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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (O.A.) No. 420 of 1988

Brij Nath

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Applicant.

Versus

Superintendent of Post Offices,  
Mirzapur Division & another

....

Respondents.

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Hon'ble G.S. Sharma, J.M.  
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 by Brij Nath praying for setting aside of the order of respondent no.1, dated 27.2.1988, by which it has been decided that the selection of the applicant in Postal Assistant's cadre in the Postal Department cannot be entertained against the reserved vacancy for physically handicapped (deaf). The applicant further prays for a direction to be issued to the respondents to reinstate the petitioner on his original post of Postal Assistant and to pay his salary from 26.3.1985 onwards and also to give him other service benefits.

2. According to the applicant, he was appointed as a Postal Assistant by respondent no.1 (Superintendent of Post Offices, Mirzapur Division, Mirzapur). The appointment was allegedly illegally terminated by an order dated 26.3.1985, against which the applicant filed a writ petition in the High Court of Judicature at Allahabad. The writ petition was subsequently transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985. This Bench of the Tribunal, after hearing the counsel for the parties, set aside the said order dated 26.3.1985 with directions to the respondents to pass appropriate order regarding selection of the applicant, after giving reasonable opportunity of being heard to the petitioner, who will be at liberty to adduce evidence to prove that he is deaf as



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defined in letter no. Staff-C/R-20/Ch IV, dated 12.1.1979. It was further stated that the respondents shall also be at liberty to prove by evidence that the petitioner is not deaf as defined in the aforesaid letter and for this purpose, it was stated, the respondents can also refer the matter to some ENT medical practitioner. Thereafter a contempt petition was filed by the applicant in respect of the order of this Tribunal, referred to above, and ultimately ~~the impugned~~ respondent no.1 has passed the impugned order dated 27.2.1988. According to the applicant, respondent no.1 has passed the impugned order under a misconception and wrong interpretation. The case of the applicant in brief is that he was tested by a Medical Board of the Special Employment Exchange for Physically Handicapped, G.T. Road, Kanpur (Annexure '4' to the application) and after examining the applicant, the Medical Board has certified that the disability of deafness of the applicant is more than 90 decibels. According to the definition, as given in the said letter of 12.1.1979, the 'deaf' is defined as under :-

"The deaf are these in whom the sense of hearing is non-functional for ordinary purpose of life. They do not hear/understand sound at all even <sup>with</sup> ~~are~~ amplified speech. The cases included in this category will be those having hearing loss more than 90 decibels in the better ear (profound impairment) or total loss of hearing in both."

Since in this case, according to the Medical Board, ~~the~~ hearing loss of the applicant being more than 90 decibels in both the ears, he has to be included in the category of 'deaf' persons in accordance with the accepted definition, referred to above. The impugned order does not take into account the certificate of the Medical Board in terms of the definition, referred to above, and has reached a wrong conclusion that the applicant is not eligible for being considered as a deaf person for the purpose of reservation of vacancy for the physically handicapped persons. In view of these circumstances, the

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impugned order deserves to be set aside with consequential selection and reinstatement of the applicant in the post of Postal Assistant with retrospective effect.

3. In the counter affidavit filed on behalf of the respondents, it is stated that the applicant entered the Department on 1.4.1979 as Extra-Departmental Packer. Subsequently, he applied for the post of Postal Assistant on 8.11.1982 against the reserved vacancy for deaf persons. Originally he submitted a medical certificate dated 1.9.1982 from Dr. A.K. Dwivedi. This certificate states that the applicant is having Bilateral mixed hearing loss and this is a permanent disability. The applicant was selected as Postal Assistant, Mirzapur. Later, the Superintendent of Post Offices, Mirzapur addressed the Chief Medical Officer, Mirzapur for medical examination of the applicant. The Chief Medical Officer certified that he could not discover that the applicant had any disease constitutional or bodily infirmity. Nothing is mentioned in this certificate regarding deafness of the applicant. The respondents state that although the applicant was selected from outside quota in the second half of 1982 in the cadre of Postal Assistant against deaf quota, he was never employed regularly at the post of Postal Assistant, because there was no vacancy. He was engaged in Mirzapur Head Post Office and other offices at the time of shortage of staff for a few days to work on daily wage basis. The respondents also rely on the definition of 'deaf person' for the purpose of reservation, as extracted earlier in this judgment. The respondents aver that the medical certificate was required to be submitted from a Medical Board attached to the Special Employment Exchange, Kanpur. The applicant was referred to the Special Employment Exchange. He submitted a medical certificate dated 31.7.1987 issued by the Medical Board attached to the Special Employment Exchange, Kanpur (Annexure 'CA-3' to the counter affidavit). Since the certificate dated 31.7.1987 did not show the extent <sup>of</sup> ~~to~~ <sub>the</sub> deafness in terms of decibels, the applicant was again instructed to get the same mentioned in the certificate. This <sub>was</sub>



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was done by the applicant. The Medical Board made <sup>a</sup> further certification dated 25.2.1988 on the Medical Certificate dated 31.7.1987, <sup>1987</sup> as follows :-

"25.2.1988 Above examined person has more than 90 decibel deafness in both the ears and this is disability by 90% even with the help of hearing aid."

According to the respondents, the various medical certificates produced by the applicant showed inconsistency<sup>ies</sup> and the Medical Board's certificate dated 25.2.1988, referred to above, is vague with reference to the definition, also referred to above. The contention of the respondents in brief is that the applicant has not been certified that he does not hear/understand sound at all even with amplified speech. He has not been certified that he has total loss of hearing in both the ears. It is pointed out by the respondents that the applicant had, at no stage of time, certified that in him the sense of hearing is non-functional for ordinary purposes of life. The medical certificate of the Medical Board, where the petitioner has been certified to be deaf by 90 decibels, is ambiguous, inasmuch as it has not been specified whether the deafness of more than 90 decibels is in the left or right ear or the deafness of more than 90 decibels is in the better ear.

4. We have heard the learned counsel for the parties. During the oral arguments the learned counsel for both the sides reiterated their contentions at length. The entire controversy in this case revolves round the proper interpretation of the definition of 'deaf', <sup>as</sup> given in the Ministry of Home Affairs letter dated 12.1.1979, referred to earlier in this judgment; the definition is again reproduced below for convenience :

"The deaf are these in whom the sense of hearing is non-functional for ordinary purpose of life. They do not hear/understand sound at all even<sup>to</sup> with amplified speech. The cases included in this category will be those having hearing loss more than 90 decibels in the better ear (profound impairment) or total loss of hearing in both."

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Succinctly summarised, the contention of the applicant is that the second half of the above definition should be applied in his case on the basis of the Medical Board's certificate dated 25.2.1988; the contention of the respondents, on the other hand, is to lay exclusive stress on the first part of the above definition. Accordingly, the respondents have contended vigorously that in order to be eligible for the reservation against the deaf quota, the applicant's sense of hearing should be non-functional for ordinary purposes of life and that he should not hear/understand sound at all, even with the help of hearing aid. This is the reasoning given in the impugned order cancelling the selection of the applicant. As against this, the applicant refers to the Medical Board's certificate dated 25.2.1988, according to which, the deafness or loss of hearing of the applicant is more than 90 decibels in both the ears and his disability being 90% even with the help of hearing aid. In another certificate of the ENT Surgeon of the Medical Board, also dated 25.2.1988, (Annexure 'RA-1' to the rejoinder affidavit) it has been made clear that the hearing loss of the applicant is more than 90 decibels in both the ears. The above definition contains the following clause :-

"The cases included in this category will be those having <sup>hearing</sup> loss more than 90 decibels in the better ear (profound impairment)."

It is obvious that the Medical Board's certificate fits with this part of the definition and the respondents have nowhere disputed this agreement. The impugned order is silent about this clause in the definition, while laying stress on absolutely deafness. In the reply filed it is argued that there is something vague in the certificate because it is not specified whether the loss of hearing <sup>exceeding</sup> ~~existing~~ 90 decibels is in the left or right ear or in the better ear. These contentions are without any significance as it does not seem to matter whether the degree of loss of hearing, referred to, is in the left ear or in the right ear. When the loss of hearing is <sup>more than</sup> ~~existing~~

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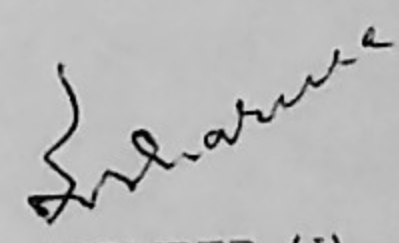
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90 decibels in both the ears, such loss is bound to be more than 90 decibels in the better ear of the two. The respondents want this clause in the definition about 90% loss to be completely ignored for the purpose of applying in the applicant's case. In any reasonable method of interpretation this cannot be done. If the intention of the authors of the definition was that the person should be absolutely devoid of the sense of hearing, they would not have amplified the definition by specifically saying that the definition will include those having hearing loss of more than 90 decibels. It is obvious that persons with that degree of deafness were considered handicapped enough for the purpose of reservation of vacancy. Such being the position, the benefit of the particular clause, referred to above, which is admittedly applicable to the applicant, cannot be denied to the applicant. Since this has been done by the impugned order, it cannot stand.

5. In the above circumstances, the application is allowed. The impugned order dated 27.2.1988 is hereby set aside and the selection of the applicant is restored. The respondents shall now proceed further to make his appointment in accordance with the relevant rules against the existing or the first available vacancy reserved for physically handicapped (deaf) persons. There will be no order as to costs.

  
MEMBER (A).

  
MEMBER (J).

Dated: May 4, 1989.

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