

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.478/12

Wednesday, ... this the 19th day of June 2013

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Thaha Gafoor P.P.,
S/o.Sainulabid,
Residing at Padippura House,
Bitra Island, UT of Lakshadweep. ...Applicant

(By Advocate Mr.M.R.Hariraj)

Versus

1. Union of India represented by the Secretary to Government of India, Ministry of Human Resources, New Delhi – 110 001.
2. Administrator, UT of Lakshadweep, Kavaratti – 682 555.
3. Director of Education, UT of Lakshadweep, Kavaratti – 682 555. ...Respondents

(By Advocate Mr.S.Radhakrishnan [R2&3])

This application having been heard on 13th June 2013 this Tribunal on ...19th June 2013 delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant in this case is a visually challenged individual, and was an aspirant to the post of PGT (English) in the Lakshadweep Islands and in response to Annexure A-1 notification dated 21-11-2011 he had preferred necessary application, under the General Quota, but could not succeed. Hence, through various representations, he had requested for consideration of his case against physically challenged reservation quota.

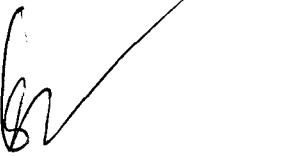


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As nothing emanated from the respondents, he has, challenging the very notification dated 22-11-2011, filed this OA in June, 2012. The following are the reliefs sought for by the applicant :-

- "i. To quash Annexure A8 to the extent it does not reserve the vacancy of PGT (English) as reserved for person suffering from blindness/low vision;
- ii. To declare that the vacancy of PGT (English) is liable to be reserved for person suffering from blindness/low vision and to direct the respondents to consider the applicant for appointment to the said vacancy in preference to others who do not suffer from such disability;
- iii. To grant such other reliefs as may be prayed for and the court may deem fit to grant, and
- iv. Grant the costs of this Original Application."

2. Respondents have contested the O.A. They have stated that in all 117 posts have been identified by the Administrator for recruitment of persons with disabilities and the same was published on 05-03-2000. 2 posts of Lecturers out of 34 were identified for differently abled persons by the aforesaid order. However, the said posts of Lecturer have been declared as a dying cadre. No separate quota has been fixed for physically challenged persons in the cadre of PGT. Hence, till now all the posts are filled up without such reservation for physically challenged individuals. The respondents have also stated that the department would examine the feasibility to convert the post of lecturers as Post Graduate Teachers when the incumbents working against the said post of Lecturers vacate the post. The respondents have also stated that vide order in OA No. 460 of 2011, direction has been issued by the Tribunal to take effective steps to identify suitable vacancies of physically challenged teachers for differently abled



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persons. The matter has been taken up with the Ministry and the Administration is pursuing the matter to grant the deserving benefits to the physically disable persons. Once it is identified, the Administration will issue public notice affording equal opportunity to all the eligible candidates to apply for the identified vacancies.

3. Counsel for the applicant argued that the Central Government has already identified the posts that could be manned by physically disabled persons and post of Higher Secondary Teacher is one among them. So far no post has been so reserved and non identification of jobs cannot be a reason for non reservation as held by the Apex Court in the case of **Govt. of India vs Ravi Prakash Gupta (2010)7 SCC 626** wherein the Apex Court has held as under :-

“29. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, does not arise.”



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4. The counsel further submitted that the action taken on the present notification under challenge should be nullified and the post of PGT (English) should be earmarked for being filled up and the applicant should be considered for the same. Submissions have also been made as to the interpretation of the term, 'Appropriate Government', 'Central Government' etc., to hammer home the point that once the Central Government has identified the jobs, the same would suffice without waiting for the Administrator to identify the jobs/posts.

5. Counsel for the respondents submitted that the applicant could not succeed in his attempt when he had applied for the post of PGT(English) and by the time he had filed this OA many have already been appointed in pursuance of the aforesaid notification. He has further submitted that action has already been taken to identify various posts. Further, in so far as teaching faculty is concerned in higher secondary level, at least two of the 34 lecturers are physically challenged persons. Thus, it cannot be said that there is no representation at all.

6. Arguments were heard and documents perused. The applicant tried his luck by applying in response to the notification at Annexure A-1, waited for the result and not being successful in the selection, has, thereafter approached the Tribunal in June, 2012, challenging the notification on the ground that there is no reservation for physically challenged persons. That there is no reservation as per notification was to the full knowledge of the applicant at the time when the notification was issued. He has, no doubt, made some attempt by addressing communication to the authorities on

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26-11-2011 but therein, no request was made to the respondents not to operate the said notification. Instead, he did participate in the selection but as per his own words vide para 4.6 of the application he had lost in it. Having not challenged the notification immediately on its publication, and having participated in the selection, the applicant cannot be permitted to challenge the vires of the notification . It has been held in the case of **K.A. Nagamani vs Indian Airlines, (2009) 5 SCC 515** as under :-

55. In *Madan Lal v. State of J&K (1995) 3 SCC 486* this Court observed:

“9. ... It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair....”

7. Thus, in so far as the challenge to the notification is concerned, the claim of the applicant has to be rejected.

8. Yet, a larger issue deserves consideration. In order dated 15-05-2012 in OA No. 460 of 2011, this Tribunal has passed the following order :-

“7. From the facts of the case it emerges that the applicant though a disabled person had applied for the post of PGT (History) in the general category. In the notification for the post of PGT (History) along with other PGT posts there was no quota reserved for the disabled. In the absence of reservation for the disabled in the notification dated 31.1.2009 inviting applications for filling up the post of PGTs, the applicant has no ground to claim that his disability should be considered for selection. As and when notification is issued giving equal opportunity to all disabled persons to participate in the selection, the case of the applicant can also be considered if he applies for the post notified in the category of disabled. In a

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general selection the applicant cannot have personal reservation on the ground of his disability. Having stated this we would observe that it is the duty of the respondents to make earnest efforts to identify posts for the disabled and fill them up so that qualified disabled persons are enabled to live a dignified life as per various orders of the Government of India and the Persons with Disabilities Act, 1995."

9. Keeping in view the aforesaid direction, this Tribunal reiterates that the Respondents shall meticulously take prompt action and identify the posts for being manned by physically challenged persons. In so far as PGT is concerned, a list may be drawn and against the relevant slots (3% in all for various kinds of disabilities) earmarked for being filled up by disabled individuals whenever vacancies arise the same may be notified. In any event, as and when vacancies arise in the post of lecturers when the same is filled up by PGT, reservation aspect for physically challenged individuals be accorded.

10. With the above, the OA is disposed of. No cost.

(Dated this the 19th day of June 2013)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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