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CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH

Original Application No. 302 of 2012.

Jodhpur, this the 5th July, 2013

CORAM:

HON'BLE MR. JUSTICE K.C. JOSHI, JUDICIAL MEMBER
HON'BLE Ms. MEENAKSHI HOOJA ADMINISTRATIVE MEMBER

Manish Vaishnav S/o Shri Ramniwas Vaishnav aged 27 years,
Residing Near Gandhi Chauk, Parabatsar, Tehsil Parbatsar, District
Nagaur (Raj) Pin 341512.

(Through Shri B.L.Swamy, Advocate)

.... Applicants

Versus

1. Union of India through the Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. The Joint Director, East (G.R.), Ministry of Railways (Rail Board), Rail Bhawan, New Delhi – 110 001.
3. The Secretary UPSC, Dhaulpur House, Shahjahan Road, New Delhi.
4. The Commissioner, Disabilities, Directorate of Social Justice Empowerment, Government of Rajasthan, Jaipur.
5. Chief Commissioner for Persons with Disabilities, New Delhi.
6. The Secretary, Government of India, Minsitry of Road Transport and Highway Border Roads Development Board, 'B' Wing, 4th Floor, Sena Bhawan, New Delhi – 11 0011.

.... Respondents

(Through Mr. D.S.Fedrick for Mr. K.K.Vyas for Respondents No. 1 to 5.)

(Through Mr.Niranjan Mathur for Mr. Kuldeep Mathur, for Respondent No. 6)

ORDER (ORAL)

PER K.C. JOSHI :

The applicant by way of this application has sought the following reliefs and prayed to give him an appointment on the post of Engineering service with consequential reliefs w.e.f. the date similarly situated persons have been appointed.

2. The short facts of this case as averred by the applicant are that the applicant appeared in the Engineering Service examination 2009 advertised by the UPSC in the reserved quota for physically handicapped persons and passed the said examination successfully. He submitted certificate dated 08.02.2010 as at Annex.A/1. The applicant

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ranked at 204 at serial No. 34 of the list. The extract of the rank in the list has been annexed as Annex.A/2. It has been averred in the application that certain posts were reserved for the physically handicapped persons and the statement is annexed as Annex.A/3. After clearance of the written examination, the applicant was called for the medical examination. The applicant was allotted the department of Border Road Development Board but respondent No. 6 declined to give appointment to the applicant vide Annex.A/5 dated 18.08.2011. The Railway Board while not agreeing with the proposal of respondent No. 6 wrote a letter vide Annex.A/6 dated 30.11.2011. The applicant made several representations to the respondent-department but no heed was paid and ultimately a notice for demand of justice was served on 14.06.2012 (Annex.A/16) seeking to provide the appointment to the applicant in pursuance to the ESE 2009 in the physically handicapped quota, but to no avail. The applicant has thus sought the following reliefs :-

1. *The respondents may kindly be directed with the suitable direction to providing the appointment to the applicant on the post of engineering service in the reserved quota PH (LDCP) as the applicant has stood the 204th rank in the merit w.e.f. the date on which the similarly situated persons were appointed with the consequential relief.*
2. *That the respondents may kindly be directed to count the seniority and other benefits of the appointment to the applicant's service record from the date of the appointment of other persons, as if he was never denied the same with the consequential relief.*
3. *That without prejudice to hereinabove if during the pendency of Original Application if vacancies are filled up then in such event the respondents may be directed to create one post for the applicant.*
4. *That the respondents may kindly be directed to pay the interest @ 18 p.a. on the amount of salary after counting from the date of appointments of other persons which becomes due from the date of appointment of the similarly situated persons of ESE 2009.*

5. *The exemplary cost may be imposed on the respondents for dereliction of duty in not providing the appointment to the applicant despite the duly selection has been made.*
6. *The impugned action of the respondents in not providing the appointment to the applicant on the post of engineering service in the reserved quota PH (LDCP) may kindly be deprecated and set aside.*
7. *The cost of the may kindly be made in favour of the applicant.*
8. *Any other direction or order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."*

Thus it appears to be a story of a physically handicapped person who passed the Indian Engineering Services Examination successfully but due to the adamancy of one of the respondent i.e. respondent No. 6 he could not be appointed since 2011.

3. On behalf of the respondent No. 6 a separate reply was filed and it has been averred that the Border Roads Engineering Services clearly contains that the selected candidate shall be liable to serve in any part of India or out side including the field area in war and in peace and they would be medically examined in accordance with the medical standards laid down for the field service. They have filed a copy of the Rules as Annex.R/2 As the applicant was not fit for field service, therefore, he was not suitable for BRES. It has been averred that the applicant was found handicapped under the functional classification BL (i.e. both legs affected) while the vacancies in BRES were reported for OA (i.e. one arm affected). Further, the allocation of the applicant to BRES was not in accordance with the medical fitness requirement as per ESE Rules 2009 in respect of BRES and also with respect of BRDB Sectt. requisition clearly indicating the nature of disability (one arm affected) which could be suited to the BRES job requirement, Ministry of

Railways were requested to reallocate the applicant to some other department. Thus, by way of detailed reply, the respondent No. 6 denied the right of the applicant for his appointment in the BRES.

4. The respondents No. 1 and 2 filed a detailed reply and they contended that the applicant was allotted to BRES against one of the 2 physically handicapped vacancies reserved for Locomotor Disability and Cerebral Palsy (LDCP). Out of a total 83 vacancies in BRES two vacancies were reserved for Physically Handicapped (LDCP). The vacancy statement was consolidated and forwarded to the Board by the UPSC along with the detailed results and dossiers of the candidates of the Engineering Services Examination. The applicant has been recommended as a Physically Handicapped candidate for allotment against 1 of 5 vacancies reserved for LDCP in Civil Engineering Discipline in the following services :-

Indian Defence Service of Engineers	1 vacancy
Central Water Engineering Services	1 vacancy
Border Road Engineering Services	2 vacancies
AEE (QS&C) in MES	1 vacancy

5. It has been averred by the respondents No. 1 and 2 that the physically handicapped reserved vacancies (one each) in IDSE, CWES & AEE (QS&C) in MES were filled by 3 physically handicapped candidates with ranks 201,202 and 203 respectively. The applicant secured 204th rank thus being recommended as a LDCP candidate in BRES. However, the dossier of the applicant was returned by the Border Roads Development Board (BRDB) drawing attention to page 68 of the Engineering Services Rules 2009 which mentions that the

candidates for BRES will be medically examined in accordance with the medical standards laid down for the field service. But the requirement of the BRES as brought out above is not corroborated by the relevant portion of regulations relating to physical examination of the candidates specified in Appendix – II of the ESE Rules 2009 and also the fact that there is reservation for PWD candidates in ESE 2009 for BRES. The candidature of the applicant was recommended in accordance with the Rules of Engineering Services Examination 2009 and it was the duty of the BRES to appoint the applicant under the physically handicapped reserved category quota in the relevant service.

6. By way of rejoinder the applicant has reiterated the same facts and also annexed a copy of the judgment passed by the Court of Chief Commissioner for Persons with Disabilities, Ministry of Social Justice & Empowerment, Department of Disability Affairs on 15.01.2013 at Annex.A/19. The Court passed the following directions in Para 13 of the judgment.

“13. In view of the above, since the complainant has approached Hon’ble CAT, Jodhpur Bench, Rajasthan, no directions can be given to the respondents, this Court is of the considered view that respondent No. 2, namely, Border Roads Development Board, should appoint the complainant to the post of Assistant Executive Engineer in Border Roads Engineering Service since the post has been identified for ‘BL’ category of locomotor disability and they have not obtained exemption from the appropriate authority. In the event of any difficulty in posting the complainant at a station in a difficult terrain, the respondent may post him in a suitable zone or area.”

7. Heard both the learned counsel for the parties.

8. The learned counsel for the applicant contended that the unfortunate applicant who is a physically handicapped is running from

pillar to post unsuccessfully and finally he also approached the Court of the Chief Commissioner but, due to the pendency of this petition, the Chief Commissioner vide order dated 15.01.2013 passed the directions to the respondent No. 6 to appoint the applicant but the efforts made by the applicant remain in vain. The counsel for the applicant contended that the Ministry of Railways, Railway Board, while dis-agreeing with the view of the Ministry of Shipping, Road Transport and Highways, Border Roads Development Board (BRDB) requested the respondent No. 6 to give appointment to the applicant and the dossier of the applicant was returned back, therefore, the matter is pending before the respondent No. 6 and the respondent No. 6 is under an obligation to appoint the applicant under the physically handicapped reserved category vacancy. The counsel for respondents No. 1 and 2 contended that the candidature of the applicant was forwarded to the respondent No. 6 as per the relevant rules and the action on the part of the respondent No. 6 to deny appointment is not legal nor as per rules.

9. Counsel for the respondent No. 6 contended that the applicant being physically handicapped in the category of Locomotor disability with both legs he is not fit to be appointed in the respondent department and allocation of seat made by the respondents No. 1 and 2 is contrary to and in violation to the relevant rules, therefore, they have refused to give appointment to the applicant and the action on the part of the respondent No. 6 is right and correct in view of the relevant rules.

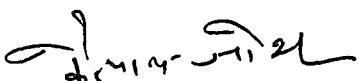
10. We have considered the rival contentions of all the parties and also perused the relevant records. The matter was heard by the Court of Chief Commissioner, Ministry of Social Justice and Empowerment where the department of Border Roads Development Board (BRDB) was also a party and respondents Nos. 2 and 3 i.e. Ministry of Railways and UPSC, were also parties and the matter was heard under the relevant rules and the provisions of law and the Chief Commissioner came to the conclusion that the claim of appointment in the BRES is right and as per rules or the provisions of the relevant law and directed the BRDB through the Secretary, to appoint the applicant on the post of Assistant Executive Engineer since the post has been identified for BL category of locomotor disability and the respondent No. 6 has not obtained exemption from the appropriate authority.

11. We have considered the rival contentions of both the parties. As the Chief Commissioner for Persons with Disabilities in his judgment dated 15.01.2013 considered the inconsistencies between the Medical certificate given by the different authorities in sub paras (i) and (ii) of para 12 of the judgement and it has been observed in para No. 12 (iv) that the UPSC has not specified the sub category of disability for which a given post is reserved for persons with disabilities and ultimately came to the conclusion that the applicant is entitled to have the appointment against the vacancy of physically handicapped persons (both legs), but the respondent No. 6 has not complied with the order of the Chief Commissioner for Persons with disabilities. When once the respondents No. 1 and 2 allotted the candidature of the applicant for

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appointment after the medical examination to respondent No. 6 to appoint in the department and in response to the letter of the respondent No. 6 (Annex.A/5) disagreed with the views of the respondent No. 6 and directed further to give suitable appointment to the applicant vide Annex.A/6. We are of the considered view that applicant is entitled to get his appointment in the department of respondent No. 6 and, therefore, while allowing this O.A. of the applicant, we direct the respondent No. 6 to give the appointment to the applicant within three months from the date of receipt of this order. So far as consequential relief is concerned, the respondent-department shall consider the claim of the applicant (after giving him appointment) in this regard on the representation to be submitted by him and after the decision on the applicant's representation, if any grievance remains, the applicant may approach this Tribunal for the same if so desired. The O.A. is allowed and disposed of with the above directions with no order as to costs.


 (Meenakshi Hooja)
 Member(A)


 (K.C.Joshi)
 Member(J)

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