

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**Original Application No. 39/2012**

Reserved on : 16.02.2015

Jodhpur, this the **23** day of February, 2015

CORAM

**Hon'ble Justice Mr K.C. Joshi, Judicial Member**

**Hon'ble Ms. Meenakshi Hooja, Administrative Member**

Hemant Maheshwari @ Hemant Kela S/o Shri Raman Lal Kela, aged 32 years, R/o Kumharpara, Jaisalmer (Raj)  
(Presently posted as TGT-Maths at K.V., AF, Jaisalmer.)

.....Applicant

By Advocate: Mr. K.K. Shah

Versus

1. Kendriya Vidyalaya Sangathan through the Commissioner, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi-110016.
2. The Secretary, Ministry of Social Justice & Empowerment, Govt. of India, New Delhi.
3. The Chief Commissioner for Persons with Disabilities, Ministry of Social Justice to Empowerment, Govt. of India, Sarojini House, 6, Bhagwan Das Road, New Delhi.

.....Respondents

By Advocate : Respondent No. 1 through Mr Avinash Acharya.  
Respondent No. 2 & 3 through Ms K. Parveen.

ORDER

Per Justice K.C. Joshi

By way of this application, the applicant has challenged the order

dated 10/18.12.2011 (Ann A/1) by which no reservation has been given to

the applicant being visually handicapped person, therefore, he has prayed for the following reliefs:-

“In view of above submissions it is most respectfully prayed that this Original Application may kindly be allowed and by issuance of an appropriate order or direction, the Annex. A/1 dated 10/18.10.2011 may kindly be quashed and the respondents may please be directed to either identify the post of PGT-Maths for VH category disabled persons or appoint the applicant as PGT Maths as he has all the requisite qualifications & fulfills all the requirements. That applicant may please be awarded any other relief, which this Hon'ble Tribunal deems just and proper in the case.”

2. The brief facts to adjudicate the matter, as averred by the applicant, are that the applicant is a Visually Handicapped (VH) person suffering from more than 40% disability of visual impairment. He was selected as TGT (Maths) in Kendriya Vidyalay Sangathan (KVS) and posted at KV, Air Force, Jaisalmer since 12.10.2006. The Department of Personnel & Training (DoPT) under the Ministry of Personnel, Public Grievances & Pension, Govt. of India has issued Office Memorandum on 29.12.2005 (Annex. A/4) wherein instructions have been issued with regard to reservation of persons with disabilities in posts and services under the Govt. of India. As per these instructions, reservation for vacancies in case of direct recruitment to Group A, B, C and D posts is fixed 3% and one percent is reserved amongst the aforesaid posts for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability. The applicant has further stated that the KVS vide advertisement dated 12

18.01.2008 (Annex. A/5) published 143 vacancies of PGT (Maths) for various categories i.e. UR-75, OBC-37, SC-21, ST-10 but did not identify the posts for disabled persons for PGT (Maths). Similarly, vide advertisement dated 12-18.11.2008 (Annex. A/6) 25 vacancies of PGT (Maths) for various categories i.e. UR-15, OBC-06, SC-03, ST-01 for the year 2009-10 were published, but there was no identified posts of PGT (Maths) for disabled persons. The applicant belongs to General Category and under horizontal reservation of 3%, the disabled persons has to be given reservation in General Category. In the year 2007-08 and 2008-09 out of 75 General Candidates, atleast 2 were to be kept for disabled, but not a single persons from disabled quota was given appointment. For the year 2009-10, one disabled candidate of OH category was given appointment as PGT (Maths). The applicant has appeared against the vacancies of 2007-08 and 2008-09 as well as 2009-10 and passed the written tests all the times and called for interview once only, but could not get selected for the same as posts of PGT (Maths) were not identified for VH category. Aggrieved, the applicant approached the Chief Commissioner for Persons with Disabilities by way of filing complaint. The Chief Commissioner, after hearing the applicant & KVS and considering the documents on record, vide its order dated 23.11.2010 (Annex. A/9) directed the KVS to devise and implement more equitable method for implementing 3% reservation for persons with disabilities in which eligible candidates with visual impairment in subject like Mathematics may get benefit of opportunity of competing for the reserve vacancies for persons with disabilities.

Thereafter, the KVS published advertisement (Annex. A/10) for 27 vacancies of PGT (Maths), but this time also no quota was kept either for VH or OH. The applicant applied and called for interview, but could not be selected as there were no post identified for any of the disabled person in PGT (Maths). The applicant also sought information under RTI and it was informed by the KVS that no reservation is provided to VH for PGT (Maths) as it is confined to PGT posts of English, Hindi & History only. The applicant has further stated that he got 62 marks in the written examination for the vacancies of year 2009-10 which were more than average for General Category candidates, but his 2<sup>nd</sup> and 3<sup>rd</sup> papers were not evaluated as he did not get 64 or more marks. In spite of clear direction from the Chief Commissioner for Persons with Disabilities to KVS vide Annex. A/9 the KVS has rejected the case of the applicant vide Annex. A/1 dated 10/18-12-2010 whereas other organizations like Delhi Subordinate Service Selection Board are giving reservation to VH category persons in PGT(Maths). The KVS once again published advertisement for vacancies of the year 2011-12 for PGT (Maths), but 01 post is reserved for OH category and not for VH category at all. The applicant again took up the matter with respondent No. 1 but it showed its inability vide communication dated 19.12.2011 (A/16) on the ground that the post of PGT (Maths) has not been in the list of identified posts notified by Ministry of Social Justice & Empowerment. The applicant has averred that when a VH category person could teach as TGT (Maths) after being selected by competing on own merit, how could he not be able to teach as PGT (Maths)

after being selected against the vacancies reserved for persons with disability. It has been further averred that when VH disability would not come in way for a candidate to become TGT (Maths) on own merit against unreserved vacancies then why reservation is not extended to VH person for the post i.e. PGT (Maths). Thus, there is no rationality in not identifying the post of PGT (Maths) as reserved for persons having disability of VH category. The applicant also made a representation dated 29.11.2011 (Ann.A/18) to Hon'ble Minister of HRD in this regard. The applicant has further averred that though having required qualification, experience & meeting all QRs for PGT (Maths) posts is not being selected for the same due to not identifying the post of PGT (Maths) for persons having disability of VH category, therefore, aggrieved of the action of the respondents, he has filed this OA seeking relief as extracted above.

3. By way of filing reply, respondent No. 1 i.e. the KVS has submitted that KVS has already amended Article 41 of the Education Code vide Office Memorandum dated 29.06.2010 as per the decision of the Board of Governors in its 88<sup>th</sup> meeting held on 14.05.2010 and allowed 03% reservation for persons with disabilities as per DoPT guidelines and this reservation is given to the category of posts and not to a particular post/subject as a matter of policy. This reservation is generally given in TGT subjects and PGT like English/Hindi/History (Non-science subjects) and in the past some teachers have been appointed in some of these subjects/categories including visually handicapped. The respondents have

further submitted that 3% reservation of vacancies of direct recruitment are reserved for persons with disabilities as per DoPT instructions issued on 29.12.2005 and provisions of Section 33 of the Persons with Disabilities Act-1995. The type of work (teaching) being carried out in this department is different from that in many other establishments, thus, there is no element of illegality/unreasonableness in the identification/allotment of posts/subjects for disabled persons on the part of the respondents. The observations made by the Chief Commissioner of Persons with Disabilities in the case No. 166/1011/08-09 dated 23.11.2010 (Annex. A/9) had already been examined by the duly constituted committee and the committee has decided that the posts in the PGT cadre identified for reservation of persons with disabilities by the KVS are as per Govt. of India, DoPT order Annex. A/4 and the case of the applicant who is visually handicapped (VH), for the post of PGT Maths is not substantiated and the applicant as well as the Chief Commissioner for Persons with Disabilities has been informed in this regard vide letter dated 10/18-10-2011 (Annex. A/1). The Chief Commissioner for Persons with Disabilities vide their letter dated 19.12.2011 had also informed the applicant that since the post of PGT (Maths) is not in the list of identified posts notified by Ministry of Social Justice and Empowerment, their office cannot insist on KVS on extension of reservation for persons with visual impairment in the unidentified posts. The respondent No. 1 has also averred that the information provided to the applicant by KVS under RTI Act, 2005 vide letter dated 07.01.2010 is authentic and Paper-II and Paper-III of the applicant were not evaluated

because the applicant obtained less marks in Paper-I than the minimum cut-off marks fixed by KVS. It has also been averred in the reply by the respondent No. 1 that the applicant can always come through promotion to the post of PGT by Limited Departmental Examination and KVS has given ample opportunities to all its employees to appear in the Limited Departmental Examination for higher posts such as PGT as per their eligibility and the applicant who is a qualified teacher, can appear in the Limited Departmental Examination and can prove his competency by getting selected to the post of PGT. Thus, respondent No. 1 i.e. KVS has prayed that the applicant has not suffered any legal injury, therefore, he is not entitled to any legal remedy.

4. Heard all the parties. Counsel for applicant contended that the applicant is a Visually Handicapped (VH) category disabled person and he is posted as TGT (Maths) with KVS at K.V. Air Force, Jaisalmer. The applicant has been applying for the post of PGT (Maths) and has got the requisite qualification for the post but he has not been appointed because this post has not been identified by the Ministry of Social Justice & Empowerment, Govt. of India and there is no reservation for VH category person in PGT Maths, therefore, he has prayed that by issuance of an appropriate order or direction, the Annex. A/1 dated 10/18.10.2011 may kindly be quashed and the respondents may please be directed to either identify the post of PGT-Maths for VH category disabled persons or appoint the applicant as PGT Maths as he has all the requisite qualifications

& fulfills all the requirements. Counsel for applicant further contended that by way of written examination he has passed the requisite test and called for interview, but has not been appointed on the post of PGT (Maths) on the ground that there is no such reservation for VH category person although later on vide order dated 29.07.2013 the applicant has been promoted through Limited Departmental Examination for the year 2010-11 to the post of PGT in the pay band-2 of Rs. 9300-34800 with Grade Pay of Rs. 4800/- Counsel for the applicant produced the memorandum No. F.11055/PGT/LDE/2013/KVS(HQ) (E-II) dated 29.07.2013 for our perusal. Counsel for applicant contended that the Dy. Chief Commissioner for Persons with Disabilities vide order Annex. A/9 advised the KVS to devise and implement a more equitable method for implementing 3% reservation for persons with disabilities in which eligible candidates with visual impairment in subjects like Mathematics are also able to enjoy the benefit of reservation under the Act. Therefore, vacancies in PGT (Maths) should also be reserved for persons having disability of VH category. Counsel for applicant further submitted that the order Annex. A/9 was passed by Dy. Chief Commissioner for Persons with Disabilities on the complaint of the applicant i.e. Shri Hemant Kela and no further action has been taken by the KVS for identifying the post of PGT Maths for VH person. The Dy. Chief Commissioner for Persons with Disabilities has informed that *since post of PGT (Math) is not in the list of identified posts notified by Ministry of Social Justice and Empowerment, this office cannot insist on extension of reservation for persons with visual impairment in the unidentified posts.*



The judgment is annexed at Annex. A/9 and communication is at Annex. A/16. The crux of the contention of the counsel for the applicant is that when other type of handicapped/disabled persons like Orthopedic Handicapped (OH), Hearing impaired persons, etc. can work on the post of PGT (Maths) in KVS and especially when the applicant himself can work as PGT (Maths) after passing of Limited Departmental Examination for the year 2010-11 then non-providing of reservation to the applicant for the year 2008-09 and onwards under the provisions of '*The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*' is bad in the law and therefore, Annex. A/1 is liable to set aside and respondents may be directed to provide benefit of reservation from date on which the applicant is entitled for such reservation with other consequential benefits. In support of his contentions, counsel for applicant relied upon the following judgment of Hon'ble Apex Court :

- (i) Deaf Employees Welfare Association & Anr vs. UOI & Ors., reported in (2014) 3 SCC 173.

5. Per contra, counsel for respondent No. 1 contended that Section 33 of *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* provides as under :

33. Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent for persons or class of persons with disability of which one percent 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.

Provided, that the appropriate Government may, having regard

notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

Counsel for the respondents further contended that the Ministry of Social Justice & Empowerment, Govt. of India vide notification dated 31<sup>st</sup> May, 2001 published on 30.06.2001 has identified the posts to be reserved for persons suffering from various disabilities and after the direction/advise by the Dy. Chief Commissioner for Persons with Disabilities, respondent department have been informed regarding the process of reservation of posts for persons suffering from different disabilities and the appropriate Govt., who is competent, has decided the number of posts category-wise in each category and they have kept these posts for other type of disabled persons suffering from other type of disabilities. Therefore, there are no reasonable grounds to quash Annex. A/1.

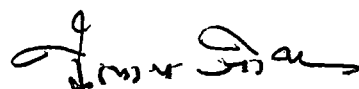
6. Considered the rival contentions and also perused the judgment cited by counsel for applicant. The judgment cited by counsel for applicant was for grant of Transport Allowance and the Ministry of Finance, Govt. of India took a view that visually impaired person cannot be equated with hearing impaired person since deaf and dumb persons are not physically dependent on others for commuting and therefore, not entitled to double rate of Transport Allowance whereas in the present case the controversy is entirely different and the facts of the case cited by counsel for applicant is not applicable in the present case. In our considered view, when the

***Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*** has identified certain posts for certain types of disabled persons including visually handicapped vide notification dated 31.05.2001, which does not include the subject of Maths. Thus, there is no reason to interfere with order Ann.A/1 and we are satisfied with the reasons given in Ann.A/1 that reservations for persons with disabilities can be given only in the posts identified and the posts of PGT (Maths) has not been identified in the aforesaid notification. Accordingly, in our considered view, there is no reason to quash Ann.A/1.

7. Thus, OA lacks merit and the same is dismissed with no order as to costs.



(MEENAKSHI HOOJA)  
Administrative Member



(JUSTICE K.C.JOSHI)  
Judicial Member

R/ss

Copy need  
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for K. Parveen  
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