

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 898/2001

Date of Decision: 8.4.2003

Vinayak Govind Bakre

Applicant(s)

Shri S.S. Karkera

Advocate for Applicants

Versus

Union of India & ors.

Respondents

Shri. R.R. Shetty.

Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)  
HON'BLE SHRI K.V. SACHIDANANDAN. MEMBER (J)  
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1. To be referred to the reporter or not? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal? ☒
3. Library. ☒

*Shanta J*

(SMT. SHANTA SHASTRY)  
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO. 898/2001

THIS THE 9TH DAY OF APRIL, 2003

CORAM: HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)  
HON'BLE SHRI K.V. SACHIDANANDAN. .. MEMBER (J)

Vinayak Govind Bakre,  
aged about 46 years,  
Physically handicapped,  
working as Asstt. Accounts Officer  
at LAO COD, Kandivili,  
Mumbai. ....Applicant.

By Advocate Shri S.S. Karkera.

Versus

1. The Union of India,  
through the Secretary to  
the Govt. of India,  
Ministry of Defence,  
South Block, New Delhi-110 011.
2. The Controller General of  
Defence Accounts, West Block-V  
R.K. Puram, New Delhi-110 066.
3. The Secretary, Department of  
Personal, M/o Personnel,  
Public Grievances & Pensions,  
North Block, New Delhi-110 001.
4. The Pr. Controller of Defence Accounts,  
No.1, Finance Road,  
Pune-411 001.
5. The Controller of Defence Accounts,  
Glibar Maidan, Pune-411 001. ... Respondents

By Advocate Shri R.R. Shetty.

O R D E R  
Hon'ble Smt. Shanta Shastri. Member (A)

By this OA the applicant is claiming promotion  
to the group-B post of Accounts Officer under 3% quota  
for physically handicapped persons.

2. The applicant was appointed as Auditor on

09.11.1978 and was promoted as Section Officer with effect from 13.8.1985 and was further promoted as Assistant Accounts Officer (Group-B) with effect from 28.01.1993. According to the applicant, as per the recruitment rules, after completion of four years of service as Assistant Accounts Officer, he is entitled for promotion to Group-B post of Accounts Officer, according to seniority.

3. Applicant states that he is a disabled person in that he is having 40% handicap under the category of orthoepedically handicapped and also drawing the conveyance allowance as admissible to physically handicapped Government servants. According to him, he has good record of service and has performed his duty in various in various capacities under the respondents. The applicant submits that on the basis of the judgment of the Apex Court in the case of Indira Sawhney (W.P. No.930/90) and the directions issued thereof, Government of India in the Department of Personnel & Training issued OM dated 18.02.1997 and the further OM of same date for extending the benefit of 3% vacancies to be reserved for handicapped persons with roster points No.1, 34 and 67 in direct recruitment quota as well as in Promotion quota in Group-A and Group-B posts. Thereafter, an amendment was issued vide OM dated 16.01.1998 wherein, according to the applicant, it has been specifically stated that existing policy of

reservation for the SC/ST including physically handicapped in promotion in all groups is applicable to all grades and services where the element of direct recruitment does not exceed 75%. The post of Accounts Officer is to be filled 100% by promotion. The applicant therefore, submits that reservation of 3% for physically handicapped quota is applicable in the case of the applicant also. A further amendment was issued by the DOP&T vide OM dated 04.6.1998 which gives definition of person with disabilities for reservation in central Government posts/services. According to the applicant, he alone is physically handicapped person who is claiming promotion under the physically handicapped quota under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Since the respondents did not grant him the promotion, he preferred a representation to the respondents on 29.11.1999 but the same was rejected vide order dated 27.3.2000 stating that there is provision for granting promotion under the physically handicapped quota in Group-A and "B" posts. Being aggrieved, he preferred OA No.372/2000 before this Tribunal. The Tribunal vide order dated 21.6.2001 disposed off the OA directing the respondents to examine his case and to pass speaking order. The respondents have now passed the speaking order on 23.7.2001 and have rejected the claim of the applicant. Being aggrieved, the applicant has approached this Tribunal.

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4. According to the applicant, the respondents have not taken into consideration the DOP&T OM dated 18.02.1997 and 16.01.1998. The applicant submits that the respondents have failed to abide by Section 33 of the Act and the rules framed by the Government in regard to the policy of reservation. According to the applicant, the physically handicapped quota exists in Group-B post and is applicable to all groups and grades where the post is to be filled 100% by promotion.

5. The respondents have contended that they have passed a detailed speaking order on 23.7.2001 clarifying that reservation in promotion for physically handicapped persons is only in respect of Group-C and "D" posts whereas the post in question i.e. the post of Accounts Officer is a group-B post, there is no reservation provided for under the physically handicapped quota for promotion in Group-B post. The respondents submit that the OM dated 18.02.1997 provides for reservation for physically handicapped in Group-A and "B" posts of the services to be filled only through direct recruitment and not through promotion. Further, the DOP&T OM dated 18.02.1997 read with DOP&T OM dated 20.11.1989 makes it clear that the reservation is available for physically handicapped when promotions are being made within Group-D and Group-D to "C" and this very aspect has been reiterated by the DOP&T New Delhi vide their comments

recorded in CGDA note No. AN/II/2151/CAT/R.1437)(VGB) dated 13.02.2002 which has been annexed and marked as Exhibit R2. The respondents have not denied that the Assistant Accounts Officer with four years service are eligible for promotion to the post of Accounts Officer. However, no reservation exists for promotion to the post of Accounts Officer. The applicant has relied on the OM dated 16.01.1998, but the DOP&T has clarified that while the provision of OM dated 16.01.1998 replaces certain provisions of the earlier OM of 18.02.1997 the OM of 18.02.1997 deals that reservation is available for physically handicapped within Group-D and from Group-D to C and within Group-C. No reservation for promotion from Group "B" & "A" are available where the element of direct recruitment to the grade of Account Officer is there, no reservation for physically handicapped by promotion is available. It has been clarified further by the DOP&T which is reiterated by their ID No.282/02 DO (R) dated 10.5.2002 that the OM does not extend reservation in promotion to the physically handicapped in Group-A and Group-B posts. It simply clarifies that reservation in cases wherever applicable would be applicable only in such grade and service where element of direct recruitment does not exceed 75%. This is applicable in the case of reservation for SC/ST as well as physically handicapped.

6. The applicant has reiterated that in terms of

the clarification of OM dated 16.01.1998 reservation for physically handicapped applies even in promotion to Group-B posts.

7. We have heard the learned counsel for the applicant as well as the respondents and have given our careful consideration to the contentions raised. We have also perused various OM. On perusal, we find that what has been done in OM dated 16.01.1998 is that earlier sub-para 2 of the OMs dated 18.02.1997 has been replaced. Earlier sub-para 2 of OM dated 18.02.1997 read as follows:- "With the enactment of this law the reservation of physically handicapped stood extended to identified Group-A and B posts filled through direct recruitment". In the OM dated 16.01.1998 the above referred para was replaced by the following: "The existing policy of reservation for SCs/STs including for the physically handicapped in promotion in all Groups is applicable to all grades and services, where the element of direct recruitment does not exceed 75%." Thus in our considered view, this does not say that reservation to the physically handicapped is available for promotion in group-A posts. All that it says is that as per the existing policy of reservation in promotion in all grades and groups is applicable. As per existing policy no reservation is available even for SC/ST in promotion to Group-B or Group-A posts. This being the position, the OM dated 16.01.1998 cannot be said to be supporting

the stand of the applicant especially now that the DOP&T which has issued all the earlier OMs dated 20th November, 1989, 18.02.1997 16.01.1998 etc., has<sup>4</sup> itself clarified the position that reservation does not apply to promotion to Group-B posts. In our considered view, the applicant has no~~1~~ case. The OA fails and is dismissed accordingly with no order as to costs.



(K.V. SACHIDANANDAN)  
MEMBER (J)



(SMT. SHANTA SHASTRY)  
MEMBER (A)

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