

15

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.195 OF 2005

Cuttack this the 1st day of July 2009

Dipak Kumar Rout

.....

Applicant

Vrs.

Kendriya Vidyalaya Sangathan

.....

Respondent

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be circulated to the P.B., CAT, or not?

(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

(K. THANKAPPAN)
JUDICIAL MEMBER

16

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ORIGINAL APPLICATION NO. 195 OF 2005

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CORAM:

HON'BLE SHRI JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
AND

HON'BLE SHRI C.R. MOHAPATRA, ADMINISTRATIVE MEMBER

...

Dipak Kumar Rout, aged about 42 years, S/o. Brajabandhu Rout, At-Ganapur,
PO-Satyabhamapur, Dist-Cuttack – at present working as Primary Teacher,
Kendriya Vidyalaya, Cuttack ...Applicant

By the Advocates: M/s. D.P. Dhalasamant
P.K. Behera

-VERSUS-

Kendriya Vidyalaya Sangathan, represented through its Commissioner,
K.V.S. 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi – 110
016 ...Respondents

By the Advocates: M/s. Ashok Mohanty
S.P. Nayak, M.K. Rout

ORDER

HON'BLE SHRI JUSTICE K. THANKAPPAN, JUDICIAL MEMBER:

Applicant is a physically handicapped person, presently working as Primary Teacher, Kendriya Vidyalaya, Cuttack. In pursuance of Annexure-A/1 notification dated 19.9.2003, the applicant submitted his application for the post of Post Graduate Teacher (in short 'P.G.T.') English. Since the applicant had got all the qualifications and experience prescribed for the post, he expected that he would be selected and empanelled for appointment to the above post. However, as the applicant was not selected, he filed a representation before the authorities pointing out application of reserved quota in case of physically handicapped person with prayer to review the



entire process of selection in the light of the administrative protection given to the physically handicapped persons by the Government of India. Having not received any reply, the applicant, relying on various orders/instructions issued by the Government of India from time to time, has moved this Tribunal seeking the following relief:

“...to direct the Respondents to declare the applicant to have been qualified for being appointed to the post of PGT (English);

... to direct the Respondent to appoint the applicant to the said post with effect from the date the other selected candidates have been appointed as P.G.T. (English) with all consequential service and financial benefits;

...and/or to declare the entire process pursuant to Annexure-A/1 is null and void;

...and/or to direct the Respondents to determine the roster point meant for PH quota with effect from the date when it came into force i.e., 1977 and accordingly, confer all consequential service benefits arising therefrom on the applicant”

2. Resisting the contentions of the applicant, a reply statement has been filed for and on behalf of the Respondent-K.V.S. It has been stated by the Respondent that the post of Post Graduate Teacher being a Group B post, it is not necessary to reserve any quota for physically handicapped as reservation for physically handicapped persons is allowed only in Group C and D posts. Further, it is stated in the reply statement that out of the total no. of 254 candidates selected for P.G.T. in various disciplines, 11 vacancies, which was more than 3% of the required reservation belonged to PH category and there being 8 vacancies in P.G.T. (English), 3% is nil.



Hence, no quota could be given to physically handicapped in P.G.T. (English).

3. The applicant, by filing a rejoinder has stated that as per the directions and instructions of the Government of India and as per the provisions under Section 33 of the Persons with Disability (Equal Opportunities Protection of Rights and Full Participation), Act, 1995 extended the scope of reservation of 3% vacancies in case of physically handicapped persons, which came into force with effect from 1.1.1996. In pursuance of the above enactment, the Government of India, Department of Personnel & Training, Ministry of Personnel, Public Grievances, issued instructions to all concerned to follow the policy of reservation in Group A and B posts/services under the Central Government in February, 1997. The applicant has stated that thus being the situation, out of the total number of vacant posts existed from the date of issuance of the above instructions, the Respondent-KVS should have reserved posts to be filled up by physically handicapped persons. It is further stated in the rejoinder that the Respondent - KVS has not followed the above policy of reservation for physically handicapped from the day-forth the reservation policy in case of physically handicapped person came into being.

4. On receipt of the above, the Respondent-KVS has filed a reply to rejoinder to show that they have been following the policy of reservation in case of physically handicapped persons.



5. We have heard Shri D.P.Dhalasamant, the learned counsel appearing for the applicant and Shri Ashok Mohanty, learned senior counsel appearing on behalf of the Kendriya Vidyalaya Sangathan and perused the documents submitted before us.

6. The learned counsel for the applicant submitted that as per the principles enunciated in the Act, the Respondents are bound to follow the rules and instructions issued by the Government of India from time to time. The counsel further submitted that even as per the additional reply statement, it is not clear whether the Respondents have ever followed and applied the principle of reservation to physically handicapped persons correctly. The counsel for the applicant also pointed out that as per Annexure-A/4 notification, it is specifically mentioned that reservation of vacancies for SC/ST/OBC/Ex-Servicemen and Physically handicapped candidates would be as per rules of the Government of India and if so, it is imperative on the part of the Respondent to empanel the applicant for appointment against the quota meant for physically handicapped as in the advertisement. It is clearly stated that the future posts coming up would be filled up from the waiting list or at the most, if the applicant was not appointed as such, he should have been included in the panel prepared for appointment under physically handicapped quota.

7. To the above contentions of the counsel for the applicant, relying on the counter, and the additional reply statement, the learned Senior



counsel for the Respondent-KVS submitted that the KVS is following the principles of reservation for SC/ST/OBC/Ex-servicemen and Physically handicapped candidates as per rules of the Government of India. The learned counsel also submitted that as per Annexure-A/1 notification, a total vacancy of 254 posts of Post Graduate Teachers in different disciplines have been filled up. Further, the learned counsel submitted that from 1999 onwards, following the policy of reservation the physically handicapped persons are being appointed and to show this, the Respondent-KVS has stated that under the relevant advertisement, during the period 2004-2005, out of 254 selected for the post of Post Graduate Teachers, 11 belonged to physically handicapped category which was more than 3% of the required reservation. There being 8 vacancies for the post of post Graduate Teacher in English the 3% reservation thereof worked out to 'nil' and this is how, as per the available vacancies the Selection Committee recommended 8 candidates for appointment on merit. The marks secured by the last candidate selected and recommended for appointment, who belongs to General Category were 70, OBC - 72.5, SC - 68 and ST - 51.5 out of 125 whereas the applicant had secured only 47.50 marks. Further, it has been submitted that under PH category for the post of PGT (English) three candidates had secured more marks than the present applicant, i.e. 1st was 55, 2nd 49.25 and 3rd 48.5 respectively. Lastly, the learned counsel appearing for the Respondent contended that in the application form for the post of



Teachers under Column 10 Category 1, there is provision of boxes for tick marking for General/OBC/SC/ST categories. Likewise, there is also provision under column 11, Category-II of boxes for tick marking sub categories, i.e., Blind, Physically Handicapped, Ex-servicemen, etc. Hence, according to the learned counsel for the Respondent, there being no violation of any rule or instructions issued by the Government from time to time, all the grounds urged in the O.A. are baseless and therefore, this Tribunal should dismiss the Original Application, being devoid of merit.

8. In the light of the contentions of the learned counsel appearing for either sides based on the relevant rules, the question to be answered is whether the applicant is justified in approaching this Tribunal and whether he is entitled to any relief as claimed in this O.A. or not.

9. It is an admitted fact that as per Annexure-A/1 advertisement, Respondent-KVS, RO, Mancheswar, Bhubaneswar invited applications for filling up of the post of Post Graduate Teachers in various disciplines including English. But Annexure-A/1 did not indicate the total number of vacancies to be filled up. Annexure-A/1 only disclosed that applications were invited for recruitment of Teachers in KVS for the year 2004-05 for filling up of vacancies and drawing up a panel of candidates for the period up to 30.6.2005. As revealed in Paragraph-6 of the counter/reply statement, it is admitted by the Respondent-KVS that Annexure-A/1 was for filling up of total vacancies of 254. It is further stated in the same paragraph that there



were only 8 vacant posts for the Post Graduate Teachers in English. Thus, it is clear from the counter/reply statement that the vacancies against which the applicant had applied were eight in number and if so, in the light of the contention of the learned counsel for the applicant, it has to be borne in mind that out of the 8 vacancies, if 3% reservation for physically handicapped is applied, the applicant cannot be considered against the said quota. That apart, the counter-reply has specifically taken the position that the applicant had secured less mark than the other physically handicapped persons selected and on this score alone, the applicant is not justified in praying for any relief in this O.A.

10. The next question to be considered is whether the Respondents have applied the principles of reservation in the matter of physically handicapped candidates in all appointments hitherto made or not. In this context, it is to be noted that as per the additional reply statement, filed on behalf of the Respondents, from 1999 onwards, KVS is following the policy of reservation and the posts are being filled up by appointing physically handicapped candidates in the KVS. It is further stated in paragraph 15 of the counter reply filed by the Respondents as follows:

“That due reservation of 3% has been provided to P.H. candidate and blinds in respect of Group-C and D posts which has also been evident



23

8

from the table given below :

Sl. No.	Name of 1999-2000	2002-2003			2003-04			2004-05				
No. Post/Sub.No. of candidates recommended for appointment												
	Total	PH	Blind	Total	PH	Blind	Total	PH	Blind	Total	PH	Blind
I. PRT	205	03	01	-	-	-	1400	40	03	914	35	5
II.TGTs												
1.English	210	05	01	251	02	-	115	03	-	126	01	01
2.Hindi	25	-	-	-	-	-	48	02	02	34	-	01
3.Sans.	22	01	01	53	01	01	23	-	01	44	02	-
4.Science	22	02	-	78	02	-	06	-	-	45	01	-
5.Math	40	01	-				243	06	-	72	03	01
6.Social Studies	31	-	01	109	05	02	103	02	-	82	02	-
Total	350	09	03	491	10	03	538	13	03	403	09	03

The above chart would also indicate that the Sangathan is following the instructions of the Government of India published from time to time. In this context, it is advantageous to quote the relevant portion of Office Memorandum dated 18.2.1997 issued by the Government of India, Department of Personnel & Trg., Ministry of Personnel, Public Grievances & Pensions, which reads as under:

“The undersigned is directed to state that Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provides that Government shall appoint in every establishment such percentage of vacancies not less than 3% for persons or class of persons with disability of which 1% each shall be reserved for persons suffering from –

- i) blindness or low vision;
 - ii) hearing impairment;
 - iii) locomotor disability or cerebral palsy,
- in the posts identified for each disability”.

Further, it is clarified by the Government of India in their order dated



24

9

4.7.1997 as under:

“Subject: Reservation for physically handicapped persons in Group A and B posts/services under the Central Govt.

The undersigned is directed to invite attention to this Department's O.M.No.36035/16/91-Estt.(SCT) dated 18.2.1997 on the above subject and to say that it has been represented before the Government that the earmarking of points No.33, 67 & 100 in the prescribed register for reservation for the physically handicapped would mean that the physically handicapped candidates may have to wait for a long time to get their turn for promotion. The suggestion has been considered and it has now been decided, in partial modification of the O.M. cited above, that the points number 1, 34 & 67 in cycle of 100 vacancies in the 100 point register may be earmarked for reservation for physically handicapped. The other instructions contained in the aforesaid O.M. remain unchanged.”

11. In the light of the above orders and other instructions issued by the Government of India from time to time, the Respondent-KVS is only to follow the principles of reservation for Physically Handicapped Persons as per 100 point roster. If so, the other question to be decided is whether the stand taken by the Respondent-KVS that they have taken in the cadre or the grade posts of Post Graduate Teacher as well in one group while applying the principles of reservation. Counter/reply statement specifically states that the Respondent-KVS has been following scrupulously the principles of reservation in filling up of the vacancies in strict compliance of the orders/instructions issued by the Government of India. So far as the applicant is concerned and the vacancies to be filled in pursuance of the Annexure-A/1 advertisement, there being only 8 posts of PGT (English) out of 254 against the total estimated and earmarked of 11 vacancies for physically handicapped obviously the applicant could not be



25

10

considered, the 3% of 8 having been worked out to nil vacancy . If so, the method in which the Respondents have applied the ratio is flawless and it cannot be interfered with by this Tribunal. It is left to the discretion of the Department or the Sangathan or the Organization to fix up or identify the vacancies which are earmarked for physically handicapped in the light of point 1, point 2, point 3 levels as per the instructions of the Government of India.

In the above circumstances, we hold that the Respondents have followed the principles of reservation for physically handicapped persons in its proper perspective.

12. For the reasons discussed above, we hold that the O.A. is devoid of merit and accordingly, the same is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER