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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00623/2014

Date of Decision : 19.8.2015.

Reserved on : 05.08.2015

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER
HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER**

Rajan Nagpal son of Sh. K.D. Nagpal age 34 years working as Supervisor / Non Technical-Stores, Ordnance Cable Factory, Plot No. 183, Industrial Area, Phase-1, Chandigarh.

Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, North Block, New Delhi.
2. The Director General of Ordnance Factories-cum-Chairman Ordnance Factory Board, Ayudh Bhawan, 10-A, S.K. Bose Road, Kolkata – 700001, India.
3. The General Manager, Ordnance Cable Factory, Plot No. 183, Industrial Area, Phase-1, Chandigarh.

Respondents

Present: Mr. D.R. Sharma, counsel for the applicant
Mr. Ram Lal Gupta, counsel for respondents

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- 8 (i) The impugned order / instructions dated 20.07.2010 (Annexure A-1) passed by respondent no. 2 be quashed and set-aside in the interest of justice.
 - ii) The respondents be directed to fill the post of Chargeman (Non-Technical / Stores) by providing 3% reservation to Physically Handicapped persons.

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iii) It be declared that pursuant to merger of the posts of Chargeman Grade-I (Non-Technical / Stores) and Chargeman Grade-II (Non-Technical / Stores) into single grade of Chargeman (Non-Technical / Stores) having pay scale of Rs.9300-34800 with GP of Rs.4200 (PB-2) the applicant is eligible for promotion from the post of Supervisor (Non-Technical / Stores) to the post of Chargeman (Non-Technical / Stores) w.e.f. 01.04.2011, he having completed 03 years of service in the feeder cadre of Supervisor (Non-Technical / Stores).

2. Averment has been made in the OA that the applicant who is having the qualification of B.Sc. is an Orthopaedically Handicapped person having 80% disability, as per Certificate dated 17.01.2001 (Annexure A-20). The applicant joined the respondent Department as Storekeeper on 01.07.2004 and became Supervisor / Non-Technical Stores on 01.04.2008 (Annexure A-21 and A-22). The next channel of promotion from the post of Supervisor / Non-Technical Stores is to that of Chargeman Grade-II / Non-Technical Stores. In the year 2009, the Ministry of Defence merged w.e.f. 01.01.2006, the posts of Chargeman Grade-II (Non-Technical/Stores) and Chargeman Grade-I (Non-Technical/Stores) into single grade of Chargeman (Non-Technical/Stores) having pay scale of Rs.9300-34800 with GP of Rs.4200 (PB-2). As such the applicant being Supervisor (Non-Technical/Stores) became eligible for promotion to the Chargeman (Non-Technical/Stores) w.e.f. 01.04.2011 on completing 3 years of service w.e.f. 01.04.2008. Respondent no.2 vide letter dated 20.07.2010 decided to make promotion to the post of Chargeman (Technical) and Chargeman (Non-Technical/Stores) for the year 2010-11 by holding DPC for both existing and resultant vacancies. But respondent no.2 arbitrarily laid that the persons belonging to feeder post(s) should have 06 years of qualifying service. Further, no 3% mandatory reservations was provided to Physically Handicapped category

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in the matter of promotion to the post of Chargeman (Technical) as well as (Non-Technical/Stores) (Annexure A-1).

3. It is further stated that the persons belonging to Physically Handicapped category are entitled to 3% reservation in the promotional post where the element of direct recruitment does not exceed 75%. A separate 100 point register is to be maintained by the Heads of Department, divided into three blocks, i.e. 1-33, 34-66, 67-100. Points 1, 34, 67 are to be earmarked in Roster of reservation for Physically Handicapped (PH). In case of unfilled reserved vacancies, these are to be carried forward to the next block in the same year first and thereafter to the three subsequent years. The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training (DOPT) vide OM dated 16.01.1998 issued corrigendum to the OM dated 18.02.1997 to the effect that the reservation in promotion is to be provided for Physically Handicapped in all groups and it is applicable in all grades and services(Annexure A-17 & A-18). In the seniority list of Supervisor (NT Stores) as on 01.01.2014, the name of the applicant figures at SI No.2 as Physically Handicapped amongst the 05 Supervisors (NT Stores). He is the only Physically Handicapped person and others include 01 belonging to SC category and 03 belonging to General category. There are no Visually Handicapped (VH) and Hearing Handicapped (HH) persons (Annexure A-12).

4. It is further stated that respondent no.1 vide letter dated 26.03.2014 asked the quarters concerned in Ordnance and Ordnance Equipment Factories to furnish information in respect of Group 'B' (for Chargeman and equivalent) and

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'C' posts identified for Physically Handicapped (PH) in all cadres (Annexure A-8). The applicant again requested the respondents to fill the vacant post of Chargeman / NT Stores through promotion and provide 3% Physically Handicapped Promotion Reservation and promote him as such he being eligible and having right of promotion as per Roster Points No.1, 34, 67 reserved for Physically Handicapped persons. But no response had been given by the respondents. Copies of representations dated 28.11.2013, 19.02.2014, 28.03.2014 and 04.06.2014 are annexed as Annexure A-4, A-5, A-6 and A-7 respectively. The applicant has come to know that the respondents are filling the posts of Chargeman (Non-Technical/Stores) without providing 3% reservation in the promotion to the Physically Handicapped persons like the applicant and without considering the applicant on the plea that the post of Chargeman is Group 'B' and there is no reservation in promotion for Physically Handicapped in Group 'B' posts. Hence this O.A.

5. In the grounds for relief it has, inter-alia, been stated as follows:-

- i) The issue with regard to rights of disabled persons in the matter of promotions in all Group A, B, C & D posts is no more res-integra. The Hon'ble Supreme Court of India in the case of "Union of India Vs. National Federation of the Blind & Ors. in Civil Appeal No.9096 of 2013, decided on 08.10.2013 reported as [2013(12) SCALE 588] has held that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., computing 3% reservation on total number of vacancies in the cadre strength which is the intention of the legislature. The case of the applicant is also covered with the order dated 20.07.2012 passed in OA No.870-CH-2010 titled "Adarsh Kumar Vs. Union of India & Ors" by this Tribunal (Annexure A-23).
- ii) Pursuant to merger of the posts of Chargeman Grade-I (Non Technical/Stores) in the pay scale of Rs.5500-9000 and Chargeman

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Grade-II (Non Technical/Stores) in the pay scale of Rs.5000-8000 into single grade of Chargeman (Non Technical/Stores) having pay scale of Rs.9300-34800 with GP of Rs.4200 (PB-2), the applicant became eligible for promotion to the post of Chargeman (Non Technical/Stores) he being having minimum 03 years service in the feeder cadre of Supervisor (Non Technical/Stores) w.e.f. 01.04.2008. Furthermore, once the posts of Chargeman Grade-I and II (Non Technical/Stores) are no more existing then asking of 06 years i.e. 03 years service each on such posts does not arise.

- iii) The order dated 20.07.2010 cannot be said to be any Rule in the eyes of law and it cannot override or substitute the provision of the Act or Rules. It is settled law that administrative orders / instructions etc. can not overrule effect of statutory rules and provisions.
- iv) The action of the respondents in not providing reservation for Physically Handicapped persons is unsustainable and unjustified. The order dated 20.07.2010 is ultra vires of Article 16(1) of the Constitution, inasmuch as, it has been held by the Apex Court in the case of "Indira Sawhney Vs. Union of India" reported [1992 Supp. (3) SCC 217] that reservation of persons with disabilities is under Article 16(1), the impugned order would be ultra vires of the said Article, as the same excludes the posts filled by promotion in Group 'A' and 'B' from the scheme of reservation which is under Article 16(1) and duly contained in Section 33 of the Act of 1995.

6. In the written statement filed on behalf of the respondents, it has been stated that Ordnance Factory Board, Kolkata has intimated to All Ordnance & Ordnance Equipment Factories vide letter No.3265/CM (T&NT)/PROM/10-11/A/NG, dated 20.07.2010 in para (v) that promotion to CM (Tech)/CM-Non-Tech (OTS & Stores) from the feeder post (s) is to be made on completion of 06 years of qualifying service i.e. in terms of existing SRO till such time revised SRO is finalized and circulated. As per this letter, the applicant does not fulfill the eligibility criteria for promotion to the post of Chargeman (NT / Stores) and the applicant is also not the senior most employee in the seniority list.

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7. Further, there is no reservation in promotion in Group 'B' posts hence there is no question of maintaining a separate 100 point register and carrying forward the unfilled vacancies. It is clearly mentioned in OFB Letter No.2982/LDCE/CM(T&NT)/2014/Per./NG, dated 03.07.2014 that "since the post of Chargeman is now classified as Group 'B', there will be no reservation in PH also." A copy of the same is annexed as Annexure R-1.

8. In the rejoinder filed on behalf of the applicant, reference has been made to the decision of the Apex Court in "Union of India Vs. National Federation of the Blind & Ors." wherein it has been held that the reservation for persons with disabilities has to be computed in case of Group A, B, C & D posts in an identical manner viz., 3% reservation on total number of vacancies in the cadre strength which is intention of the legislature.

9. Arguments advanced by the learned counsel for the parties were heard, when learned counsel for the applicant reiterated the content of the OA and rejoinder. He pressed that although the applicant was eligible for promotion as Chargeman (Non-Technical / Stores) on completion of 03 years service as Supervisor on 01.04.2011, the applicant had even completed 06 years service as such on 01.04.2014 and was entitled to be considered for promotion in view of the reservation provided for Physically Handicapped persons. He also referred to judgment of the Apex Court in National Federation of the Blind & Ors. (supra) in this regard.

10. Learned counsel for the respondents fairly conceded that reservation in promotion for persons with disabilities was to be allowed in all

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categories and the stand taken in the written statement that since the post of Chargeman (Non-Technical / Stores) was in Group 'B' and reservation was therefore not applicable was incorrect. He stated that since the applicant had fulfilled the eligibility criteria of 06 years for such promotion he would be considered for promotion as Chargeman, keeping in view his position in the seniority list as well as the aspect of reservation for the Physically Handicapped and the roster prescribed in this regard.

11. In view of the ad-idem between the parties, the OA is disposed of with direction to the respondents to consider the applicant's claim for promotion whenever vacancies in the cadre of Chargeman arise after 01.04.2014 when the applicant fulfilled the eligibility criteria of six years service as Supervisor for promotion to the post of Chargeman.

12. The OA is disposed of accordingly. No costs.

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(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER

Sanjeev
(SANJEEV KAUSHIK)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 19.8.2015.

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