

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

TRIBUNAL'S ORDER IN O.A. NOS.: 250/96, 717/97 AND 754/98.

Dated the 29th day of JANUARY, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Pradeep J. Talekar .. Applicant in O.A. 250/96.

Sandesh R. Jadhav .. Applicant in O.A. 717/97.

Augustine Rodrigues .. Applicant in O.A. 754/98.

(By Advocates Shri M.S. Ramamurthy
and Shri Suresh Kumar).

VERSUS

Union Of India & 3 Others .. Respondents in all the
three cases.

(By Advocate Shri M.I. Sethna
alongwith Shri V.D. Vadhavkar).

: ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

These are three cases pertaining to the claim
of the applicants for promotion in the Customs Department,
but they are not considered for promotions by the
respondents on the ground that they are handicapped
persons and the promotional posts are not identified
as suitable for promotion of handicapped persons.

Though we have heard arguments in all these
three cases and reserved the cases for orders, now we

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find that no affidavit in reply is filed in O.A. No. 754/98. Hence, we cannot dispose of that O.A. finally on merits, since the reply itself is not filed by the respondents.

Then at the time of arguments, the applicants placed strong reliance on the 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' (Act No. 1 of 1996). Since the applicants are not yet promoted and now they are claiming promotions, naturally they will be governed by the provisions of this Act. According to this Act, Section 33 provides that Government shall reserve certain percentage of vacancies for handicapped persons in the posts identified for each disability.

The Government had appointed a Committee to identify the posts suitable for handicapped persons. In our view, that report will be of great assistance to the Tribunal to decide the point in dispute. Therefore, we expect the respondents to produce the report of the Committee on identification of posts suitable for handicapped persons.

Then there is a proviso to Section 33 that the Government may issue a notification exempting any establishment from the provisions of Section 33. Similarly, Section 47(2) of the Act provides that no promotion shall be denied to a person merely on the ground of his disability. But there is a proviso which

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says that the Government may issue a notification granting exemption to certain establishment from the provisions of Section 47.

If there is no exemption notification under Section 33 and 47, then the question is, whether the handicapped persons can be denied promotion only on the ground of disability.

In our view, the reply of the respondents is not very clear and sufficient to spell out the stand of the Government viz-a-viz the provisions of the Act. Therefore, we feel that for a proper and just decision of the case, there should be proper affidavit by the Government about their stand in implementing the provisions of the Act. If according to the Government ^{Post} that promotions concerned in these cases are exempted from the operation of the Act, then they must produce the Notification issued under the proviso of Section 33 and proviso of Section 47(2) of the Act.

2. For the above reasons, we give the following directions :-

- (i) Respondents should file an affidavit in reply in O.A. No. 754/98.
- (ii) In all the three cases the respondents should file an additional affidavit explaining their stand about the implementation of the provisions of the Act mentioned above.

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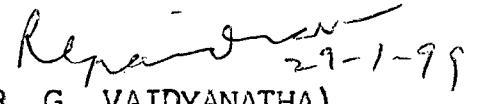
(iii) The respondents should produce a copy ^{committee} of the report by the Government for identifying the post suitable for handicapped persons.

(iv) The respondents should produce before the Tribunal any notification issued by the Government under the proviso of Section 33 and proviso of Section 47(2) of the said Act.

(v) The respondents should comply with the above directions within a period of six weeks from today. Then liberty to the applicant to file rejoinder and produce additional documents, if they so desire, within two weeks thereafter.

(vi) Place the O.As. on 09.04.1999 for compliance with the above directions.


(D. S. BAWALI)
MEMBER (A).


R. G. Vaidyanatha
29-1-99
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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