

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.337 OF 2004

Allahabad this the 10th day of November 2004

HON'BLE MR. D. R. TIWARI, MEMBER-A

Yogendra Narain Bajpayee,

aged about 25 years,

Son of Sri S. N. Bajpayee,

Resident of 489/C, Bakshi Khurd,

Daraganj, Allahabad.

..... .Applicant

(By Advocate Sri Shyamal Narain)

Versus

1. Union of India,
through the Secretary,
Department of Personnel and Training,
Ministry of Personnel, Public Grievances
and Pension, North Block,
New Delhi.

2. The Chairman,
Staff Selection Commission,
Department of Personnel and Training,
Ministry of Personnel Public Grievances,
and Pension, Block No.12,
Kendriya Karyalaya Parisar,
Lodhi Road, New Delhi-110003.

..... . Respondents

(By Advocate Shri Rajiv Sharma)

D. R. Tiwari

ORDER

By this O.A. filed under Section 19 of Administrative Tribunals Act 1985, the applicant has sought the following reliefs:-

- "i) That this Tribunal be pleased to quash the impugned orders/letters dated 31.3.2003 and 26.2.2004 passed by the S.S.C. (Annexure Nos.1 and 2 to compilation no,1) rejecting the applicant's request for being allocated to some Central Government department or office situated at Allahabad.
- ii) That this Tribunal be pleased to command the respondents to allocate the applicant to some office/department of the Central Government in the clerical cadre, immediately."

2. Briefly stated, the facts of the case is that applicant is a Physically Handicapped person with 100% disability resulting from Polio. He appeared at the Combined Matric Level Examination of Clerks Grade,2000 as a candidate under the physically handicapped quota through Staff Selection Commission, Northern Region, Allahabad. He was declared selected in the final examination in February 2003 and his roll number is 2449101. He was allocated for appointment at Delhi under the North Zone of the Staff Selection Commission (here in after referred to as S.S.C.), since he is having 100% disability, which would have been difficult for him to move to Delhi and work as Clerk. It is well known that Delhi is a city of distances and it is very difficult for handicapped persons to move about. He represented to the Chairman, Staff Selection Commissions, New Delhi, vide his letter dated 24.02.2003 (Annexure-5). In his representation he gave detailed reasons and requested for his allocation to Uttar Pradesh under the Central Region of Staff Selection Commission so as

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to enable him to take up the employment in question.

His request was not acceded and Staff Selection Commission informed the applicant vide its letter dated 31.03.2003 (Annexure-1) informing him that there were no vacancies for Physically handicapped persons in Central Region in the Clerk Grade. Hence it was not possible for the Commission to agree to his request.

3. He received a letter dated 20.06.2003 from the S.P. (HQ) C.B.I. Head Office, New Delhi calling him for medical examination for the post of Lower Division Clerk in C.B.I. (Annexure-6). It was through this letter that the applicant came to learn that he had been allocated to the C.B.I. as Lower Division Clerk. On receipt of the letter from C.B.I., the applicant moved a representation to the S.P. Headquarter, C.B.I. New Delhi stating all the relevant details of his disability rendering him unable to take up any assignment at Delhi and requested that he may be allocated to some Office of C.B.I. at Allahabad (Annexure-7). The S.P. C.B.I. Head office, New Delhi wrote back stating that there was not office of C.B.I. at Allahabad and if the applicant was interested in initially joining at Lucknow, he signify his written willingness to the C.B.I., New Delhi (Annexure-8). The applicant wrote a letter to the S.P. C.B.I., Lucknow praying that his dossier may be returned to the Staff Selection Commission with the

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request that the applicant may be allocated to some department having an Office at Allahabad. He endorsed a copy of this to the Chairman, Staff Selection Commission also (Annexure-9). By this letter he suggested certain departments where he could be adjusted at Allahabad and alternatively he had prayed that his name be kept in the waiting list and be given appointment at Allahabad whenever the vacancy arose in any department at Allahabad.

4. Failing to get any response to his letter he again sent a detailed representation dated 13.01.2004 to the Chairman, S.S.C., New Delhi, under copy to the S.P. C.B.I., New Delhi, (Annexure-10). However, the applicant's representation was again rejected vide letter dated 26.02.2004 (Annexure-2) which stated that the applicant's representation on the same subject has already been replied to.

5. Aggrieved by the stand taken by the Staff Selection Commission the applicant filed the present O.A. He has assailed the impugned orders/letters dated 31.03.2003 and 26.02.2004 on various grounds namely:-

- (i) Rejection of his representation is wholly un-reasonable and illegal. It is also accordingly discriminatory and violative of article 14 and 16 of the Constitution of India.
- (ii) The reservation of 1% for each category of handicapped has been provided under the provision of a Central law which is a socially benevolent

[Signature]

provision is quoted in Welfare State For the protection and uplistment of a disadvantaged Section of Class of people. Its implementation requires wider and liberal interpretation.

(iii) Failure on the part of the respondent to effect the applicant to a posting commensurate with his Compared physically capacity would result in the applicant being inevitably deprived of the gains of his selection.

(iv) His non-allocation to near native place to Allahabad is contrary to the provisions contained in the O.M. dated 10.5.1990 and 13.03.2002 issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training.

6. The respondents, on the other hand, had hotly contested the claim and contentions of the applicant. They have submitted that the applicant bearing Roll No.2449101 was declared successful finally in Combined Matric Level (Main) Examination 2000 under Physically Handicapped category and was allocated rank no. SLY/03/023. They have stated that the allocation of Group and Region to any particular candidate is decided by the following parameters:-

- (i) Availability of vacancies,
- (ii) Performance of the candidate in the examination
- (iii) Preference of the candidate.

They have also mentioned that the Commission had received seven vacancies earmarked for physically



handicapped candidates from the Regional Offices. The break up of the vacancies, received from the Regional Offices is given below:-

Maharashtra Region	:	03
Northern Region	:	03
Kerala & Karnataka Region	:	01
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Total	:	07
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They have submitted that there is no/ vacancy available in the Central Region, i.e. in Allahabad. As per the policy of the Commission, the P.H. candidates have been allocated to the States, where the vacancies were available. In the instant case, vacancies are available in Delhi-03. Since Delhi is much nearer to Allahabad the applicant has been allocated to Delhi Region where the vacancy of PH candidates are available and the applicant was informed accordingly by letterS dated 31.03.2003 and 27.2.2003. They have further argued that there were no vacancies of PH category under UP region in respect of impugned examination. It is under this circumstances that he has been allocated to Northern Region i.e. Delhi. They have submitted that in view of these reasons it is not possible for them to adjust the applicant at Allahabad Region.

7. I have heard at length the rival submissions

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made by the counsel of either side. I have perused the pleadings very carefully.

8. During the course of argument the counsel for the applicant Shri Shyamal Narain very emphatically stated that if a liberal interpretation is not given to a social legislation which has given reservation to the handicapped persons the objections to the said legislation would be nullified. He further stated that the disability of the applicant is of such a serious nature that he needs to be vested and bodily lifted even to be put on a cycle rickshaw and low-motion even in order to very small distances. He has drawn my attention to the photograph of the applicant which is on record also. He submitted that the applicant's posting outside Allahabad is totally illusory and all the gains he got by passing the examination has been brought to naught. The entire efforts of the applicant to rise above his adversity which was propelled by sheer grit, determination and unflinching desire to become financially independent has no meaning in case he is not posted at Allahabad. He also submitted that there are so many offices of the Central Government where many clerks are working and it would be in the fitness of the things that the applicant is posted to one of these offices. He has further contended that the argument of the Staff Selection Commission that there is no vacancy under the handicapped quota appears to be illogical. The counsel for the

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respondents Shri Rajeev Sharma opposed the contention of the applicant's counsel and reiterated the position taken in the counter reply. He submitted that the Commission is only the recruiting agency and allocation of candidates depend on the demands identified for each region and there was no demand for handicapped quota candidate in the Uttar Pradesh Region. Hence the request of the applicant could not be acceded to.

9. Be that as it may, it may be observed that the representation of the applicant was rejected on the ground that there was no vacancy for the candidate of handicapped quota in Allahabad by implication it may be stated that the vacancies were available in Central Region in the Clerks Grade. Once a candidate is selected as a reserved category candidate under some quota, his status and duties are that of a clerk and the same are wholly indistinguishable from the status and duties of other clerks who are selected as General category or non-reserved category. The respondents have not denied the fact that vacancies of clerical grades are ~~not~~ available in Central Region. The applicant's representation has been rejected on the ground that the said vacancies were not for physically handicapped candidate. I find no good ground that if clerical grade vacancies are available in the Central Region, there is no legal ground for denying the applicant allocation against

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one of those vacancies and the applicant in any case would be doing the clerical work only. In view of this, the O.A. is bound to succeed.

10. In the result, the O.A. succeeds and the impugned orders are quashed. The respondents are directed to consider the posting of the applicant in Allahabad itself. They may seek ~~regularisation~~ ^{relaxation} from the Department of Personnel and Training if so advised for this purpose.

11. There shall be no order as to costs.

D. Deo
Member-A

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