

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 15th day of September 2004.

QUORUM : HON. MRS. MEERA CHHIBBER, J.M.
HON. MR. D. R. TIWARI, A.M.

O.A. No.1010 of 2002

1. Akshya Kumar S/O Prithvi Chand.

2. Ashok Kumar Gupta S/O Prithvi Chand.

Both r/o Village & P.O. Bansdih, Tehsil Bansdih, Distt.
Ballia.....

.....Applicants.

Counsel for applicants : Sri N.P. Singh.

Versus

1. Union of India through the Secretary, Central Public Works Department, Govt. of India, New Delhi.

2. The Secretary, Central Public Works Department, Govt. of India, New Delhi.

3. Deputy Director (Training) Central Public Works Department, Training Institute, Room No.329A, Wing Nirman Bhawan, New Delhi.

4. Superintending Engineer, Delhi Kendriya Parimandal-5, Kendriya Lok Nirman Vibhag, East Block-4, R.K. Puram, New Delhi.....

....Respondents.

Counsel for respondents : Sri Ashish Gopal (since expired)

O R D E R

BY HON. MR. D. R. TIWARI, A.M.

By the instant O.A. filed under section 19 of A.T. Act, 1985, the applicants have sought the following reliefs.

A) That the restriction imposed debarring the handicap in hearing candidates from participating and holding them in eligible for recruitment to the post of Junior Engineer Civil and Electrical as per the advertisement 27th July to 2nd August, 2002 (Compilation - I) be set aside and held to be ultravires to the provision of Article 14 of Constitution of India.

B) That the respondents be directed to consider the applicants application form for recruitment to the post of Junior Engineers (Civil and Electrical) ignoring the restriction of being handicap in hearing."

D. R. Tiwari

2. Shorn of superfluities, the necessary factual matrix to adjudicate the issue is that the applicants have challenged the eligibility clause of the advertisement published in Employment News dated 27th July to 2nd August, 2002 (Annexure A-1). Vide clause 2, the advertisement debars the candidates to appear for the post of Junior Engineer (Civil/Electrical) who are suffering from visual and hearing disabilities. The applicants have passed the three years diploma course of Civil Engineering from Technical Education Board, U.P. Lucknow in the year 1994 (Annexures A-2, A-3 and A-4). They are suffering from hearing impairment about 80% being permanently handicapped person. A handicap certificate is at Annexure-5. In addition, they belong to backward caste. The Applicant No. 1 applied for the post of J.E. (Civil) whereas the Applicant No.2 applied for the post of J.E. (Electrical) (Annexures A-11 & A-12). Their grievance is that they are said to be ineligible for the reason that the applicants are handicapped in hearing and as per para 2 of the advertisement, they are debarred from appearing in the exam.

3. This Tribunal vide its interim order dated 4.9.02, directed the respondents to allow the applicants to appear in the written test scheduled to be held on 27.10.02 and the permission to appear in the written test shall not prejudice the case of the parties at the time of hearing. Accordingly, they were allowed to appear in the examination. After declaration of the result, vide their M.A.1502/03, they submitted that the applicant No.2 has been declared selected as OBC ~~Civil~~ candidate having the 8th position in the merit list.

4. They have assailed the aforesaid advertisement on various grounds which are contained in sub-paras I to VI of para 5 of the O.A. Besides this, during the course of

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hearing, the learned counsel for the applicant has emphatically argued that the restriction in the advertisement for the candidates who have hearing impairment is against the principles of equality enshrined in Article 14 of the Constitution. It has also been further argued that the restriction by which the handicapped in hearing are completely restrained from applying for the post of Junior Engineer (Civil/Electrical) while other physically handicapped persons are permitted for applying, is discriminatory. It has been further argued that a diploma holder in Civil Engineering but impaired in hearing can very well perform the duties of a Junior Engineer (Civil).

5. The respondents, on the other hand, have opposed the contention of the applicants and they have stated that duties of Junior Engineer (Civil) are such that hearing handicapped cannot perform the duty perfectly. They have also attached a photo copy of the Manual Vol.-I (Duties of Junior Engineers) (Annexure CA-1). They have further submitted that the post identified to be ~~reserved~~ ^{reserved} for the physically handicapped persons as per report of the Expert Committee to identify/review the post to be reserved for the persons with disabilities in Ministry/Department notified on 31.5.2001 does not include the post of J.E. (Civil and Electrical). These posts have been identified for orthopaedically handicapped persons only. Vide their M.A. No. 1185/04, they have further stated that the post of J.E. (Civil/Electrical) is a group 'C' post and they have not been identified for filling up by hearing/visually handicapped persons. These posts have been identified for the orthopaedically handicapped persons only, in group 'C', whereas reservation with hearing handicapped disabilities in the engineering service has been made in group 'A' and 'B' categories.

6. We have heard the rival submissions of the parties at length and perused the records very carefully.

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7. During the course of the hearing, Sri N.P. Singh, learned counsel for the applicant has raised ~~many~~ ^{many} issues. He has argued that the advertisement is violative of Section 32 and 33 of the 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter called the Act of 1995). He has also stated that the respondents have averred for the first time that J.E. (Civil) is a group 'C' post vide their M.A.No.1185/04. He has emphatically argued that there cannot be discrimination among the different types of handicaps in the sense that the orthopaedically handicapped persons have been allowed whereas the visually and hearing impaired persons are not allowed.

8. The central question, which falls for consideration is whether the respondents are justified in debarring the visually and hearing impaired persons for recruitment to the post of Junior Engineer (Civil). During the course of hearing, our attention was drawn to the minutes of the Sub-Committee of the Expert Committee to identify the post for giving reservation to the physically handicapped persons of various categories. We also saw the final notification of the Ministry of Social Justice and Empowerment which was published in the gazette on 31.5.01. On close scrutiny we found that the persons with hearing impairment were not one of the posts reserved in group 'C' category in the notification. The contention of the counsel for applicant that it contravenes Section 32 & 33 of the Act of 1995 is not based on facts. We cannot take any exceptions with para 2 of the advertisement as they have been advertised after the post were identified by the Expert Committee and it is as per the final notification dated 31.5.2001. The contention of the applicants' counsel is negative & simply on the ground that there has been no violation of Section 32 & 33 of the Act of 1995. The second contention of the counsel for applicants that

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the respondents are late in telling the court that J.E. (Civil) is a group 'C' post is not at all tenable as this information was given to the court much before the case was listed for hearing. Another argument of the applicant's counsel is that there has been discrimination among the various categories of handicapped persons. We are not impressed by this argument as reasonable classification is always permissible and it is neither unconstitutional nor illegal. Each category of handicapped is a class in itself. It is not the case of the applicants that some of the persons of hearing impairment have been allowed and others have not been allowed. It may be mentioned that there were three Sub-Committees of the Expert Committee for different categories of disabilities namely :-

- i) Sub Committee for Loco Motor disability or cerebral palsy;
- ii) Sub Committee for hearing impairment and;
- iii) Sub Committee for persons with blindness or low vision and the argument of the applicant's counsel that there has been discrimination in the sense that orthopaedically handicapped were allowed and persons with hearing impairment were not allowed cannot be countenanced.

9. It may be stated that executive has taken a decision to reserve the post for handicapped as per the provisions of the Act of 1995. After due deliberation and taking into consideration, the functional requirement and the recommendations of the Expert Committee it has been decided to reserve posts for handicapped persons. We are aware that courts have limited role to interfere in so far as the policy matters are concerned. The Apex Court have laid down that the administrative action is subject to control by judicial review under three heads :-

- i) Illegality;
- ii) Irrationality and;
- iii) Procedural impropriety.

10. We do not find that the advertisement suffers

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from any of the infirmity mentioned above. Once it is found that the administrator has acted in good faith having regard to all relevant considerations, the court should be slow to interfere with such decision. The above discussion clearly shows that exercise of power has been bonafide and there is no manifest error in the advertisement neither the exercise of power is manifestly arbitrary as contended by the counsel for applicant.

11. In view of the facts and circumstances, mentioned above, and our discussions, we find no justification to interfere with the advertisement impugned hereinabove and no exception can be taken to this.

12. The O.A. is disposed of in terms of the above discussion.

No order as to costs.

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