

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 286 of 2011

TUESDAY, this the 18th day of December, 2012

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Suresh Babu. B, S/o. Bhaskara Pillai. N,
(Group) Sub-Divisional Engineer,
BSNL, Manjeswar, Kasaragode,
Permanently residing at 'Sayujyam',
Athmabodhini Road, Peringamala,
Thiruvananthapuram – 695 042. - Applicant

(By Advocates Mr. O.V. Radhakrishnan (Senior) with Mr. Antony Mukkath)

Versus

- 1 Bharat Sanchar Nigam Limited,
 Represented by its Chairman and Managing Director,
 Statesman Building, New Delhi – 110 001.
- 2 Director (Human Resources Development),
 Bharat Sanchar Nigam Limited,
 Statesman Building, New Delhi – 110 001.
- 3 General Manager (Personnel),
 Bharat Sanchar Nigam Limited,
 Statesman Building, New Delhi – 110 001.
- 4 Secretary, Ministry of Personnel, Public Grievances
 and Pensions, Department of Personnel and
 Training, Government of India,
 New Delhi – 110 001.
- 5 Union of India represented by its
 Secretary, Ministry of Communication and
 Information Technology,
 Department of Telecommunications,
 421 Sanchar Bhavan, 20 Ashoka Road,
 New Delhi – 110 001. - Respondents

(By Advocates Mr. P.M.M. Najeeb Khan (R1-3
 Mr. Thomas Mathew Nellimoottil R4&5)


This O.A having been heard on 22.11.2012, the Tribunal on 18.12.12
delivered the following:



ORDER

Hon'ble Mr. K. George Joseph, Administrative Member -


The applicant is an orthopaedically handicapped person with 45% disability. In compliance of the direction in O.A.No. 1587/1991, he was promoted from the post of Upper Division Clerk to the post of Junior Telecom Officer (JTO) against reservation for the physically handicapped. Later, he was promoted to the post of Sub Divisional Engineer (SDE) a Group-B post, on 29.09.2004. No promotions were effected to Group-A and Group-B cadres from April, 1997 to March, 2010 under the quota for the physically handicapped. According to the applicant, he became fully qualified for promotion to the post of Divisional Engineer, a Group-A post, by 2007. He claims that he should be promoted to the post of Divisional Engineer after revising his promotion to the post of SDE granting the benefit of reservation provided for the physically handicapped as per Annexure A-10 dated 04.07.1997. He has filed this O.A. for the following reliefs:

- (i) To declare that the applicant is fully eligible for reservation allowed for physically handicapped, his disability having been certified to be 'moderate' at 45% and denial of the benefit of reservation to the applicant in the matter of promotion to the grade of Sub Divisional Engineer and to the grade of Divisional Engineer against the posts identified for physically handicapped, with effect from the respective dates of his entitlement is illegal, arbitrary, discriminatory and violative of Articles 14 and 16(1) of the Constitution of India;
 - (ii) To issue appropriate direction or order, directing the respondent to promote the applicant to the grade of Sub Divisional Engineer against the identified vacancy for orthopaedically handicapped applying the roster provided in Annexure A-10 and also to promote him to the grade of Divisional Engineer against the posts identified for physically handicapped, with effect from the respective dates of his entitlement with all consequential benefits including fixation of pay, seniority and arrears of pay and allowances;
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(iii) To grant such other reliefs which this Hon'ble Tribunal may deem, fit and proper in the circumstances of the case; and


(iv) To allow the above Original Application with costs.

2. The applicant contended that the denial of the benefit of reservation to him in the matter of promotion to the grade of Sub Divisional Engineer and further promotion to the grade of Divisional Engineer is illegal, arbitrary and discriminatory. Reservation to the identified posts for persons with disabilities is a statutory right conferred by Sections 32 and 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The respondents are bound to grant him the benefit of reservation by promoting him to the grade of Sub Divisional Engineer with effect from the date of his entitlement applying reservation and the roster fixed in Annexure A-10 and further promotion to the grade of Divisional Engineer against the post identified as per Annexure A-16 with effect from the date of his entitlement with all consequential benefits. In Annexure A-16, the posts in the grade of Sub Divisional Engineer and in the grade of Divisional Engineer are identified for promotion to persons suffering from orthopaedic disabilities in Groups A, B, C and D. The respondents have deprived the applicant of his legitimate right to promotion conferred under the Act, 1995 and by the executive orders issued by the Government. In Annexure A-18 judgement, the Hon'ble High Court of Delhi found that reservation is admissible even for Groups A and B posts in promotion category and not only at the induction level. The word 'appoint' includes not only direct recruitment but also promotion. The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, being a benevolent legislation should be given liberal and expansive interpretation. The Government of India



clarified in O.M. dated 18.02.1997 at Annexure A-9 and corrigendum dated 04.07.1997 at Annexure A-11 that reservation has to be provided in the matter of promotion as well. The Annexure A-1 medical certificate was accepted by the respondents and in implementation of the Annexure A-2 order of this Tribunal, he was appointed as Assistant Superintendent/JTO. Rule 8 of Annexure A-15 Recruitment Rules provide that reservation in promotion shall be given at DE/AGM level as well in all groups. Annexure R-1(a) O.M. cannot override the provisions contained in Sections 32 and 33 of the Act, 1995. The posts identified for persons with disabilities and earmarked for the category of Divisional Engineer under promotion quota shall be filled up by the persons with disability eligible for such reservation.

3. In the reply statement, the respondents submitted that Annexure A-7 memorandum has been issued in the context of identification of jobs for the physically handicapped persons in Group-A and Group-B posts filled by direct recruitment in the Central Government Service and Public Sector Undertakings and the jobs identified are confined only to direct recruitment posts. Annexure A-11 produced by the applicant is a clarification on Annexure A-9 circular which is superseded by the O.M dated 29.12.2005 issued by the Government of India, wherein there is no provision for reservation in promotion to Group-A and Group-B posts. There is no provision for giving promotion to the persons with disabilities to Group-A and Group-B posts as per DOPT guidelines which are being followed in the BSNL. Annexure A-18 judgement pertains to promotion of a physically handicapped person to Group-C cadre and hence it is not applicable in the case of the applicant. Annexure A-19 order of the Punjab and Haryana High Court directed to keep



3% of posts reserved for promotion for the disabled by giving them promotion as per direction and guidelines issued by the DOPT dated 20.11.1989. This circular has been superseded by the memorandum dated 29.12.2005 of the DOPT. The applicant will become eligible for promotion to the cadre of Divisional Engineer on 11.06.2009 and not before that date. The applicant is eligible only for promotion in the normal course. Section 33 of the Person with Disabilities Act, 1995, states that every appropriate Government shall appoint in every establishment not less than 3% of the vacancies for the persons with disabilities in the identified posts. Accordingly, as per O.M dated 29.12.2005, the Government of India had not identified Group-A and Group-B posts for that purpose. The Persons with Disabilities Act, 1995, does not lay down that reservation is to be given in all the grades in both initial appointment and promotion. Persons with disabilities are not entitled for reservation both in initial recruitment and promotion throughout their career unlike in the case of Scheduled Castes and Scheduled Tribes.

4. We have heard Mr. O.V. Radhakrishnan (Sr.) with Mr. Antony Mukkath, learned counsel for the applicant, Mr. P.M.M. Najeeb Khan, learned counsel for the respondents Nos. 1 to 3 and Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents Nos. 4 and 5 and perused the records.

5. The claim of the applicant for the benefit of reservation for the physically handicapped in promotion to the post of SDE, which is comparable with Group-B post in Government and the post of DE, which is comparable with Group-A post in Government, is based on Annexure A-11 O.M. dated 16.01.1998 and Sections 32 and 33 of the Persons with Disabilities Act, 1995



and the judgements of Hon'ble High Court of Punjab and Haryana and High Court of Delhi. Annexure A-11 dated 16.01.1998 is a corrigendum to the O.M. dated 18.02.1997 at Annexure A-9 by which reservation for the physically handicapped is made applicable in promotion in all groups where the element of direct recruitment does not exceed 75%. These O.Ms have been superseded by the O.M dated 29.12.2005 at Annexure R1(a). Relevant extract of the said O.M is reproduced below :

"Subject:- Reservation for the persons with Disabilities

With a view to consolidating the existing instructions, bringing them in line with the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 and clarifying certain issues including procedural matters, the following instructions are issued with regard to reservation for persons with disabilities (physically handicapped persons) in posts and services under the Government of India. These instructions shall supersede all previous instructions issued on the subject so far.

2. QUANTUM OF RESERVATION

(i) Three percent of the vacancies in case of direct recruitment to Group A, B, C and D posts shall be reserved for persons with disabilities of which one percent each shall be reserved 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;

(ii) Three percent of the vacancies in case of promotion to Group D, and Group C posts in which the element of direct recruitment, if any, shall be reserved for persons with disabilities of which one percent each shall be reserved 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."

(emphasis supplied)

6. The O.M dated 29.12.2005 superseded all previous instructions issued on the subject and it rules the field now. It is categorically stated that 3% of vacancies shall be reserved for persons with disabilities in case of direct recruitment to Group A, B, C and D posts and that 3% of the vacancies shall



be reserved for the physically handicapped in case of promotion to Group-D and Group-C posts in which the element of direct recruitment does not exceed 75%. In the light of this O.M which consolidates the existing instructions, bringing them in line with the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, we are in agreement that the stand of the respondents that there is no provision for reservation to the physically handicapped in promotion to the posts of SDE and DE ~~identified for them~~ is misplaced. The reliance of the applicant on the superseded O.M is misplaced. He has not challenged the O.M dated 29.12.2005 which does not provide for reservation to the physically handicapped in promotion to Group-A and group-B posts.

7. Sections 32 and 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, are reproduced as under:

“32. Identification of posts which can be reserved for persons with disabilities – Appropriate Government shall -

(a) identify posts, in the establishments, which can be reserved for the persons with disability;

(b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. Reservation of posts – Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent 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 to the type of work carried on in any department or establishment, by notification, exempt any establishment from the provisions of this section."

The above sections do not lay down that the reservation should be given in all grades in case of direct recruitment and promotion. Therefore, these sections also do not come to the aid of the applicant.

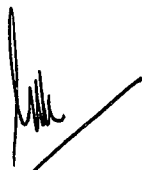
8. The judgement of the Hon'ble High Court of Delhi dated 07.12.2007 in WP (C) Nos. 11818 and 13627-28 of 2004, did not strike down the O.M. dated 29.12.2005 which did not provide for reservation in promotion to Group-A and Group-B posts. The said judgement is in the context of promotion to Group-C post. The judgement of the Hon'ble High Court of Punjab and Haryana dated 18.03.2010 in CWP No. 12741 of 2009, set aside the letter dated 23.12.2002 that stated that there is no need to provide reservation in promotion in Class III and IV posts to physically handicapped persons and directed the respondents therein to keep 3% posts reserved for promotion for the disabled by giving them promotions as per directions and guidelines issued by the Ministry of Personnel dated 20.11.1989. It pertains to reservation for the physically handicapped in posts filled by promotion in Group-C and Group-D only. The O.M dated 29.12.2005 which superseded all previous instructions was relied upon by the petitioners therein. Its validity was never questioned. The words 'appointment' or 'employment' in a wider sense may take in 'promotion' in their ambit. But none of the judgements relied upon by the applicant confers upon him an indefeasible right to reservation in promotion for the physically handicapped persons in the posts



of SDE and DE. The objective of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, is to give equal opportunities, protection of rights and full participation to the physically disabled persons. It does not provide for preferential treatment to the physically handicapped persons so as to leap-frog over their seniors in the matter of promotion in Group-A and Group-B posts. Rule 8 of Annexure A-15 Recruitment Rules provides for reservation in promotion at DE/AGM level. But the applicant has not substantiated that reservation for the physically handicapped is covered by the said Rule 8. The reservation for the physically handicapped and for the SC/ST categories are not on the same footing. The reservation for the physically handicapped is governed exclusively by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and O.M dated 29.12.2005 as of now. In the absence of specific provision in the Act or instructions of the Government of India for granting reservation to the physically handicapped in promotion to Group-A and Group-B posts, the applicant is not entitled for the reliefs sought in this O.A.

9. In the result, the O.A is dismissed with no order as to costs.

(Dated, the 18th December, 2012)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER