

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

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...

(Reserved on 22.01.2016)

...

Date of decision - 10.2.2016

...

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**
HON'BLE MS. RAJWANT SANDHU, MEMBER (A)

...

(i) O.A No. 060/00506/2014

Poonam Manchanda daughter of Sh. R.L. Manchanda, Accounts Officer, Post Graduate Institute of Medical Education and Research, Sector 12, Chandigarh, resident of House No. 982, Sector 11, Panchkula.

BY ADVOCATE: Sh. Survir Sehgal

...APPLICANT

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1. Union of India through the Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, Parliament House, New Delhi.
2. The Secretary, Department of Health and Family Welfare, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi.
3. The Post Graduate Institute of Medical Education and Research, through its Director, Sector 12, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Rajesh Garg, Senior Advocate along with Ms. Nimrata Shergill, Advocate.

(ii) O.A No. 060/00383/2014

Satyaveer Singh Dagur son of Sh. Ratti Ram Dagur (File No. 2289), working as Sister Grade II in the Post Graduate Institute of Medical Education and Research, Sector 12, Chandigarh.

...APPLICANT

BY ADVOCATE: Sh. Survir Sehgal.

VERSUS

1. Union of India through the Secretary,
Government of India, Ministry of Personnel, Public Grievances and Pensions,
Department of Personnel and Training, North Block,
Parliament House, New Delhi.
2. The Secretary,
Department of Health and Family Welfare,
Ministry of Health and Family Welfare,
Government of India, Nirman Bhawan,
New Delhi.
3. The Post Graduate Institute of Medical Education and Research,
through its Director
Sector 12, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Harsh Nagra, Advocate proxy for Sh. Mr. Amit Jhanji, counsel for the respondents.

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

By this Common order, we propose to dispose of two connected matters i.e. O.A No. 060/00506/2014 & O.A No. 060/00383/2014, as common questions of law and facts are involved. Learned counsel representing the parties would also suggest likewise. For convenience, the facts have been culled out from O.A No. 060/00560/2014 titled

Poonam Manchanda Vs. Union of India & Ors.

2. The solitary issue raised at the hands of the applicants in both the petition is as to whether a physically handicapped officer holding Group 'A' or 'B' posts, would be entitled to reservation in promotion in group 'A' & 'B' by virtue of the provisions contained in The Persons Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred to as the Act of 1995) or on account of any Standing Orders/instructions that may have been issued by the Government in that behalf ?

3. Challenge in this Original application is to the order dated 24.05.2014 (Annexure A-12) whereby the respondent-PGIMER has rejected the representation dated 28.02.2014 preferred at the hands of the applicant for providing reservation in promotion in Group 'A' and Group 'B' posts under physically handicapped quota. She has further sought issuance of a direction to the respondents to consider and promote her who is suitable and eligible in all respects, from the feeder cadre to the post of Senior Accounts officer from the date when she became eligible with all the consequential benefits.

4. Inasmuch as, since only a law point is involved, to be adjudicated by this Tribunal, therefore, there would be no need to give the facts in detail. The brief reference to facts which led to filing of the O.A are that the applicant, who is physically handicapped person has

disability certificate dated 28.12.1987 certifying that she is permanently disabled to the effect of 70% limbs. The applicant, being eligible, applied for the post of Assistant Accounts Officer in PGIMER. The respondent-PGIMER were having seven sanctioned posts of Assistant Accounts Officer and out of these, four posts were to be filled in by direct recruitment. Selection committee recommended the name of the applicant along with two other candidates for the post of Assistant Accounts Officer (Group 'B' post). Recommendation of the selection committee was approved by the Ministry of Health and Family Welfare. Accordingly, she was offered appointment on 18.05.1999 on probation for a period of two years. After completion of probation, she was confirmed on the post w.e.f. 27.05.2001. For next promotional post of Accounts Officer, Departmental Promotion Committee of Group-'A' post recommended the name of the applicant and after approval by the Governing Body, the applicant was promoted as such vide order dated 25.05.2007. It is case of the applicant that while she was appointed as Assistant Account Officer, she did not claim reservation as a physically challenged person. In the year 2007, she was promoted as Accounts Officer and at that time also she was considered under the General Category. In the year 2010, the respondent-PGIMER created two posts of Senior Accounts Officer which were to be filled up in 100% by way of promotion amongst the Accounts Officers on the basis of merit-cum-seniority. Since, the applicant was at S. No. 3 in the seniority list of the feeder cadre, she made a representation dated 21.07.2010 which was supplemented by another representation 13.10.2010. However, there was no response to these representations. In the year 2013, the respondent -PGIMER issued a notice on its website inviting objections to the proposed Recruitment Rules for all the posts in the PGIMER/AIIMS and JIPMER

including the posts of Finance and Chief Accounts Officers/Senior Accounts Officer. Vide communication dated 23.01.2014, PGIMER received a communication for creation of new posts including two posts of Senior Accounts Officer in Pay Band-3 which is Group 'A' post. It is the case of the applicant that since PGIMER is not having their independent recruitment rules, there was an intention by the PGIMER to fill up the said post 100% by promotion on the pattern of AIIMS where the post of Chief Accounts Officer is equivalent to that of Senior Accounts Officer, therefore, the applicant being eligible for consideration to the above post, was waiting for her consideration. She made another representation dated 28.02.2014 requesting therein that post falling at roster point no. 1 be earmarked for reservation for physically handicapped persons and she being first may be promoted as such. Vide impugned order dated 24.05.2014, the applicant was informed that her representation for grant of reservation in promotion in Group 'A' and Group 'B' posts cannot be acceded, accordingly, the same was rejected. Hence, the present O.A.

5. In support of the claim raised, Sh. Sehgal, learned counsel for the applicant vehemently submitted that impugned rejection for not granting reservation to physically handicapped persons under the Act of 1995, is totally illegal and arbitrary and against the spirit of the Act of 1995 as such, the same is liable to be set aside and quashed. He submitted that the respondents have created artificial discrimination by not providing reservation in Group 'A' and Group 'B' posts. He contended that word 'appoint' as mentioned in Section 33 of the Act of 1995, would necessarily include "promotion" as well, and, therefore, reservation is not only to be in the initial appointment, but in promotion as well. He further submitted that in this context, Government of India issued a corrigendum dated 16.01.1998 wherein

they had decided to grant reservation to physically handicapped category in the posts filled up by way of promotion which shows that reservation was allowed in promotion in all Groups and to all the grades and services. Therefore, he submitted that once there is an instruction issued by the Nodal Ministry, DoPT then the respondents cannot take different stand and deprive the applicant from seeking promotion on the basis of reservation policy for disabled persons. To buttress his submission, he particularly referred to para 51 & 54 of the judgment passed in the case of **Union of India Vs. National Federation of the Blind**, Civil Appeal No. 9096/2013 decided 08.10.2013. Then, he drew support from para 14 of the judgment of the Jurisdictional High Court passed in CWP No. 12741/2009 titled **Viklang Sang, Haryana Vs. State of Haryana & Ors.** decided on 18.03.2010. He also placed reliance upon the judgment of the Hon'ble Delhi High Court passed in case of **Municipal Corporation of Delhi Vs. Manoj Gupta** (Annexure A-29) and **Union of India through G.M Vs. Jagmohan Singh** (Annexure A-30) and Judgment of Hon'ble High Court of Bombay passed in **National Confederation for Development of Disabled and Another Vs. Union of India & Ors. D** (PIL No. 106/2010) decided on 04.12.2013. Lastly, he placed reliance upon the decision by the Co-ordinate Bench of this Tribunal in O.A No. 060/00623/2014 decided on 09.08.2015.

6. Upon notice, all the respondents filed a joint written statement through PGIMER wherein they have taken a categorical stand that though they have created the post of Senior Accounts Officer which is to be filled through direct recruitment. However, they submitted that in terms of Act of 1995 and subsequently consolidated instruction issued in this behalf, there will be no reservation in promotion for disabled persons in Group-A and Group 'B', thus, claim

of the applicant has been turned down vide impugned order. It has been pleaded that reservation in promotion for physically handicapped in Group C & D posts were introduced by the DoPT vide OM dated 20.11.1989 and it was never made available in the case of Group 'A' and 'B' posts. Consequent upon notification of the Act of 1995, the DoPT issued an OM dated 18.02.1997 stating that with the enactment of the Act of 1995, reservation to physically handicapped persons stood extended to identified Groups 'A' and 'B' posts filled through direct recruitment. It is also submitted that O.M dated 16.01.1998 is corrigendum to earlier O.M dated 18.02.1997 which does not talk of reservation in promotion for physically handicapped persons relating to Group A & B posts. The said OM provides that a separate 100 points roster would be maintained to implement the reservation so introduced and points 33, 67 and 100 of the roster would be reserved for physically handicapped which was subsequently modified on representation to points 1, 34 and 67 instead of points 33, 67 & 100 which was carried out by DOP&T vide OM dated 04.07.1997. It is pleaded that that the said OM would show that it only modified the instructions with regard to the reserved points in the roster. The OM, it is pleaded, did not state that reservation would be available in case of promotion, and that had there been an intention of the government to introduce reservation in promotion in group 'A' & 'B', it would have stated so in very clear terms, as is done in all cases relating to policy decisions. It is further averred that after enactment of 1995 Act, DoPT has issued consolidated O.M dated 29.12.2005 which has superseded all previous OM's issued on the subject.

8. In support of the stand of the respondents, Sh. Garg, Senior Advocate for the respondents vehemently argued that appointment means initial appointment and it cannot be said to include

promotion as well, and that the intention of the Legislature while mentioning the word 'appoint' in Section 33 of the Act of 1995 was to provide reservation in initial recruitment, and even though the respondents might have provided reservation in promotion to Group 'C' and 'D' posts, if they have not done so with regard to Group 'A' and 'B' posts, no exception can be had to that effect. He also contends that the provisions of the Constitution in providing reservation for various categories are enabling provisions which would clothe the appropriate Government to make reservation. However, he further contended that the same cannot be claimed as a matter of right and, therefore, no Court or Tribunal would have jurisdiction to direct the Government to make reservation with regard to a category or class of posts. He then submitted that after enactment of 1995 Act, the DoPT issued consolidated instructions for reservation for persons with disabilities on 29.12.2005 wherein there is no reference for grant of reservation in promotion to disabled persons. The only intention there is to identify the vacancies and to reserve 3% post for physically handicapped persons. Subsequent to that another O.M. dated 20.03.2014 was issued for implementation of the judgment of Hon'ble Supreme Court in the matter of **Union of India & Anr. Vs. National Federation of Blind & Ors.** (supra) wherein para 14 of the OM dated 29.12.2005

was modified and while issuing the above O.M, the Government of India decided to grant the reservation in promotion in Group 'A' and Group 'B' posts only in case of direct recruitment whereas in the case of Group 'C' and Group 'D' it was provided in promotion also. Lastly, he took us to various judicial pronouncements on the subject. One judgment of the Hon'ble Supreme Court passed in case of **Union of India & Anr. Vs. National Federation of the Blind & Ors.** (supra) and another judgment passed by the Delhi High Court passed in W.P

(C) No. 15828/2006 titled **National Federation of Blind Vs. U.O.I & Ors.** decided on 17.07.2014 wherein similar arguments were raised and DB did find any merit in the contention raised at the hands of the applicant therein to hold that in case of National Federation of Blind (Supra) of the Hon'ble Supreme Court, there is no intention by their Lordships to provide reservation even in Group 'A' and 'B' posts and the intention was only for computation for the purpose of reservation on total number of vacancies in the cadre strength. Then he referred to an order passed in WP(C) 15828/2006 by the Hon'ble Delhi High Court decided on 12.09.2014 in review application of earlier order wherein also similar contention was rejected. He also drew our attention to judgment dated 01.09.2014 passed in WP(C) 6371/2006 titled **Ramesh Chander Vs. U.O.I & Ors.** wherein also same points were raised for grant of reservation in promotion to disabled persons which was not favoured by DB as the same was not decided by the Hon'ble Supreme Court in furtherance to which O.M was issued.

9. We have given our deep consideration to the entire matter with the able assistance of the learned counsel for the parties.

10. Before we comment upon the conflicting contentions raised by the learned counsel, as mentioned above, it would be appropriate to have a look at the aims and objectives of the act of 1995 and some of its provisions, including Section 33, which is relevant.

11. In the statement of objects and reasons for bringing about the Act of 1995, it is stated that the meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December, 1992 adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and

the Pacific region. India being a signatory to the said proclamation, it was felt necessary to enact a suitable legislation to provide for the following:

- "(i) to spell out responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- (ii) to create barrier free environment for persons with disabilities;
- (iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disables persons;
- (iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;
- (v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and
- (vi) to make special provision of the integration of persons with disabilities into the social mainstream."

Accordingly, it was proposed to provide *inter alia* for the constitution of Co-ordination Committees and Executive Committees at the Central and State levels to carry out various functions assigned to them. Within the limits of their economic capacity and development, the appropriate Government and the local authorities were required to undertake various measures for the prevention and early detection of disabilities, creation of barrier-free environment, provision for rehabilitation services etc. The Bill also provided for education, employment and vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities, etc. For effective implementation of

the provision of the Bill, appointment of the Chief Commissioner for persons with disabilities at the Central level and Commissioners for persons with disabilities at the State level clothed with powers to monitor the funds disbursed by the Central and State Governments and also to take steps to safeguard the rights of persons with disabilities, was also envisaged. One of the objects of introducing and enacting the Act of 1995 is employment and reservation in identified posts (emphasis supplied). The act consists of 13 chapters. Chapter VI deals with employment. This chapter alone may be relevant for determining the issues debated before us. As per provisions contained in Section 32, *the appropriate Government shall identify posts in the establishments which can be reserved for the persons with disability, and there has to be a periodical review of the list of posts identified and the list has to be up-dated taking into consideration the developments in technology.* Section 33, which is the main Section, dealing with reservation of posts reads as follows:

"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 blindness or low vision; hearing impairment; locomotor disability or cerebral palsy, in the posts identified (emphasis supplied) 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 subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section. Even though, in Section 33, the Government is enjoined upon to appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with

disabilities, but the proviso to the said Section clearly mentions that some establishments can be exempted, subject, of course, to such conditions, if any, as may be specified, from provisions of this Section. By virtue of provisions contained in Section 34, the appropriate Government may by notification require that from such date as may be specified, the employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for persons with disability that have occurred or are about to occur in that establishment. Section 36 deals with vacancies not filled up to be carried forward. Where in any recruitment year any vacancy under Section 33 cannot be filled up due to non-availability of a suitable person with disability or for any other sufficient reason, such vacancy shall be carried forward. Section 37 enjoins upon every employer to maintain record in relation to the persons with disability employed in his establishment. Section 38 requires the appropriate Government and local authorities to formulate schemes for ensuring employment of persons with disabilities. Section 35, 39, 40 and 41 may not be relevant and, therefore, there would be no need to make a mention of the same. However section 47 is relevant as it deal with non-discrimination in government employment. Sub-clause(2) of Section 47 say no promotion shall be denied to a person merely on the ground of his disability. What appears from the statement of objects and reasons for legislating and thus enacting the Act of 1995 is that in addition to other things, there has to be reservation in identified posts. The object further appears to be to give equal opportunities to persons with disabilities. It appears that the Act of 1995 came into being with an aim to provide equal opportunities and for protection of rights and full participation of disabled persons so that they may not lag behind the able-bodied persons only because of the ill fate that they were

born with or have become handicapped. The idea is to make them equal to able-bodied persons and not to provide opportunities to them for being better than able-bodied persons. The very name of the Act suggests that persons with disabilities would need equal opportunities and protection of rights and full participation. Reservation is to be in identified posts, as surely, there may be many such posts duties whereof persons with disabilities may not be able to perform.

12. From the scheme of the Act, insofar as it relates to reservation, dealt with in Chapter VI, it further appears that reservation is to be in the initial appointment. Section 33 states that the appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons who may have disabilities. Section 34 also deals with vacancies appointed for persons with disabilities. Section 36 deals with vacancies that may be carried forward, where in any recruitment year the vacancy could not be filled under Section 33. Section 37 enjoins upon the employer to maintain records in relation to persons with disabilities employed in his establishment. On a joint reading of relevant Sections contained in Chapter VI, as mentioned above, it may appear that the mandate of law is to necessarily make reservation for persons with disabilities in the matter of appointment. There is no command to make reservation in promotion. Despite the fact that there is no provision for reservation in promotion in the Act of 1995, the Government may itself provide the same.

13. We may notice here that before the enactment of 2005 Act, the Government of India issued OM dated 20.11.1989, which provides as under:-

"The undersigned is directed to say that the Government has under consideration a proposal to introduce reservation in favour of the physically handicapped persons in posts filled by promotion. The matter has been examined and it has now been decided that when promotion are being made.

(i) Within Group 'D', (ii) from Group 'D' to Group 'C' and (iii) within Group 'C' reservation will be provided for the three categories of the physically handicapped persons namely, the visually handicapped, the hearing handicapped and the orthopedically handicapped. The applicability of the reservation, will, however, be limited to the promotions being made to those posts that are identified as being capable of being filled/held by the appropriate category of physically handicapped."

The said OM was clarified by another OM dated 16.02.2000, inter alia, indicating that there is no reservation in promotion for physically handicapped persons when promotions are made from Group-C to Group-B within Group-B and Group-B to Group-A.

14. The said OM dated 20.11.1989 was subsequently amended by promotion:-

"QUANTUM OF RESERVATION

(i)

(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, does not exceed 75%, shall be reserved for persons with disabilities of which one per cent 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."

15. Then issued comprehensive/consolidated instructions were issued in shape of OM dated 29.12.2005, Clause-14 of the OM of 2005 provides as under:-

"14. Reservation for persons with disabilities in Group 'A' posts shall be computed on the basis of vacancies occurring in direct recruitment quota in all the identified Group 'A' posts in the establishment. The same method of computation applies for Group 'B' posts."

The OM dated 29.12.2005 was challenged by National Federation of the Blind before the Delhi High Court, which accepted the challenge and directed the Union of India to modify the OM dated 29.12.2005 being inconsistent with the provisions of Section 33 of the Act. The judgment of Delhi High Court was challenged before Hon'ble Supreme Court and Hon'ble Supreme Court in the case of National Federation of the Blind (supra) came to the conclusion that certain Clauses in the OM dated 29.12.2005 were contrary to the intention of the legislature and were liable to be struck down and directed the appropriate government to issue new OM consistent with its decision; it was, inter alia, directed as under:-

"55. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:

55.1 We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29-12-2005 and the subsequent OMs consistent with this Court's order within three months from the date of passing of this judgment.

55.2 We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

55.3 The appellant herein shall issue instructions to all the departments/public sector undertakings/government companies declaring that the non-observance of the scheme of reservation for persons with disabilities should be considered

as an act of non- obedience and the Nodal Officer in department/public sector undertakings/government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default."

16. After, the judgment of Hon'ble Supreme Court in National Federation of the Blind (supra), OM dated 03.12.2013 was issued by the Government and para 14 of the OM (quoted supra) was modified in the following manner:-

"Reservation for persons with disabilities in Group 'A' or Group 'B' posts shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group A posts or Group 'B' posts respectively, in the cadre."

Vide another OM dated 20.03.2014 it was indicated by the Government as under:-

"4. All the Ministries/Departments/Organisations of the Government of India are requested to compute the reservations for persons with disabilities at the earliest and immediately identify the posts for disabled persons and implement the same without default. However, the following points may be kept in view while computing reservations:-

(i) Three percent of the vacancies in case of direct recruitment to Group A,B,C and D shall be reserved for persons with disabilities of which 1% 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. Three percent of the vacancies in case of promotion to Group D and Group C posts in which direct recruitment, if any, does not exceed 75% shall be reserved for persons with disabilities of which 1% 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)

17. Respondents have issued another OM dated 7.1.2015 modifying para 15(i) of there earlier OM dated 29.12.2005 but the same also does not talk of reservation in promotion for physically handicapped persons in Group 'A' and Group 'B'. Para 15(i) of the O.M dated 29.12.2005 is amended to the following extent:-

"Reservation for persons with disabilities in Group 'A' or Group 'B' posts shall be computed on basis of total number of vacancies occurring in direct recruitment quota in all the Group 'A' posts or Group 'B' posts respectively, in the cadre. Separate rosters for Group 'A' posts and Group 'B' posts in the establishment shall be maintained."

From the above stipulations made in the various OMs, it is apparent that the OMs/instructions consistently since 1989 have provided for 3% reservation of the vacancies in case of promotion to Group-D and Group-C posts, in which, direct recruitment does not exceed 75% and the same does not provide for any reservation in Group-B or Group-A posts in case of promotion.

18. Now we deal the second limb of arguments which is based upon the judgment passed by the Hon'ble Bombay High Court in case of **National Confederation for Development of Disabled & Anr. v. Union of India** Public Interest Litigation No. 106/2000 decided on 04.12.2013 is concern, perusal of the same make it clear that its interpretation of judgment in **Union of India & Anr. V. National Federation of Blind & Ors.** (Supra) and the court came to the conclusion that as Hon'ble Supreme Court has directed that 3% reservation under the Act is to be computed on the total number of vacancies in the cadre strength, the same include the vacancies to be filled in by nomination and vacancies to be filled in by promotion. Considering that there are positive directions in the above case to the respondents to provide reservation in promotion, when the

respondents did not allow reservation in promotion. Then the **National Federation of the Blind filed Contempt Petition (Civil) No. 499/2014** before Hon'ble Supreme Court alleging disobedience of the directions issued by it in the case of National Confederation for Development of Disabled (supra). The contentions, inter alia, included that the judgment of Hon'ble Supreme Court provided for reservation in the matter of promotions, however, no steps in this regard were taken by Union of India and, therefore, they were in contempt of the directions issued by Hon'ble Supreme Court. The contentions raised in this regard were considered by Hon'ble Supreme Court in **National Federation of The Blind v. Sanjay Kothari : 2015 (9) SCALE 611**, wherein, it was, inter alia, observed and held as under:-

"3. Shri Rungta has primarily urged that contempt of this Court's order has been committed by the Respondent by not making provision for reservation in promotion and also by not identifying the posts against which the persons with disabilities can be appointed and in not making such appointments. Shri Rungta has submitted that notwithstanding the efflux of a long period of time since the Act came into force and the directions of this Court dated 8th October, 2013, a large number of vacancies remained unfilled and even those vacancies which have been filled up constitute a negligible percentage of persons with impaired vision. Drawing the attention of the Court to paragraph 51 of the judgment, Shri Rungta submitted that this Court had clearly and categorically held that the provisions of the Act with regard to reservation would apply in the matter of promotion; however, no steps in this regard have been taken by the Union till date. All such acts and lapses on the part of the Union are in clear breach of this Court's order and, therefore, the appropriate authority of the Union including the impleaded Respondents are liable to be dealt with under the Contempt of Court's Act and Article 129 of the Constitution.

4. Shri Suri, learned senior Counsel appearing for the intervenor has submitted that in a writ petition before the Bombay High Court dealing with the issue of reservation in promotion, orders were passed holding that the decision of this Court in Union of India and Anr. v. National Federation of the Blind and Ors. (supra) provided for reservation in promotion and the special leave petition by the Union of India against the Bombay High Court judgment has been dismissed. In such circumstances, the issue with regard to reservation in promotion, according to Shri Suri, is no longer open and the Union is duty bound to give effect to such reservation.

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5. Controverting the submissions advanced by Shri Rungta and Shri Suri, the learned Attorney has drawn our attention to Section 47 of the Act - The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which is in the following terms:

47. Non-discrimination in Government employment(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may having regard to the type of work carried on in any establishment, by notification and subject 25 to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section.

6. The learned Attorney General has contended that apart from the aforesaid, there is no other provision in the Act dealing with promotions. On the strength of Section 47(2) it cannot be contended that the Act provides for reservations in the matter of promotion. On the Other hand, Shri Ranjit Kumar, learned Solicitor General has placed before the Court the additional affidavit filed on behalf of the Union of India dated 29.05.2015 to show the steps taken by the Union to fill up over 15,000 identified vacancies. In this regard the learned Solicitor General has placed before the Court a compilation of the latest position which would go to show that 5629 posts earmarked for persons with disabilities have been so filled up whereas steps have been taken for filling up of over 6,000 posts whereas in respect of another about 3400 posts, the recruitment process is likely to be initiated shortly. The learned Solicitor General has further submitted that the Union is committed to fill up the 6,000 posts for which process has been initiated by the end of December, 2015 and for the 3400 posts for which process is yet to be initiated by February, 2016. Insofar as reservation in promotion is concerned, it is argued by the learned Solicitor General that nowhere in the judgment the Court had any occasion to deal with the said issue; neither the directions issued by this Court including those in paragraph 51 are capable of being construed in the manner in which Shri Rungta and Shri Suri have argued.

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9. Insofar as the reservation in promotion is concerned, the issue can be viewed from the perspective of the questions that had confronted the Court in Civil Appeal No. 9096 of 2013 as set out in paragraph 24 of the order of the Court which is to the following effect:

24. Two aspects of the impugned judgment have been challenged before this Court:

(a) The manner of computing 3% reservation for the persons with disabilities as per Section 33 of the Act.

(b) Whether post based reservation must be adhered to or vacancy based reservation.

10. Para 51 of the order on which reliance has been placed by Shri Rungta must be viewed in the context of the questions

arising for answer before the Court i.e. the manner of computation of vacancies in case of Groups A, B, C and D posts. All that the Court in the aforesaid paragraph 51 has held is that the manner of such identification must be uniform in the case of all the groups viz. A, B, C and D. Nothing beyond the above should be read in paragraph 51 of the Courts' order as aforesaid.

11. Coming to the point urged by Shri Suri with regard to the dismissal of the Union's special leave petition all that needs to be noticed is that the order dated 12.09.2014 dismissing SLP(C) No...../2014 (CC No(s). 13344/2014) is an order of dismissal simpliciter. In the absence of any reasons, we cannot speculate as to the basis for the dismissal ordered by this Court.

12. Having answered the questions arising for determination in the manner indicated above we will have no reason to keep this contempt petition pending any further. The contempt petition is accordingly disposed of in terms of our conclusions and observations as above.

13. Having answered the issue of reservation in promotion in the manner indicated above, the application for clarification filed by the Union of India with regard to the said issue would stand answered in the above terms."

(emphasis supplied)

Hon'ble Supreme Court after noticing the contentions raised and the response of the Union of India(therein) categorically observed that its judgment in the case of National Federation of the Blind (supra) should be read in the context of questions arising for answer before the Court and nothing beyond the above should be read in the Court's order and noticing the contention regarding the judgment of Bombay High Court in the case of National Confederation for Development of Disabled (supra) and dismissal of SLP against it, it was observed that in absence of any reasons the Court cannot speculate as to the basis for the dismissal ordered by it. Further, based on its observations, the application filed by the Union of India regarding reservation in promotion was also directed to have been answered in terms of its order as noticed hereinbefore. In view of categorical pronouncement of Hon'ble Supreme Court qua interpretation of its judgment in the case of National Federation of the Blind (supra) after noticing the judgment of Bombay High Court in the case of National Confederation for

Development of Disabled (supra) that its judgment should be viewed in the context of the questions arising for answer and nothing beyond and further disposing of the application regarding clarification sought by Union of India for reservation in promotion in terms of its above determination, therefore, the submissions made by learned counsel for the applicant primarily based on the judgment of Bombay High Court in the case of National Confederation for Development of Disabled (supra) cannot be accepted. As the contentions regarding absence of reservation in promotions in the OM issued by the Government was specifically raised in the contempt petition before Hon'ble Supreme Court and the said contention was negated after noticing provisions of Section 47(2) of the Act, it cannot be said that the absence of reservation in Group-A and Group-B post in the OMs issued by the Government is bad.

19. A conjunctive perusal of the above exerted instructions and observation of Hon'ble Supreme Court would make it abundant clear that intention of their lordship in case of National Federation of Blind (supra) was only to compute 3% reservation on total number of vacancies in the cadre strength for disabled persons and there was no mandate for Government to provide 3 % reservation in promotion. Therefore, we are of the consider view that there is nothing in the judgment directed the reservations in promotions vacancies should be granted in all posts of a cadre, having regard to the fact that Group 'C' & 'D' employees along are given such benefits. In other words, there is no such mandate or direction in the National Federation of Blind (supra) that Group 'A' and 'B' posts or services must also provide for promotional reservations. Moreover being the police matter the court cannot interfere unless the applicant prove it arbitrary and against the Act. We may also record a finding here that there is no challenge to

the above OM's issued by the government of India for not providing reservation in promotion in group A & B posts. Government servant have only right to safeguarding rights or benefits already earned, acquired or accrued but cannot challenged the authority of the State to make such amendments or alterations in rule. This is so held in case of p .U. Joshi & others vs. Accountant General, Ahmadabad & others 2003(2) SCC 632 and in Mallikarjuna Rao & others State of Andhra Pradesh & others 1990 (2) SCC 707, wherein it has been held that courts or tribunals cannot direct the Government to frame statutory rules under Article 309 in a specific manner.

20. Even the judgment in the case of **Viklang Sang, Haryana vs. State of Haryana**; Civil Writ Petition No. 12741 of 2009 decided on March 18, 2010, which itself is based upon judgment in case of **Union of India v. Jagmohan Singh** will render no assistance to the applicant because in that case despite the OM dated 20.11.1989 and corrigendum dated 4.7.1997 the UOI did not provided reservation in promotion to group C & D, therefore while dismissing writ petition at the hands of UOI the court directed them to provide reservation in promotion as per OM's issued by them. The court while recording its finding in para 30 held' that "*there is no justification from deviating from the Government's policy contained in aforesaid OM's*".

With regard to the order passed in **Rajan Nagpal Vs. U.O.I & Ors.** (O.A No. 060/00623/2014) decided on 05.08.2015 by the Coordinate Bench of this Tribunal, as relied upon by the applicant will also not help the applicant because in that case there is a categorical finding recorded in para 10 that learned counsel for the respondents therein have made a concession. Based upon such consent/agreement, the matter was disposed of. Since above judgment was delivered on

consensual basis and not on merit, thus, the applicant cannot derive the benefits of that order and same is to be read as per-curiam.

21. In the backdrop of sequence of facts and legal position discussed above, we are in agreement with the submission raised at the hands of the respondents that it is within the domain of the Government of India, to consider and decide the reservation in promotion in group 'A' & 'B' to reiterate, what the Lordships have held in case of National Federation of Blind (supra) is only computing 3% reservation in total number of vacancies in a cadre strength. We may also find merit in the contention raised at the hands of the respondents that there is no challenge to the OMs issued to the above effect not providing any reservation in promotion. No other point argued. Therefore, the OA is dismissed being devoid of merits. No order as to cost.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(RAJWANT SANDHU)
MEMBER (A)**

Dated: 10.2.2016
'jk'