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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

ORIGINAL APPLICATION NO.326 OF 2007

ALLAHABAD THIS THE 25th DAY OF JANUARY, 2008

HON'BLE MR. A.K. GAUR, MEMBER-J

HON'BLE MR. SHAILENDRA PANDEY, MEMBER-A

Jogendra Singh, S/o Ex Sapper Ram Chandra Singh, R/o
12/1 Karelabagh Lal Colony, Allahabad.

.....Applicant

(By Advocate Shri Col. R.A. Pandey)

V E R S U S

1. Union of India through the Secretary, Ministry of Defence, DHQ, PO, New Delhi.
2. Engineer-in-Chief, Army Headquarters, DHQ, PO, New Delhi.
3. The Commander Works Engineer (CWE) (Air Force), Bamrauli, Allahabad.

.....Respondents

(By Advocate: Sri S. Singh)

O R D E R

BY SHAILENDRA PANDEY, MEMBER-A

Through this O.A., the applicant who is a 50% disabled person and also an Ex-Serviceman's ward, has sought a direction to quash the impugned order by which the respondents have rejected his representation for the post of Peon against the vacancy stated to have been reserved for Physically Handicapped candidate/ESM Wards. According to the respondents' counsel the case of the applicant has been rejected since no vacancy for the post of Peon

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was reserved and available for Physically Handicapped person as per the Government Rules.

2. The applicant's counsel has argued that rejection of his application is very arbitrary and that it also violates and defeats the related Government policy, guidelines and also the aim and objects of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

3. The applicant's counsel has argued that the Commander Works Engineer (West), Bamrauli, Allahabad published an advertisement in "Danik Jagran" dated 7.8.2006 and invited applications for three posts of Peons (General-2, SC-1) with reservation for physically handicapped and Ex-serviceman as per Government Rules. The applicant being Physically handicapped and also the ward of an Ex-serviceman applied for the post as he fulfilled all the relevant criteria, but when he approached the CWE's office, he was told that the vacancy meant for physically handicapped persons and the ward of Ex-service man had been cancelled. He, thus, approached this Tribunal by filing Original Application no. 1252 of 2006, which was disposed of with a direction to the respondent no.3 to consider and dispose of the representation of the applicant in accordance with rules through a reasoned and speaking order within a period of two months. The respondents decided the representation of the applicant, which is the impugned order in this O.A.

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It is the contention of the applicant that as three vacancies were available a fraction thereof (3% of $3=0.09$) was available for disabled/physically handicapped {P.H.} persons and ESM Wards. Thus, the three vacancies in the instant case were shared vacancies over which a general candidate, in absence of any kind of reservation in his favour, did not have a claim due to lack of a whole number, whereas the applicant had a fraction claim on two counts: {1} as a disabled person and {2} ESM Ward and that in the event of the applicant's claim remaining unfilled due to lack of a whole number the fractional vacancy should have been carried forward. Therefore, allotting the third vacancy in favour of the General candidate was totally arbitrary and violative of the P.D. Act and Government Policy.

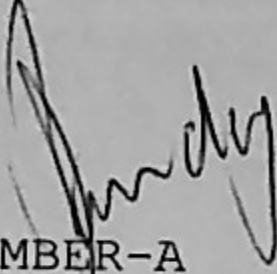
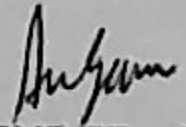
4. The respondents' counsel has argued that the action of the respondents was in accordance with the Rules as no vacancy for the post of Peon was reserved and was available for physically Handicapped person. The applicant's claim with regard to fraction entitlement (in this case being 0.09%) being rounded up would be 'Nil'.

5. When the applicant's counsel was asked if he could cite any direct ruling with regard to fractional entitlement being rounded upto to the next whole number, he has invited our attention to the judgment of Hon'ble Allahabad High Court in the case of Sudhir Kumar Awasthi Vs. Chief Development

Officer, Farrukhabad/Kannauj and Another reported in ESC 2004 (2) 818). We have gone through the said judgment and are of the view that this case does not mention that any fraction whatsoever is to be rounded up to the next whole number. In this case, out of 88 posts, 3% post i.e. 2.64% were to be reserved and if it was held that in view of this, three posts (2.64 rounded off to 3), should, therefore, have been reserved for P.H. persons. In the case cited the fraction was more than .5 and in such an eventuality accord the favour of preference should have been given to a disabled candidate in the event of a tie between the General and disabled candidate. In other words the balance would tilt in favour of the disabled candidate if the fraction vacancy of more than 0.5 was to be rounded up. The applicant's counsel has also contended that had these fractional vacancies (even below 0.5%) been carried forward from time to time, then perhaps full vacancy would have accrued and as such has sought the intervention of this Tribunal. He has, however, not been able to produce any evidence to show that these carried forward by clubbing all vacancies would add up to a full vacancy.

6. We have considered the pleadings of both the counsels and citation referred to above and the impugned order. We find that the impugned order is a detailed and reasoned one and has been issued by the respondents after consideration of all aspects of

the case and, therefore, we are unable to quash the impugned order. The O.A. is accordingly dismissed. The applicant, however, is given liberty to file a fresh O.A., if he is able to establish that by clubbing all fractional entitlements in the office a full vacancy would be available. No costs.


MEMBER-A
MEMBER-J

GIRISH/-