

**Central Administrative Tribunal
Principal Bench, New Delhi**

**OA No. 312/2012
With
OA No. 1613/2013**

Reserved on:10.05.2016
Pronounced on:01.08.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

OA No. 312/2012

Anil Kumar Singh,
S/o Shri Ram Chandra Singh,
R/o Flat No.5,Block F,
Alaknjanda Apartmetn
(Rampuri),Ghaziabad.

...Applicant

Versus

1. Union of India,
Through Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public
Grievances & Pensions,
North Block, New Delhi-1 .
2. Secretary,
Union Pubic Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110069.

...Respondents

OA No. 1613/2013

Sujitha J.
d/o Shri T.P.Jothi,
R/o No.7, Mallipathan Street,
Tindivanam, Villupuram District,
Tamil Nadu.

...Applicant

Versus

1. Union Public Service Commission
Through Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110003.

2. Union of India,
Through Secretary,
M/o Personnel, P.G. & Pensions,
North Block, New Delhi. ...Respondents

Appearance: Shri S.K. Rungta, Sr. Advocate with
Shri Prashant Singh for applicants in both
afore OAs

Shri Naresh Kaushik and Mrs. Avinash Kaur
in both OAs

O R D E R

Dr. B.K. Sinha, Member (A):

The OA Nos. 312/2012 and 1613/2013 have been heard together and are being disposed of by this common order, as the subject matter, contents of the pleadings and the arguments advanced in both the afore OAs happen to be identical.

2. OA No.312/2012 has been remanded by the Hon'ble High Court of Delhi vide its order dated 31.07.2012 in WP(C) No. 4489/2012 as earlier, this OA was dismissed *in limine* by this Tribunal vide its order dated 24.05.2012 rejecting the claim of the applicant without requiring the respondents to submit a response to his Application. The Hon'ble High Court considered the matter in WP(C) No.4489/2012 and set aside the afore order of this Tribunal on the ground that as a matter of principle, cases should not be dismissed in *limine* and remitted the matter to the Tribunal for hearing on merits. Relevant para from

the order of the Hon'ble High Court dated 31.07.2012, is as under:-

“We feel that the Tribunal should not have dismissed the petition in limine as the matter involved visually impaired persons who ought to be given special consideration in view of the said Act. Consequently, we set aside the order of the Tribunal dated 24.05.2012 and remit the matter to the Tribunal for hearing on merit.”

3. The facts of the case succinctly are that the applicant in OA No. 312 of 2012 was an aspirant to join the Civil Services for which he was a candidate for Central Services Examination-2010 (CSE-2010, in short) in PH-2 category of Visually Challenged Persons. The total number of posts notified were 900 posts, and these were stated to be tentative. In so far as reservation to the differently abled candidates, the respondents had reserved only 7 seats for the visually disabled candidate. The claim of the applicant is that by virtue of provisions of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'Disabilities Act'), 1%, i.e., 9 seats, excluding those visually disabled persons who were selected on their own merit, should have been earmarked and filled up under this category. Instead, only 7 seats were advertised for which also only 5 were selected. While this is one of the serious legal lacune, yet another is that the applicant

secured 1060 marks but not selected, whereas the last selected candidate in PH-3 category (Hearing Impairment) had secured only 915 marks thus, he too should have been selected above the last selected candidate in PH-3 category.

4. In OA No. 1613/2013, the applicant participated both in CSE 2010 and CSE 2012 examinations. Her grievance is that notification issued under CSE-2010 invited applications for filling up of 965 posts and the applicant having secured 998 marks was declared successful in written examination and was called for personality test. However, she was not appointed as only candidates belonging to PH-2 category (Visually Handicapped Persons) were finally selected out of seven notified posts. And, in CSE 2012 examination, the respondents advertised 1037 vacancies out of which 10 ought to have been reserved for PH-2 category (Visually Handicapped Persons). The applicant appeared but was not called for personality test. Accordingly, the applicant has challenged both the CSE-2010 and CSE-2012, the arguments being that had the posts been and advertised as per statutory provisions of the Disabilities Act, the applicant would have been selected in CSE-2010 in which she had been called for interview, and in the CSE 2012, she would have been called for interview .

5. The following reliefs have been sought in Para 8 of both the OAs:-

OA No. 312/2012

- (a) directing the Respondents to produce the list as well as the result of those persons who have been selected in pursuance of the Civil Services Examination conducted by the Respondent No.2 in the Year 2010-2011.
- (b) directing the Respondents to appoint the Applicant in the Civil Service in terms of his merits secured in the Civil Services Examination, 2010-2011 in the category of Visually Handicapped persons.
- (c) if need be then direct the Respondents to cancel the appointment of those candidates who were illegally selected after arraying them as a party respondents in the present O.A.
- (d) direct the financial loss and compensation for mental agony caused to the applicant by the Arbitrary acts of commission and omission of the Respondents should be recovered from the Salary of the Official Concerned and
- (e) Pass any other orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

OA No. 1613/2013

- "a) Allow this application.
- b) Consequently, direct the respondents to appoint the applicant to any of the Civil Services post based on the performance in CSE 2010 and 2012 against reserved vacancies for persons suffering from blindness and low vision with all consequential benefits by taking into account both the vacancies filled up by CSE 2010 & 2012 and backlog of vacancies against reservation quota for visually impaired persons to be worked out in terms of OM bearing no. 36035/3/2004-Estt.(Res) dated 29.12.2005 and OM No. 36035/8/2003-Estt.(Res) dated 26.4.2006 in the implementation of Section 33 of The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995.
- c) Grant any other relief which Your Lordship deem fit and proper in the circumstances of the case.
- d) Award the cost."

6. The second respondent (Union Public Service Commission) in OA No. 312/2012 has filed a counter affidavit and has denied all the averments in OAs, save for those which have been placed in a factual matrix. The respondent no.2 further submits that number of vacancies indicated in the notification advertised by them in the Employment News dated 02.01.2010 were tentative in nature. This was primarily due to the fact that the participating Ministries/Departments were not in a position to indent a firm number of vacancies till the time of the publication of the advertisement. Thus, due information was provided in the said notification in clear-cut terms in bold letters and at a conspicuous place that the **“above information is tentative”**. The vacancies reported normally undergo changes at the time of the preparation of the final result at the instance of the participating Ministries/Departments and the respondent no.2 has no role to play in that process of revision/modification. As regards the marks secured by the last selected candidate in three PH categories, the respondent no.2 admitted that the last selected candidate in PH-3 category (Hearing Impairment) had secured 915 marks as opposed to 1075 in the PH-2 category (Visually Handicapped Persons). However, the reason for recommending the candidate with 915 to the exclusion of the applicant who secured 1060

marks is that the three categories for which reservations have been made, form a distinct order of their own and selection in respect of each is independent of the other.

7. The respondent No. 2, i.e., the Public Service Commission has placed similar arguments in OA No. 1613/2013 as well. As to the applicant in this case not having called for interview in the 2012 CSE, the respondents submitted that the applicant again appeared in CSE-2012 (Roll No. 095218) and was called for re-appearance in one paper of Sociology Pape-1 on 20.01.2013 at Hyderabad Centre for administrative reasons, but did not qualify the written examination of CSE-2012 and hence was not called for the interview. Here again, it was submitted that the role of respondent No.2 confines with conduct of examination and making recommendations for appointment. The appointment of the candidates in different categories is the responsibility of the respondent No.1 i.e. the Union of India through the Secretary.

8. Significantly in both the OAs, Union of India chose not to file any counter affidavit. However, during the course of the arguments, learned counsel for the Union of India has adopted the arguments of Union Public Services Commission.

9. The applicant has filed the rejoinder application reaffirming the earlier averments in the OAs.

10. There were three limbs of arguments that have been advanced by the learned senior counsel for the applicant, which are as under:-

(i) Advertising less than 1% seat and recommending less than that 1% against PH-2 category is a clear infraction of the provisions of Section 33 of the Disabilities Act. This is a fraud played by the respondents against the sacred Constitution itself and is opposed to provisions of Art. 14 and 16 of the Constitution of India. In support of this contention, reliance has been placed upon the cases of Hon'ble Supreme Court in

(a) **Government of India v. Ravi Prakash Gupta** (2010) 7 SCC 626,

(b) **Union of India & Anr. v. National Federation of the Blind & Ors.**,
MANU/SC/1025/2013; and

(c) **Mahesh Gupta v. Yaswant Kumar Ahirwar**, (2007) 8 SCC 623 and **Union of India v. Devendra Kumar Pant** (2009) 14 SCC 546.

- (ii) The second limb of the arguments advanced by the applicant is that had the respondents been faithful to the Constitution and provided for 9 posts as per the stipulations under the provisions of Section 33 of the Disability Act, the applicant would have definitely been selected.
- (iii) The third limb of the argument as detailed in the OA was that he had secured more marks i.e., 1060 in PH-2 category (Visually Handicapped Persons) as opposed to 915 marks by the last selected candidate in PH-3 category (Hearing Impairment) and as such, he has been discriminated against.

11. We have carefully examined the pleadings of the parties as also the documents submitted by them and also listened oral submissions made by their respective counsels.

12. The issues that deserve for consideration are as follows:-

- (i) Whether not providing for the posts as per Section 33 of the Disability Act is tantamount to infraction of the statutory provisions and directives of the Hon'ble Supreme Court?

- (ii) Whether the applicants in both the OAs would have chance of being on the panel of recommended candidates in CSE-2010 and CSE-2012?
- (iii) Whether the respondents were on the wrong not to have made reservations as per the policy on account of administrative difficulties?
- (iv) What reliefs, if any, could be granted to the applicants?

13. Before dealing with the above, it would be advantageous to trace out pregnant background which formed the bedrock in the enactment of the Disabilities Act. This enactment has flown out of Beijing Declaration 1992 to which India was also a signatory. This declaration made it mandatory for all signatory Nations to enact suitable legislation

- (i) to spell out the 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-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down strategies for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) to make special provision for the integration of persons with disabilities into the social mainstream."

Accordingly, the Disabilities Act was enacted in the year 1995. This Act envisages various kinds of disabilities namely, blindness; low vision; leprosy cured; hearing impairment; loco motor disability; mental retardation; and mental illness. Locomotor disability means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. A person with disability means a person suffering from not less than forty per cent of any disability as certified by a medical authority [Section 2(t) of the Act]. For securing appointment to such differently

abled persons, provisions have been made vide Section 32 of the Disabilities Act to identify posts in the establishment which could be reserved for the persons with disabilities and to review keeping in mind the development in technology periodically not exceeding three years. Again, Section 33 of the Act makes provision for reservation in services with three classes. For the sake of clarity, the provisions of Section 33 of the Act are extracted as below:-

“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 subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

14. Identification of posts vide Section 32, was meant to be simultaneously undertaken with the coming up the operation of the Act in order to keep full and meaningful effect of Section 32. For the sake of reference, Section 32 is being reproduced as below:-

“2. Identification of posts which can be reserved for persons with disabilities.—Appropriate Governments 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.”

15. Considering this piece of Social Welfare Legislation, the Apex Court in the case of Union of India vs the National Federation of the Blind (2013) 10 SCC 772 had opined as under:-

50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.

51. The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various international treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today.

It is keeping in view the above, that any case relating to the Disabilities Act, 1995 should be viewed and decided.

16. The Apex Court has considered the scope and extent of the Disabilities Act in a number of cases and have emphasized the need to ensure that the percentage of reservation under the three categories is strictly adhered to.

17. In the case of **Govt. of India through Secretary & Anr. vs. Ravi Prakash Gupta & Anr.** (supra), the Apex Court has held as under:-

“17. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed were on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, does not arise.”

Thus, the implication of the judgment of the Hon'ble Supreme Court in **Govt. of India through Secretary & Anr. vs. Ravi Prakash Gupta & Anr.** (supra) is that the backlog vacancies had to be carried forward for the next two years so that at any given point of time, the percentage of reservation is maintained. The plea of the administrative inconvenience was not to be accepted.

18. In **Union of India vs. National Federation of the Blind** (supra), a PIL was filed by the first respondent herein, before the Hon'ble High Court seeking

implementation of the Section 33 of the Disabilities Act stating that the Union of India had failed to provide reservation to the blind and low vision persons and they are virtually excluded from the process of recruitment to the Government post as stipulated under the Government. The Hon'ble High Court, vide its judgment dated 19.12.2008, directed the Union of India to modify one particular OM dated 29.12.2005 being inconsistent with the provisions of Section 33 of the Disabilities Act and issued several other directions. The Government had gone in appeal contending that the reservation of posts was being calculated strictly in the manner provided. On the other hand, the respondent before the Apex Court submitted that it was obligatory on the part of the Government establishment to provide at least 3% reservation of posts in total cadre strength. The Hon'ble Supreme Court made reference to Sections 32 33 (already extracted) and 36 of the Act, which provide for (a) carry forward for two years of the vacancy and (b) interchange among the three categories when suitable person in one category in which vacancy exists is not available. The said Section 36 of the Disabilities Act reads as under:-

“36. 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 in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government.

19. The Hon'ble Supreme Court, after having gone into the issue, held in para 52 that 3% reservation was to be calculated on total number of vacancies in the cadre strength. The Hon'ble Supreme Court further directed as hereunder:-

"54. 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:

(i) 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.

(ii) 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.

(iii) 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 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.

20. In yet another case in **N. Shraavan Kumar Vs. Union Public Service Commission** (OA No. 1893/2009 along with batch matters decided on 08.10.2010), this Tribunal, while going into the issue of computation of vacancies, held as under:-

“10. To sum up on the basis of above discussion:

- (a) the Disabilities Act provides for reservation for physically handicapped to the extent of three per cent, one per cent each for visually handicapped, hearing impaired and persons with loco motor disability and cerebral palsy;
- (b) the reservation would be applicable from the year 1996, regardless of identification under Section 32 of the Disabilities Act;
- (c) the candidates selected on their own merit would not count amount the reserved category and would be counted as unreserved category as per the DOP&T's OM of 29.12.2005;
- (d) vacancies not filled in a particular year would be carried forward and would lapse if not filled up for the next two years;
- (e) reservation was not made under Section 33 of the Disabilities Act and, therefore, the question of carry forward and lapsing of posts does not arise;
- (f) those selected on their own merit would not be counted among the reserved category candidates;
- (g) the persons belonging to the non-disabled category who have secured lesser marks than the person belonging to the disabled category cannot be recommended for appointment disregarding the claim of the candidates of disabled category on the basis of the posts available for them; and
- (h) advantage of reservation has to be given to the physically handicapped candidates after working out the number of vacancies available on the basis of total number of posts recommended and the backlog vacancies.”

20. The applicant has also relied upon the order of this Tribunal in the case of **Pankaj Kumar Srivastava vs. UPSC & Anr.** (OA NO. 3493/2011 along with connected OAs., decided on 30.05.2012). However, the issue involved therein was different as it related to adjustment of persons selected at their own in the general list and not against the reserved list. In this regard, the Tribunal held as under:-

“16. The OA is allowed. The respondent No.1, UPSC, is directed to undertake the exercise in order to decide that in the CSE 2008 and other examination how many candidates on the basis of their ranking deserve to be selected on their own merits, and they must be adjusted against unreserved vacancies on their own merits as provided in the office memorandum dated 29.12.2005, and thereafter rest of the candidates belonging to the visually impaired category must be selected against reserved category, and if the applicants are to be selected against reserved category, then they must be given appointment. The respondents shall undertake this exercise within a period of three months from today. There shall be no order as to costs.”

21. In all the above decisions, the bottom line is that there shall be religious and sincere adherence to the provisions of Disabilities Act especially with reference to working out of percentage of reservation and other attendant aspects including carry forward vacancies and interchange of vacancies amongst the three categories under certain contingencies.

22. This issue has not directly been raised instead it is confined to reservation of 3% of total strength cadre of every service identified. What is significant here is that by a

simple arithmetic exercise, seven seats were declared reserved for visually handicapped persons out of 900 seats for which selection were to be made. Though the above figure had been tentative, it has not been made clear as to how many were the actual vacancies. If the number remained the same, then reserving a number less than 9 for a PH category is against the provisions of law. Further, it is not clearly stated whether there had been any backlog vacancies under this category. If there had been, then the backlog vacancies in this regard ought to have also been reckoned in which event, the number of vacancies to be reserved would even exceed 9; however, the same have not been taken into account, as the issue has not been pressed. Thus, the simple argument of the applicant is that of these 900 vacancies, 9 vacancies should have been reserved for the PH-2 category of visually handicapped. It is very difficult to refute the logic of the simple but significant argument, as it has already been seen that in a series of judgments that have been cited are unanimous in one respect that 1% of total vacancies should have been kept as reserved for each of the three PH categories.

23. The argument of the respondent UPSC in this regard is that the reservation is made not on the basis of cadre strength but rather on the basis of the requisition filed by

the cadre controlling authorities. Where the cadre controlling authorities have not filed requisition, the UPSC cannot step into the shoes of cadre controlling authority and change the requisition. For the sake of greater clarity, para 4.8 of the counter affidavit filed in OA No.312/2012 is being reproduced as hereunder:-

“4.8 In reply to the contents of the corresponding para 4.8 of the Original Application, it is humbly and most respectfully submitted that based on the examinations conducted by the Commission, candidates are recommended by it against vacancies report/indented to it by the participating Ministries/Departments. These vacancies are reported in the various categories as provided for under the rules viz. General Category, SC/ST Category, OBC Category and the Physically Handicapped Categories, namely PH-1 (Locomotor Disability and Cerebral Palsy),Category and PH-2 (Visually Impaired/Blind Limited Vision) Category and PH-3 (Deaf and Mute/Hearing Impaired) Category. Under the PH category at the time of issuing the Notification for the Civil Services Examination, 2010 vide Gazette Notification dated 2.01.2010,and finalization of vacancies (i.e.May 2011),the position of vacancies in PH-2 (Blind/Low Vision) stood as under:-

SI. No.	Service	Notification (Jan.2010)	Finalization (May, 2011)
1.	IAS	LDCP-1,B/LV-1,HI-2	No change
2.	IP&TA&F S	LDCP-0,B/LV-1,HI-0	No change
3.	IRPS	LDCP-1,B/LV-1,HI-1	No change
4.	IIS	LDCP-0,B/LV-1,HI-0	LDCP-0,B/LV-0,HI-1 (1 vacancy of B/LV was interchanged with HI by the CCA)
5.	ICLS	LDCP-0,B/LV-1,HI-0	No change
6.	AFHQ-SO	LDCP-1, B/LV-1, HI-0	No change
7.	DANIPS	LDCP-0,B/LV-1,HI-0	LDCP-

		(not finalized)	1,B/LV-0,HI-0 (one vacancy of B/LV was interchanged with LDCP by the CCA)
		B/LV=7 vacancies	B/LV=5 vacancies

In this view of the matter, it is submitted that the finalization of vacancies cannot by any stretch of imagination be deemed to be the handiwork of the Answering Respondent, but was based purely on the vacancies reported to it by the participating Ministries/Departments of the Government of India.”

24. Though the UPSC may wash their hands of, the fact remains that the statutory mandate has not been fulfilled and any plea of the administrative difficulties cannot be acceptable as has been conclusively rejected by the Hon'ble Supreme Court in **Govt. of India through Secretary & Anr. vs. Ravi Prakash Gupta & Anr.** (supra) and **Union of India vs. National Federation of the Blind** (supra) and there is no cause for us to delve into the matter.

25. On 10.05.2016, this Tribunal, while reserving the order, directed the respondent no.2 (UPSC) to furnish the result of Civil Services Examination, 2010 indicating the names of those candidates and their marks who are below the last selected candidate under B/CV category and between Sl No.1075 to 1060, under a sealed cover.

Accordingly, a chart showing the names and marks of PH-2 category candidates, below last recommended candidate of PH-2 category, between final marks of 1075 to 1060 in CS (Main) Examination, 2010 has been furnished by the Chairman, UPSC himself in a sealed cover requesting confidentiality. This is why we are not reproducing the entire sheet in this order out of respect for the concern of confidentiality shown by the Chairman, UPSC. However, suffices it to state that there are two other candidates between the applicant Anil Kumar in OA No.312/2012 and the last candidate selected in PH-2 category who had scored more marks as compared to the applicant. Thus, even if the seats had been enhanced by 2, applicants would not have been eligible for selection. We also take note of the fact that the arguments advanced by the applicant in para 5.4 of the OA that candidates scoring 955 or less marks in other categories of disability were selected is misplaced as the competition is within the category and not within two or more categories.

26. We further find that the analogy of seeking 1% of the total seats advertised is misplaced one. There are number of Services advertised in which there is no reservation for the physically disabled categories on account of requirement of services. Further, requisition is initially

tendered by the requisitioning department on a rough estimate of the posts. We also take note of the fact that the cadre controlling authorities are the requisitioning authorities and they make the final recommendation on the basis of roster prepared in the respective department.

27. For the afore reasons, we find the case of the applicant Anil Kumar (OA No.312/2012) untenable being devoid of merit and hence the same is dismissed.

28. Insofar as the case of Sujitha J. (OA No.1613/2013) is concerned, it is her case that seven seats were declared reserved for visually impaired category candidates but only five persons were finally selected. She has also contended that the arguments on merit used in OA No.312/2012 (Anil Kumar) shall apply to her OA as well. Therefore, we make out that OA No.1613/2013 also fails on merit for parity of reasons.

29. In view of our above discussion, both the Original Applications namely OA No.312/2012 and OA No.1613/2013 stand dismissed with no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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