

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 192 of 96

Present : Hon'ble Mr.D.C.Verma, Vice-Chairman
Hon'ble Mr.M.K.Mishra, Administrative Member

TARUN KANTI GHOSH
S/O Shri Tarak Nath Ghosh,
working as Junior Clerk in
Administrative Section,
Jute Technological Research
Laboratories (ICAR), 12 Regent
Park, Calcutta - 700040.

...APPLICANT...

VERSUS

1. Union of India, through
Secretary, Ministry of Agriculture
DARE (ICAR), Govt. of India,
New Delhi
2. The Director,
Jute Technological Research
Laboratories (ICAR), 12 Regent
Park, Calcutta - 40.
3. The Administrative Officer,
Jute Technological Research
Laboratories (ICAR), 12 Regent
Park, Calcutta - 40.
4. Mr.Sumit Ranjan Sarkar,
Assistant in the office of
Jute Technological Research
Laboratories (ICAR), 12 Regent
Park, Calcutta - 40.

...RESPONDENTS...

For the applicant : Mr.S.K.Dutta, counsel
Mr.U.R.Mishra, counsel

For the respondents: Mr.M.S.Banerjee, counsel

Heard on : 17.8.04

Order on : 10/9/04

O R D E R

M.K.Mishra, A.M.

The applicant Shri Tarun Kanti Ghosh filed this OA seeking for
the following reliefs :

- a) declaration that the claim of the applicant for promotion
to the senior promotional post as a physically handicapped
person for reserve post as provided under the Rule and order
of the Govt. of India is legitimate claim;
- b) a declaration that the said claim of the applicant for
promotion to the senior clerk/ Assistant promotional post
cannot be deprived by the respondents and the respondents
should give effect of promotion since August, 1991;

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c) a declaration that the post held as officiating Assistant by Sumit Ranjan Sarkar, respondent No.4, is illegal and without jurisdiction;

d) such other or further relief as the applicant is entitled under the law and equity.

Interim Order prayed for :

Interim order directing the respondents not to filled up one post of Sr.Clerk/Assistant in the Administrative Section, Jute Technological Research Laboratories (ICAR), 12, Regent part, Calcutta - 40 till the disposal of the application.

2. Briefly the facts of the case are that the applicant was appointed as a Junior Clerk on 24.10.86 in Administration Section, Jute Technological Research Laboratories (ICAR), Regent Park, Calcutta under the provision for concession available to Physically Handicapped (Deaf). He was posted on a permanent post w.e.f. 6.1.90. The applicant completed 5 years of service as Junior Clerk in 1991 and therefore he became entitled for being considered for promotion to the post of Sr.Clerk/ Assistant. The Physically Handicapped person has also been provided with reservation in the promotion. The applicant's grievance is that the reservation in promotion as available to him, as per various O.M. issued from time to time by the Govt. of India, has not been provided by the respondents. Therefore he could not get the promotion as Sr.Clerk or as Assistant despite the fact that he was eligible as a Physically Handicapped candidate for relevant promotions. Various representations were made by the applicant before the competent authority with the prayer that he should be promoted as Sr.Clerk/Assistant on quota basis at Point No.12/40 as provided in the various O.M. of Govt. of India parallel to SC/ST candidates. But the competent authority did not favour the applicant.

3. The ld.counsel for the applicant submitted that as per Govt. of India's policy decision, the reservation was made available to the Physically Handicapped (Deaf, Blind, Orthopaedically Handicapped) persons in Group 'C' & 'D' posts/service under the Central Govt. Each category of the Physically Handicapped person was given 1% reservation in the vacancies since December 1980. By the O.M.No.39016/20/80-Estt.

(C) dated 27.3.81 it was decided that there would be a roster for

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effecting reservations for the physically handicapped persons according to which the 34th vacancy occurring in a particular recruitment year is to be earmarked for the blind and 67th vacancy and 100th vacancy for the deaf and the orthopaedically handicapped respectively in a cycle of 100 vacancies. Later on it was decided by O.M. No.36035/17/85-Est.(SCT) dated 1.4.86 that Point No.1 between 1st & 33rd vacancy, Point No.2 between 34th & 67th vacancy and Point No.3 between 68th & 100th vacancy would be available to them. It was also provided that inter se exchange would also be permitted in such cases. In the case of the applicant Point No.14 was fixed in the roster and he got the appointment as a direct recruit accordingly.

4. Subsequently vide O.M. No.36035/1/89-Est.(SCT) dated 20.11.89 it was decided that the Physically Handicapped persons in Group 'C' & 'D' posts would get the reservation in promotion also and the facility of inter se exchange would also be available in promotion. In this connection a reference of G.I., Dept. of Posts, Letter No.20-30/89-SPB.I, dated June 1992 was made. Later on it was decided by the O.M. No.36035/14/83-Estt.(SCT) dated 20.1.84 that the reservation for the Physically Handicapped persons would be provided in the same manner as is being provided to SC/ST candidates through the roster for promotion in the same pattern as that of the direct recruitment as provided in G.I., M.H.A., O.M.No.1/11/69-Estt.(SCT) dated 22.4.70 and Dept. of Per. & A.R., O.M.No.1/9/74-Estt.(SCT), dated 29.4.75. According to these O.M. the applicant was entitled to get promotion in the grade of Sr.Clerk at Point No.14 or Point No.15 in case that vacancy at Point No.14 falls for SC/ST candidate.

5. The ld.counsel for the applicant further submitted that the respondents followed the instruction of O.M.No.36025/03/97-Estt.(RES) dated 24.7.97 although the applicant became eligible for promotion in 1991 and even if the applicant was not eligible for promotion as Sr.Clerk the vacancy at Point No.14 or 15 should have been carried forward as provided in O.M. dated 20.11.89 (supra).

6. The ld.counsel for the respondents in their reply submitted

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that the applicant was appointed as Junior Clerk on 24.10.86. The next promotion is of Sr.Clerk and thereafter the promotion is for the post of Assistant from the post of Sr.Clerk as the former post is a higher post than the post of a Sr.Clerk. As per Govt. of India's order, the applicant was entitled for preferential promotion to the post of Sr.Clerk against 34th or 67th vacancy in the cycle of 100 vacancies. The 40 point roster is not applicable in the case of the Physically Handicapped person as claimed by the applicant. The reservation in promotion is applicable to all Group 'C' posts and not only in the post of Sr.Clerk. The applicant's claim that Sri S.R.Sarkar, the respondent No.4 was wrongly promoted as Sr.Clerk and then to the post of Assistant, vide order dated 13.8.91. The ld.counsel for the respondents further submitted that Sri S.R.Sarkar was promoted to the post of Assistant from the post of Sr.Clerk whereas the applicant was eligible, if at all, only to the post of Sr.Clerk. Later on the applicant's allegation that Sri S.R.Sarkar was promoted wrongly to the post of Superintendent, is not supported by any evidence. In any case the applicant was not eligible for promotion to the post of Superintendent.

7. We have considered the submissions of the ld.counsel for both the parties and also perused the material available on record. Both the counsel referred to various O.M.s issued from time to time by the Govt. of India on the subject of reservation for Physically Handicapped persons in direct recruitment and in promotion. We observe that the various O.M.s quoted by the ld.counsel for the applicant have not been followed/observed by the respondents. The relevant circulars/instructions are mentioned below for the sake of convenience :

a) G.I., Dept. of Per. & A.R., O.M. No.39016/20/80-Estt.(C) dated 27.3.81.

Sub : Reservation of vacancies for the Physically Handicapped persons in Group 'C' & Group 'D' posts under the Central Govt.
-- Maintenance of roster for the effecting reservations.

b) G.I., Dept. of Per. & Trg., O.M. No.36035/17/85-Est.(SCT) dated 1.4.86.

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Sub : Reservation for the Physically Handicapped persons in Group 'C' & Group 'D' posts/services under the Central Govt.

c) Dept. of Per. & Trg., O.M. No.36035/1/89-Est.(SCT) dated 20.11.89.

Sub : Reservation for the Physically Handicapped in Group 'C' & 'D' posts filled by promotion.

d) G.I., Dept. of Posts, Letter No.20-30/89-SPB.I dated June 1992.

Sub : Reservation for the Physically Handicapped in posts filled by promotion.

e) O.M.No.36035/14/83-Estt.(SCT) dated 20.1.84

f) Govt. of India, M.H.A., O.M.No.1/11/69-Est.(SCT) dated 22.4.70

g) DOP & AR, O.M.No.1/9/74-Est.(SCT) dated 29.4.75

h) O.M.No.36035/03/97-Estt.(RES) dated 24.7.97 which reads as under :

OFFICE MEMORANDUM

Subject : Reservation for the physically handicapped in the posts filled by promotion.

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The undersigned is directed to invite attention to this Department's O.M.No.36035/7/95-Estt.(SCT) dated 18.2.97 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.

2. It is also clarified that the manner of calculation of the vacancies for the physically handicapped shall be as laid down in this Department's O.M. No.36035/8/89-Estt.(SCT) dated 20.11.89 so far as Group 'C' and 'D' posts are concerned.

Sd/-

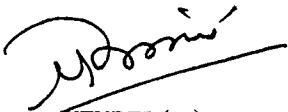
(Y.G.Parande)
DIRECTOR

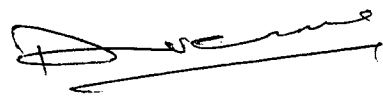
8. While examining the case of the applicant it has been noticed that on the subject of reservation for the Physically Handicapped persons in Group 'C' & 'D' posts various instructions have been issued by the Govt. of India from time to time. What is relevant is that which O.M. is applicable in the case of the applicant at a particular

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point of time, this aspect has not been looked into by the respondents. The case of the applicant has not been examined in corrective perspective. Therefore the respondents are directed to examine the case of the applicant in the light of the above quoted O.M.s within 3 months from the date of the receipt of the copy of this order. In case, thereafter, the applicant is found entitled to any benefit the same shall be provided as per rules. However, if the applicant is found not entitled to any benefit the applicant shall be informed with a reasoned order.

9. Therefore the OA stands allowed. No order as to costs.


MEMBER(A)


VICE-CHAIRMAN

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