^{not} ~~under TBOP scheme.~~ Learned counsel for the applicant has ^{not} been able to produce any ruling on the subject issued by the department that the same principle should ^{be} applied in respect of handicapped person which is applicable to SC/ST for implementation of TBOP Scheme. There is no ^{automatic} relaxation in case of handicapped person, if he does not satisfy necessary condition for ^{of benefit of higher scale} grant ~~under TBOP scheme.~~

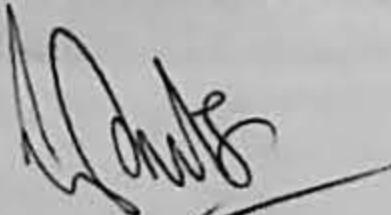
7. We have no doubt in our mind that the reservation

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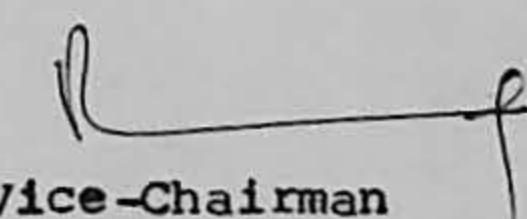
at roster point 33, 67 and 100 applies only at the time of recruitment of physically handicapped candidates in group C & D cadre. In the present case we would like to observe that the applicant was appointed in general category on 6.2.1979 and not against 3% of physically handicapped quota. It is unfortunate that he ~~was~~ became physically handicapped on 13.11.1980. The mere fact that he is getting 5% handicapped conveyance allowance will not confer any legal right on him to claim higher scale under TBOP scheme in absence of any provision. He cannot claim parity with SC/ST employee for whom the provisions exist for grant of higher scale under TBOP scheme. The action of the respondents is correct and does not suffer from any error of law.

8. In view of the facts and circumstances and aforesaid discussion we do not find any ground to grant relief to the applicant. The O.A. is devoid of merit and is, dismissed accordingly.

9. There shall be no order as to costs.



Member-A



Vice-Chairman

/pc/