

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 52 OF 2008

Thursday, this the 10th day of *September*, 2009.

CORAM:

**HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

U. Nazarulla Khan, PST,
CRC Coordinator (SSA),
Govt. Senior Secondary School,
Amini, Union Territory of Lakshadweep.

... Applicant

(By Advocate Mr. S. Krishnamoorthy)

versus

1. Administrator,
Union Territory of Lakshadweep,
Kavarathi.
2. The Secretary (Education),
Union Territory of Lakshadweep,
Kavarathi.
3. Director of Education,
Education Directorate,
Kavarathi – 682555.
4. M.P. Muthukoya, PST,
J.B. School, Agathi – 682553.

... Respondents

(By Advocate Mr. S. Radhakrishnan (R1-3)
Advocate Mr. M.V. Thamban (R4))

The application having been heard on 21.08.2009, the Tribunal
on *10-09-09* delivered the following:

ORDER

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

The applicant is a Primary School Teacher with 21 years of service.
He had developed visual disability with 50% permanent disability since 2004.

His claim is that he should have been considered for promotion to the post of Headmaster under the quota of physically handicapped persons. When respondents had issued orders promoting the 4th respondent in the handicapped quota to the post of Headmaster, the applicant has challenged the same on the ground that the 4th respondent is junior to the applicant with less percentage of permanent disability. Hence the applicant has prayed for quashing of Annexure A7 order promoting the 4th respondent and for a direction to the official respondents to consider and promote the applicant as Headmaster in the Junior Basic School in the handicapped quota.

2. Respondents 2&3 have filed a statement while the 4th respondent filed his reply. According to the official respondents, the 4th respondent submitted a representation to the Director of Education on 25.11.2003 and also approached the Tribunal in regard to his promotion under the handicapped quota. His O.A. was disposed of by order dated 19.12.2003 directing the Administrator to consider his representation and render a speaking order. The direction also included that one post should be kept vacant for considering the case of Respondent No.4 as per the rules. The Administrator collected information relating to physically handicapped candidates and in all, there were five individuals, including the applicant on the one hand and the private respondent on the other. On verification, it was found that the private respondent is one who was appointed initially under the physically handicapped quota while the applicant's initial appointment as Primary School Teacher was in the General category and the medical certificate produced by him is 16.02.2004. Meanwhile, the 4th respondent filed O.A. No.549/2006 and the Tribunal had ordered vide order dated 02.08.2006 to convene a DPC to consider the case. The Department prepared the list of

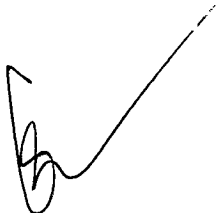


physically handicapped persons in the order of their seniority for consideration to the post of Headmaster in which the private respondent was at Sl. No.1 and accordingly the Department had promoted the said private respondent. It has also been stated in the counsel statement that among the seniority list of Primary School Teachers the position of the applicant in this O.A. is 280 and of private respondent is 308. Notwithstanding the above, the reason for promotion of private respondent was on the ground that he was appointed as Primary School Teacher in the reserved quota for handicapped person while the applicant in this O.A. developed physical disability as late as 16.02.2004.

3. Private respondent traced out the history of his case as to the filing of earlier O.A. No.1019/2003 followed by O.A. No.549/2006 and 514/2007 and submitted that even as per the applicant in the present O.A. vide Para 4.2, his disability has resulted in severe difficulties in his career and it is only with the help of Assistants he overcome his difficulties. According to the said respondent, the applicant who joined the service in general category cannot claim seniority in the handicapped quota, much less priority when he has developed physical disability much later.

4. Arguments were heard and documents perused. The Rules relating to quota for physically handicapped and the promotion post is given in the Government of India, Department of Personnel and Training O.M. dated 18.02.1997 read with O.M. dated 04.07.1997 and O.M. dated 16.01.1998 as under :-

"(iii) While filling posts by promotion, by selection, against vacancies reserved for the physically handicapped, the physically handicapped candidates who are within the normal zone of consideration will be



considered. Where adequate number of physically handicapped candidates of the appropriate category of handicap are not available within the normal zone, the zone of consideration may be extended to five times the normal size and the physically handicapped persons falling within the extended zone may be considered. In the event of non-availability of an officer even in the extended zone, the posts could be exchanged with other categories of handicap, identified for the relevant post and the reservation carried forward for the next three recruitment years, whereafter it will lapse."

5. The above stipulation does not indicate whether the seniority list should be prepared separately for physically handicapped as per the date by which the individual became physically handicapped. While the applicant happens to be senior who can be considered for general quota, the private respondent though junior had been considered for physically handicapped quota as the said private respondent has been initially appointed under the said quota while the applicant had been appointed under general quota. The question that is for consideration is whether a person who develops physical disability during the time of his service should be considered on the basis of seniority ignoring another candidate though junior had been inducted into the service under the physically handicapped quota. In our opinion the one who had been suffering from physical disability from the beginning and who had been appointed in the feeder grade under the physically handicapped quota, stands a better chance and has a better right than the one who had developed physical disability subsequently. Otherwise, in the event of seniors acquiring physical disability at a later date, would occupy the promotional

quota for physically handicapped, in which event the one appointed under physically handicapped quota in the feeder grade may have to wait for a long time. Of course, if there be no physically handicapped person appointed in the feeder grade or if such person does not fulfil the qualifications for promotion the one who has acquired the physical disability later, could be considered. In view of the above, the promotion given to respondent No.4 is fully justified. The same was also on the basis of the earlier orders passed. The applicant in this O.A. has not challenged the said order either by way of review or by way of appeal before the High Court. Hence the O.A. is dismissed.

6. No costs.

(Dated, the 10th September, 2009)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

rkr/cvr