

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No-2638/2012

Order Reserved on: 14.10.2015
Order Pronounced on: 23.07.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Raj Kumar Mishra
S/o Shri Ramesh Mishra
R/o A-41, Street No. 3, Jaitpur Extension,
Badarpur, New Delhi-44. -Applicant

(By Advocate: Shri R.K. Sherawat)

Versus

1. Government of NCT of Delhi
Through Chief Secretary
Delhi Secretariat, I.P. Estate,
New Delhi-02.
2. The Chairman/Chief Managing Director
DTC, D.T.C. Headquarter, I.P. Estate,
New Delhi-02.
3. Ministry of Social Justice and Empowerment,
Government of India,
Through its Chief/Principal Secretary,
Shastri Bhawan, New Delhi-110001.
4. Mr. Jagdish Chand, Manager (Personnel)-
PLD Section, DTC, DTC Headquarter, I.P. Estate,
New Delhi-02.
5. A.I.I.M.S., Ansari Nagar,
New Delhi-29, Through its
Medical Superintendent
6. The Director
District Employment Exchange
Women & Child Development Department Complex,
1, Canning Lane, K.G. Marg,
New Delhi-110001.
7. Employment Officer
Directorate of Employment Exchange
Govt. of NCT of Delhi, IARI Campus,

Pusa, New Delhi-110012.

-Respondents

(By Advocate: Mr. Mehmood Pracha, Shri A.N. Das
Shri R.K. Rastogi and Shri Vijay Pandita)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant is before this Tribunal aggrieved by the respondents having denied to consider his candidature for appointment as Conductor with the Delhi Transport Corporation (DTC, in short), in the Physically Handicapped category, despite his being physically handicapped, and colour blind, by holding that the discharge of duties of the Conductors with DTC also requires them to be free from colour blindness, even though in the past persons with visual disability of colour blindness were selected by the DTC as Conductors.

2. The facts of the case lie in a brief compass though the pleadings are very bulky. The Respondent No.2 DTC had issued a Notification dated 14.05.2010 for employment of 2000 personnel on short term contract basis, and invited list of registered candidates from Employment Exchanges etc., since the vacant posts were around 2000, and the Employment Exchanges had a list of around 15,000 candidates registered with them. However, the applicant had pointed out that in DTC's communication to the Employment Exchange, the reservations for SC/ST/OBC and Physically disabled category candidates were not mentioned appropriately. The applicant has submitted that at the same time apparently Newspaper advertisement in Employment News had also been issued in that regard.

3. The applicant's name was included in the list sent by the Employment Exchange as Annexure P-3, yet the applicant enquired in the Office of Respondent No.2, and he was then called for appearing before the Screening Committee for preliminary scrutiny of documents on 02.06.2010, for engagement of Conductors on short-term contract basis for a period of 89 days (Annexure P-3 colly). The applicant is, however, aggrieved that his name was not appropriately recommended by the Employment Exchange to the DTC for the proper category, even though he was having very old registration in the Employment Exchange since 2004, and had later on kept on renewing his candidature, and even when on-line registration was started in 2009, he had registered with the Employment Exchange, Pusa, New Delhi, in the Physically Handicapped category. He is aggrieved by the Employment Exchange having properly forwarded the candidature of Mr. Ranjit Kumar, and Mr. Sanjay Sharma, who did not have old registration numbers, and only had a new registration on the on-line system, which documents of those candidates he has annexed as Annexure P-3.

4. The applicant has submitted that he questioned the Respondent No.4 as to why the P.H. category persons registered with Employment Exchange earlier had been ignored by DTC, and why had a Physically Handicapped list under 3% quota not been prepared separately, and as to how many Physically Handicapped persons had been recruited by the DTC, and what was the selection criteria. He has alleged that Private

Respondent No.R-4 abused him in fifty language, and assaulted him, because of which he gave a complaint to the Commissioner of Police against the concerned DTC Officers through Annexure P-4 dated 28.09.2010. In order to try to make out his case against the two other Private Respondents No.R-6 & R-7, the applicant has submitted that he had visited their office in July 2010, when he had been informed that the earlier system of registration in the Employment Exchange had been abolished, and on-line registration had since been introduced, replacing the earlier system, and when he enquired and sent a Legal Notice to the Respondents No. R-6 & R-7 and filed an RTI application, he did not get any satisfactory reply. He has alleged that even the print media had picked up a story regarding the illegalities and irregularities in the appointments of Bus Conductors by the DTC at the relevant time.

5. Later on, in response to the Legal Notice, he was informed that his name had been sponsored to DTC on 14.05.2010 at Serial Number 3783 in the first such list sent, and at Serial Number 4512 of the second such list sent on 09.06.2010, but the fact that the applicant had passed 10th class qualification had not been added, even though he claims that he had submitted his complete qualifications even before the introduction of the on-line system of the registration of candidates. The applicant is, therefore, aggrieved that the Respondents No. 6 & 7 had failed to update his educational status properly, and that they cannot escape their liability by shirking their responsibility for their mistake. The applicant has also alleged that the Respondent-DTC themselves have been taking

contradictory stands, inasmuch as in reply/information furnished to one other applicant, they have said that the select list had not been prepared on the ground of seniority, while in reply/response to another applicant, they had replied that interview letters had been issued on the ground of seniority of the candidates. He has submitted that it goes to show that the DTC officials had gone ahead recruiting candidates as per their sweet-will, without getting any proper merit list prepared.

6. The applicant had complained to the Commissioner for Persons with Disabilities also regarding no reservation having been provided for the persons with physical disabilities according to their medical standards, and through letter dated 08.10.2010 issued by DTC to the Commissioner for Persons with Disabilities, this aspect was conceded and admitted, and an assurance was given that the DTC will comply with the requirement of recruitment of persons with disabilities. The applicant has stated that through Annexure P-26 dated 15.03.2011, the Commissioner for Persons with Disabilities directed the Respondent-DTC to review their policy for the purpose of recruiting the persons who are having low colour vision, and to see as to how the physical handicapped persons can be accommodated by appointing them according to their available physical capacity/mobility, but that no such guideline had been framed by the DTC. The case of the applicant was further examined when through letter dated 15.04.2011, the applicant was sent to Respondent No.R-5-AIIMS, which certified that the applicant is having disability with his colour vision, but since the Respondent-DTC had not

included the disability colour vision in their disabled category recruitment, the applicant cannot be provided any relief. The applicant has submitted that otherwise he meets all the physical standards, and assurance had been given for employment on the basis of colour vision disability certificate issued by Respondent No.R-5-AIIMS. This he has alleged to be because of ill-will and bias of Private Respondent No.R-4 against him. He has stated that when many persons were without medical clearance, being disabled persons, according to the disability criteria they are not fit for Conductor's job and for performing their duties, the respondents' policy/criteria of recruitment needs to be reviewed, and they should not be allowed to work as Conductors.

7. The applicant has taken the ground that while he has been disqualified on the ground of his colour blindness, but he was otherwise fit to discharge the duties normally attached to the post of Conductor in DTC. The Respondent-DTC has declined to consider his candidature by including colour blindness in category of handicapped person on the ground that Ministry of Social Justice and Empowerment has issued the list of categories of persons with disabilities eligible for consideration for the posts of Bus Conductors, which are: a) OA-One Arm, b) OL-One Leg, c) BL-Both Leg, d) MW-Muscular Weakness and limited physical endurance, e) HH-Hearing Handicapped. He has taken the further ground that he otherwise falls only in Category-D to qualify on medical standards in terms of the said Notification dated 18.01.2007 issued by Ministry of Social Justice and Empowerment, and it is surprising that

while a person with disability in both legs, one arm, one leg and hearing handicap is found fit to discharge the duties of a Conductor, but he, who is suffering only from muscular weakness with colour blindness is not found fit, only on the ground that colour blindness is not mentioned in the medical standards as notified in the aforesaid Notification by Respondent No.3, Ministry of Social Justice and Empowerment. He has raised the ground that if a visually disabled (blind) person can be selected for the post of Conductor, why cannot a physically handicapped person with colour blindness. But he has not shown as to how he has mentioned that visually handicapped/blind person, can be selected as a Conductor, when the permissible categories have already been mentioned by the applicant himself in Ground-A of his OA, which does not include visually handicapped/blind persons.

8. The applicant has raised the further ground that he is seeking directions upon the respondents to issue a fresh Notification to include the category of handicapped persons with colour blindness in the list of persons with eligible disabilities in the medical standards for appointment as Conductors in DTC. He has assailed the inclusion of the admissible categories of physically handicapped persons as being themselves a burden or liability, to be taken out from the Bus in case of any emergency, and, therefore, not being eligible to be included as permissible category!! He has submitted that persons having disabilities like stiff back (cannot sit and stoop), and the persons having 30% visual disability certificate from vision loss have been included, and if a 30% visually disabled person can be accommodated, then why was he given a

different treatment. He has further taken the ground that Respondent-DTC is taking a plea that they are not providing reservation in the case of casual/temporary basis employment, but on the other hand they have provided reservation to the candidates who were from SC/ST/OBC/Ex-service men/compassionate ground candidates, but have denied the quota for appropriate categories of disabled persons. The applicant has thereby laid a challenge to the very Notification issued under Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 which makes 40% disability/inability as the cut off deficiency in physical ability to determine impermissible disability.

9. The applicant has further taken the ground that the criteria allotted by the respondents has resulted in a situation that he is neither normal, nor fit and proper to be recruited into the service despite being a colour blind disabled person, and he has thus turned his OA to be in the nature of a Public Interest Litigation on behalf of all disabled persons having colour blindness. He has submitted that in the recruitment conducted by the Respondent-DTC, the quota of disabled persons had not been completely filled and only 22 persons with disability had been included, and, therefore, the respondents cannot take a plea that they cannot accommodate the applicant for want of vacancies. He has further taken the ground that the respondents have only sought to somehow find an excuse for denying employment to him in spite of the fact that he is having 6/6 basic vision in both eyes, and has better locomotor ability of the body than in the type of permissible

disabilities prescribed. Thus, while on the one hand he had assailed in Ground-B that Respondents were following the Notification dated 18.01.2007, which is termed to be wrong, in Ground-O of his OA he had assailed that the Respondent-DTC had acted by not following the Rules and Regulations provided under the very same enactment. He has assailed that even though his physical ability in terms of medical fitness has been checked by the Medical Board, yet the respondents have denied his candidature.

10. In Ground-OO, the applicant had assailed the actions of the Commissioner for Persons with Disabilities himself for not having issued any advice to the Govt. of India for recruitment of colour blind persons even though the persons having basic vision defect can come into service. In Ground-QQ & RR, he has assailed that under the relevant Act, for Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995, (Disabilities Act, 1995, in short), even no suggestion has been given by the Commissioner for Persons with Disabilities, for absorbing the candidates like him to some other post. He had further taken the Grounds VV, WW & XX that he is the best candidate who ought to have been recruited for the post of Bus Conductor, or any other post, but it is an irony of the system that he could not be so recruited. In Ground-YY & ZZ, he has assailed that even the other officers as well as Commissioner for Persons with Disabilities themselves have not understood the true meaning of the Act, and Section-41 of the said Disabilities Act, 1995, and that the Commissioner

has not made any efforts to get the compliance of the provisions of the Act done by the DTC. In the result, he had prayed for the following reliefs:-

- “(a) to issue direction to the Respondent/Respondent no.3 review Notification no.16-17/2003-dd3 dated 18.01.2007 issued by the Ministry of Social Justice and Empowerment/Respondent no.3 and to make amendment to include the Person with disability with color blindness in list/notification of person with disability and to issue such directions which are necessary to make the necessary amendment in the policy/rules to include the color blind person in category of Disable/Handicapped and issue such directions to the respondent DTC to appoint the applicant as Conductor with respondent DTC in the category of physical handicap;
- (b) Direct the DTC to recruit the Applicant into service according to his ability in disabled candidates for the suitable post and also award him seniority and consequential benefits.
- (c) Direct the DTC to review the policy for recruitment of color blind person in case of disability.
- (d) Direct the DTC to carry forward the post of Conductor and post for the purpose and meant for reserved upto 5% Quota for physical disabled persons.
- (e) allow the cost of litigation;
- (f) Pass any other or further order which this Hon'ble court may deem fit and proper in the facts and circumstances of this case.”

11. Through his affidavit dated 22.08.2012, the applicant had also filed a complete copy of the Notification dated 18.01.2007 issued by the Ministry of Social Justice and Empowerment (supra).

12. MA-3260/2012 had been allowed on 19.11.2012 to change the address of R-6 by providing the correct address for service.

13. The respondents filed their counter reply on 21.12.2012, which was filed along with an affidavit of Respondent No.4, who had been arrayed in an individual capacity also, but had sworn an affidavit on behalf of Respondents No. 2 & 4.

14. The respondents had taken a preliminary objection that the OA in the present form was not maintainable *qua* DTC as neither there was any infirmity or illegality in the actions of DTC, and further that the appointments were made in contractual vacancies in 2010, and that no relief can be given at this late stage by the answering respondents. The rejection of the candidature of the applicant was justified on the basis of the opinion of the Medical Board, which had found him to be colour blind, having deficiency in recognition of primary colours such as red and green, which would make a person unable to perform the functions and operations as a Conductor in a Bus of the Corporation. It was further submitted that as per Standing Orders in DTC, colour-blindness is a disqualification, and the applicant could not have been appointed as a Bus Conductor in terms of the Standing Orders.

15. The Standing Order of the DTC had been produced at Annexure R-2 in which it has been prescribed in Clause-9 that even if a candidate has been selected by the Selection Board for appointment, he would have

to be examined in respect of medical fitness by the Medical Officer of DTC, and it was submitted that exemption from reservation for PH persons in operational categories of Drivers and Conductors had been sought from the Ministry of Social Welfare, however, the same had not been granted. It was pointed out that in the year 2010, due to sudden increase in the size of the fleet of DTC Buses, temporary recruitments were made for the posts of Drivers and Conductors on contract basis, yet, reservations in such appointments were provided at par with the specified physical requirements notified by the Govt. of India.

16. Regarding the applicant himself, it was stated that he was found to have colour blindness and having deficiency in recognizing basic primary colours of red and green, and as such he was declared unfit for the post by the Medical Board. Later, when the Commissioner for Persons with Disabilities recommended to get the applicant medically examined by the AIIMS, New Delhi, that also was got done, and once again the applicant was found medically unfit due to colour blindness. They had, therefore, submitted that his candidature had been duly considered as per proper procedure.

17. Thereafter the respondents had explained that visual disability is distinct from colour blindness, which is stated to be a disqualification as per the applicable medical norms. It was submitted that though Rules for providing reservations are not attracted for appointments to be made on contractual basis, yet representation to all reserved categories was

provided even in the appointments made on contractual basis, except the prohibited categories like colour blindness. It was submitted that all the grounds raised by the applicant are totally false, wrong, misconceived and misleading, and, therefore, they were denied. It was submitted that the applicant has no cause of action in his favour and no relief can be granted to him. It was, therefore, submitted that there is no merit in the OA, and prayed that the OA is liable to be dismissed with costs.

18. The reply of Respondents No. 1,6 & 7 was filed on 01.05.2013. The order passed by the Competent Authority were sought to be justified and it was submitted that it deserves to be upheld, as the applicant has no case, and it was particularly pleaded that Respondents No. 6 & 7 may be deleted from the array of parties.

19. The respondents had thereafter relied upon the Hon'ble Apex Court judgment in Civil Appeal No. 11646-11724 of 1996 in the case of **The Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N. Visweshwara Rao & Ors**, in which it was held that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange to sponsor the names of the candidates for selection strictly according to seniority and reservation, as per requisition, and in addition, publication in the Newspapers having wider circulation should also be done, as well as display on the Office Notice Boards, or announcement on Radio, Television and Employment News-bulletin, and then the cases of those candidates who apply should

be considered, so that adoption of fair play in procedure would be subserved, and equality of opportunity would be available to all eligible candidates. It was submitted that the Respondents had followed this judgment exactly, by both requisitioning from the Employment Exchange, as well as publishing advertisement in the Newspapers. It was further submitted that the Employment Exchange Department had switched over to the new online system of registration w.e.f. 15.06.2009, and online sponsorship system w.e.f. 06.12.2009. The old registrants/jobseekers were required to revalidate/update their registration on the new online system by themselves, as it was not possible for the authorities to inform each registrant/jobseeker individually. Therefore, through Public Notice in the leading Newspapers, all registered jobseekers had been notified to get their old existing registration revalidated/updated into new system. Any wrong doing on behalf of Respondents No. 1, 6 & 7 had, therefore, been denied.

20. The counter reply on behalf of Respondent No.4 was filed on 16.07.2013 in an individual capacity also separately, since a fresh notice had been ordered to be issued to him in the individual capacity also. It was prayed that since the applicant has not sought any specific relief against the answering Private Respondent R-4, therefore, the notice *qua* the Respondent No.4 deserves to be discharged and his name ought to be deleted from the array of parties in the OA. All averments and allegations made against the answering Private Respondent R-4 were denied as false and motivated, and aimed at harassing and pressurizing him to get an

order which the applicant is not entitled to. It was further submitted that if the idea of filing the OA is to get a relief of a personal nature, this Tribunal does not have jurisdiction to grant a relief to the applicant, which is personal in nature. All other replies made in this affidavit were on the basis of the official actions taken by R-4, in his official capacity, which have been already covered in the previous counter affidavit, and, therefore, need not be repeated here once again.

21. Thereafter, MA No. 585/2014 had been filed on 19.02.2014 by the applicant seeking directions upon the respondents that since the respondents were now once again recruiting/engaging Conductors sponsored by the Employment Exchange on short term contract basis for one year at a time, and he had also received two such letters dated 01.02.2014 and 03.02.2014, because he had registered twice at Sl. No. 16306/2009386222 and 16404/2009386918, but since he had not been selected earlier on the ground of colour blindness, he would suffer irreparable loss if all the vacancies now notified against the handicapped quota are also once again filled up by the DTC during pendency of OA, and it was prayed that respondents may be directed to keep one vacancy vacant till the OA is finally decided.

22. The reply to this MA on behalf of Respondent No.2 had been filed on 24.04.2014. In this, the respondents had repeated most of the portions from their legal stand as already taken in the counter reply filed earlier, and they had assailed that the applicant had by manipulation got

his name registered twice with the Directorate of Employment, through the two ID Numbers, as mentioned by him in the MA, which in itself was wrong and illegal on the part of the applicant. It was submitted that when it is an admitted fact that the applicant does suffer from colour vision defect for the purpose of recruitments to the post of Conductors, the answering respondent, being a public utility service, cannot withhold its operations for want of staff, nor can it lower the set medical standards, in order to accommodate only one applicant, and it was prayed that the regular process of engaging/keeping a panel of select candidates should be allowed to be continued, and it may not be desirable to keep a post vacant for the present applicant, who is a medically unfit candidate for the post of Conductor, and that there was absolutely no merit in the MA, and the applicant is not entitled to any reliefs.

23. The applicant filed his rejoinders in instalments. In the rejoinder filed on 11.01.2013 to the counter affidavit on behalf of Respondents 2 to 4, the averments as made in the OA were repeated, and it was submitted that the respondents have failed to notice that the list of permissible handicaps which are provided in the Notification itself had been impugned in his O.A. as irrational and without any basis and requiring modification. It was further submitted that the applicant, who is only partially orthopedically disabled, has been denied appointment on the ground of colour blindness, ignoring his main partial disability. He had assailed the stand of the respondents that many of the jobs which he

was required to undertake as a Conductor are not possible to be performed by a colour vision deficient person. He had also assailed the distinction being made by the respondents with persons with visual disability. It was submitted that since he was having only partial red and green colour vision deficiency, he should have been recruited against the physically handicapped quota of the orthopedically handicapped persons.

24. In the rejoinder to the counter reply filed by Respondent Nos. 1,6 & 7 on 01.07.2013, it was submitted that while there was no dispute about the law laid down by the Hon'ble Supreme Court in the case of **The Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N. Visweshwara Rao & Ors**, (supra), however, when the eligible candidates are sponsored to the employer, the employer has to consider their cases without any bias.

25. In his rejoinder to the counter reply filed by Private Respondent R-4 filed on 21.08.2013, the applicant had repeated his contention that the allegations made by him against Private Respondent R-4 in his OA are true, and since he had been ill-treated by the hands of Private Respondent R-4, he was a party necessary to be impleaded since there were serious allegations in filling up of the vacancies. It was further submitted that it was a lie that DTC had not recruited candidates with visual disability for the post of Conductors, and it was reiterated that colour blindness was not a handicap for the posts of Conductors, and that Private Respondent R-4 ought not to have made averments which

are not within his personal domain, when the concerned Ministry concerned itself is a party respondent R-3.

26. The applicant had also filed a rejoinder to the counter reply filed by Respondent No.2 in MA No.584/2014 on 08.07.2014. In this rejoinder it was submitted that earlier, in the previous recruitment, the candidature of the applicant had been sponsored as a physically disabled person, together with 49 other physically disabled persons, all of them were called, and 22 of them were selected. It was submitted that it is a matter of record that the DTC is in the need of services of more Conductors, due to a number of regular Conductors having got promoted to higher posts, or retired/removed or terminated in the intervening period, resulting in the depletion of the strength of the Conductors, and, therefore, it was prayed that one post should be kept vacant for the applicant. It was denied that the applicant had by manipulation got his name registered twice with the Directorate of Employment, Govt. of NCT of Delhi. It was submitted that Registration ID No. 2009386222 is for Special Employment Exchange for the Physically Handicapped persons, and the second registration ID No. 2009386918 is for Technical Employment Exchange, for the special recruitment for the posts of Bus Conductors, and Drivers. It was once again denied that the applicant had colour blindness, and that he was not up to the requisite medical standards as laid down by the Govt. of India for recruitment as Conductors. His prayer was that irreparable damage would be caused to him if his case is rejected, since he has colour deficiency of only two colours, while the DTC had recruited people with little or no vision as

Conductors, and it was prayed that one post of Conductor be kept vacant for him.

27. During the course of the day to day hearings, Standing counsel for R-3 had been directed on 18.09.2013 to seek instructions in this matter as to whether the Respondent R-3 Ministry would be filing any separate counter reply. He had sought time on 23.10.2013 to do so. Further, during the course of the hearing on 19.03.2014, when it was seen that the prayer at Para-8 (a) is in the nature of praying for directions regarding policy decisions, and the Bench had that date taken notice of the Hon'ble Apex Court judgment in **State of Tamil Nadu & Another ver. S. Arumugham & Others** (1998) 2 SCC 198, that the Tribunal cannot enter the domain of policy formulation, the learned counsel for the applicant had prayed for being permitted to drop the prayer at Para-8(a), with liberty to agitate the prayer before the appropriate forum, which permission had been granted, after which he had submitted that he would be prepared to argue the case even in the absence of a detailed counter reply on behalf of Respondent No.R-3 Ministry.

28. Thereafter the case was heard and reserved for orders in respect of the prayers at Para-8 (b), (c), (d), (e) & (f) only, after the applicant having given up the prayer at Para-8 (a) on 19.03.2014 as mentioned above.

29. Heard. The learned counsel for the applicant relied upon the cases of (i) **Nandkumar Narayanrao Ghodmare vs. State of Maharashtra and**

Others (1995) 6 SCC 720 and (ii) **Union of India and Others vs. Satya Prakash Vasisht 1994 Supp (2) SCC 52**, (iii) **Govt. of NCT of Delhi vs. Bharat Lal Meena 100 (2002) Delhi Law Times 157 (DB)** in CWP No. 2461/2002 decided on 29.08.2002, and (iv) the judgment delivered by the Hon'ble Delhi High Court dated 22.07.2013 in W.P. (C) No. 4561/2013 (**Suresh Ram vs. Union of India & Others**). He argued vehemently that this case law should apply to the case of DTC Bus Conductors also.

30. On the other hand, learned counsel for the respondents pointed out the various duties of Bus Conductors, which he has to perform in order to assist the Driver of the bus, and in emergency also, which do not allow any leniency in the matter of recognition of red and green colours in the eyes of the Drivers and Conductors of Buses, which are the colours of traffic lights themselves, because of which public safety gets involved.

31. We have considered the case of the applicant. After his having dropped the prayer at para-8 (a) of the OA, the prayer at para 8 (b) relates to seeking directions upon the respondents to grant him employment on the basis of his Orthopaedic physical disability, as a physically handicapped candidate, for a suitable post. We have gone through all the pleadings of both sides from none of which it is apparent that the respondents have sought to deny the applicant's orthopaedic physical difficulty of below 40%, and his candidature has been rejected only because apart from the below 40% Orthopaedic physical difficulty,

he also possesses the totally impermissible difficulty of red and green colour blindness.

32. Colour blindness is a genetically inherited disease, unless some other evident cause can be found objectively, because of which a person may have lost total sensitivity to colour vision. Red Green Colour Blindness is inherited by a person from his Maternal Grand Father, through his Mother being the carrier, and a person then passes those defective Genes in regard to the Red Green Colour Blindness to his Maternal Grandson. The daughters of a Red-green Colour Blind individual are only carriers of the defective Gene, and the Red-green Colour Blindness does not normally manifest itself in them. The inheritance of Red Green Colour Blindness passes to a male only from Maternal Grandfather, and does not pass from Paternal Grandfather to Paternal Grandson.

33. The retina of the eyes of a human being consists of two types of cells, designed to detect light, colour and motion, namely, "Rods" and "Cones". "Rods" are those cells which detect intensity of light falling on the retina of the eye, and are very sensitive to detect motion, and even a slightest decrease or increase in the intensity of light reaching the retina of the eye of a human being is detected by "Rods". "Cones", on the other hand, are special cells designed mainly only to detect colours, and not the intensity of light alone. At the white spot, where the visual acuity of the eyes is the maximum, "Rods" are less in number and "Cones" are preponderant in number. While, on the other hand, at the periphery of

the retina of the eye, hardly any “Cones” are present, and the periphery of the retina of the eyes mainly consists of “Rods”, because of which the eye is able to detect motion in front, from left to right, or right to left, and from very far to nearer, depending upon the intensity of light reaching the “Rods” at the periphery of the retina.

34. Red-green Colour Blindness is a hereditary form of disease, which does not affect the “Rods” at all, and only affects the “Cones” in the Eyes of a person. As mentioned above already, this disease is passed on through Daughter as the carrier Mother, and is the result of a particular defective Gene, which renders “Cones” to be less capable of distinguishing between Red and Green Colours, and the capacity to identify Red and Green Colours being either totally absent, or deficient, in the “Cones” of the eyes of a male.

35. Red-green Colour Blindness being basically a genetic disease, it is incurable, and this Red-green Colour Blindness disease cannot also be normally acquired by anybody by any other normal process, without an accidental damage to the eyes, or some other reason. Some acute medical conditions and circumstances, and other medical reasons, related to the damage of the optic nerve can also cause the “Cones” in the retina of the Eyes of a normal person to stop seeing and communicating the sensation of colour thereafter, due to an infection of or damage to the “Cones”, but in such a situation, the “Cones” lose their ability to see colour altogether, and not only the ability to the extent of an inherited genetic lack of capacity for distinguishing between the Red and

Green Colours, which is called Red Green Colour Blindness. Therefore, in the case of any acquired colour vision defect, the deficiency is mostly a White-Black colour deficiency, or White-Black Colour Blindness, and it can normally never be only the Red Green Colour Blindness.

36. We can, for a proper discussion about the Colour Blindness, also borrow from Wikipedia, the free encyclopaedia, available on the internet, which has discussed the subject in detail, the relevant paragraphs of which are as follows:

“Color blindness, or color vision deficiency, is the inability or decreased ability to see color, or perceive color differences, under normal lighting conditions. Color blindness affects a significant percentage of the population.^[1] **There is no actual blindness but there is a deficiency of color vision.** The most usual cause is a fault in the development of one or more sets of retinal cones that perceive color in light and transmit that information to the optic nerve. This type of color blindness is usually a sex-linked condition. **The genes that produce photopigments are carried on the X chromosome; if some of these genes are missing or damaged, color blindness will be expressed in males with a higher probability than in females because males only have one X chromosome (in females, a functional gene on only one of the two X chromosomes is sufficient to yield the needed photopigments).**

Color blindness can also be produced by physical or chemical damage to the eye, the optic nerve, or parts of the brain. For example, people with achromatopsia suffer from a completely different disorder, but are nevertheless unable to see colors.

The English chemist John Dalton published the first scientific paper on this subject in 1798, "Extraordinary facts relating to the vision of colours", after the realization of his own color blindness. Because of Dalton's work, the general condition has been called *daltonism*, although in English this term is now used more narrowly for deutanopia alone.

Color blindness is usually classified as a mild disability, however there are occasional circumstances where it can give an advantage. Some studies conclude that color blind people are better at penetrating certain color camouflages. Such findings may give an evolutionary reason for the high prevalence of red-green color blindness. And there is also a study suggesting that people with some types of color blindness can distinguish colors that people with normal color vision are not able to distinguish.^[5]

Color blindness affects a large number of individuals, with protanopia and deuteranopia being the most common types.^[6] In individuals with Northern European ancestry, as many as 8 percent of men and 0.5 percent of women experience the common form of red-green color blindness.^[7] The typical human retina contains two kinds of light cells: the rod cells (active in low light) and the cone cells (active in normal daylight). Normally, there are three kinds of cone cells, each containing a different pigment, which are activated when the pigments absorb light. The spectral sensitivities of the cones differ; one is most sensitive to short wavelengths, one to medium wavelengths, and the third to medium-to-long wavelengths within the visible spectrum, with their peak sensitivities in the blue, green, and yellow-green regions of the spectrum, respectively. The absorption spectra of the three systems overlap, and combine to cover the visible spectrum. These receptors are often called S cones, M cones, and L cones, for short, medium, and long wavelength; but they are also often referred to as blue cones, green cones, and red cones, respectively.^[8]

Although these receptors are often referred to as "blue, green, and red" receptors, this terminology is inaccurate. The receptors are each responsive to a wide range of wavelengths. For example, the long wavelength, "red", receptor has its peak sensitivity in the yellow-green, some way from the red end (longest wavelength) of the visible spectrum. The sensitivity of normal color vision actually depends on the overlap between the absorption ranges of the three systems: different colors are recognized when the different types of cone are stimulated to different degrees. Red light, for example, stimulates the long wavelength cones much more than either of the others, and reducing the wavelength causes the other two cone systems to be increasingly stimulated, causing a gradual change in hue.

37. Therefore, since the applicant is hereditary red-green colour blind, the direction as prayed for by him at Para-8(b) cannot be granted by this Tribunal.

38. The above discussion also takes care of the prayer at Para-8 (c) which relates to seeking directions upon the DTC to review their policy for recruitment of colour blind persons in case of Red-Green Colour Blindness disability. It is already on record that the Respondent-DTC has enforced and applied non-permissibility of Red-Green Colour Blindness only in the case of Drivers and Conductors, and has not applied it to the other clerical and technical level posts. The applicant before us was and has been seeking employment only as a Bus Conductor, and he would, therefore, be bound by the Standing Order issued by the Respondent-DTC in this regard.

39. As regards prayer at Para-8 (d), the Respondent-DTC had not denied employment to the applicant as an Orthopedically physically handicapped person, as he has less than 40% such disability, and as per the applicant's own admission, 22 such persons have been appointed as Conductors, none of whom would have had Red and Green Colour blindness, and thus they have already provided for the prescribed 3% quota for physically handicapped persons, and no directions upon respondents are called for.

40. We have also considered the case-laws cited by the learned counsel for the applicant. The case of **Nandkumar Narayanrao Ghodmare vs. State of Maharashtra and Others** (supra) relates to appointment of Class II Agricultural Officers' Service, and does not relate to appointment to DTC, Bus Drivers or Conductors, and, therefore, directions issued to not to disqualify colour-blind persons for the post of Agricultural Officer, has no application to the facts of the present case.

41. In the case of **Union of India and Others vs. Satya Prakash Vasisht** (supra), the respondents therein had been denied appointment earlier as SI (Exe.) in Delhi Police, which denial of appointment had been declared illegal by this Tribunal. This three Judges' Bench judgment actually goes against the prayers of the present applicant, even though that case had been decided in favour of respondents therein. The Hon'ble Apex Court had specifically held as follows:-

“3. The contention of learned counsel for the appellants is that the expression "shall be free from colour blindness" is applicable both to sub-clauses (i) and (ii) of clause (a) and not merely to sub-clause (ii). It is on this basis that the learned counsel for the appellants supported the non-appointment of the respondent on the ground that he was colour blind. We are unable to accept this contention. Reading the above extract as a whole, **it is clear that the requirement that the candidate should be free from colour blindness is only for the post of Drivers and traffic staff in sub-clause (ii) and that does not apply to sub-clause (i) relating to Constables, Head Constables and Sub-Inspectors (Executive)**. It is obvious that the disqualification of colour blindness has no application to sub- clause (iii) and this was rightly not disputed by learned counsel for the appellants. In such a situation, the applicability (sic inapplicability) of the disqualification of colour blindness to sub-clause (i) is further supported by the fact that the other expression "visual acuity (both eyes) 6/12 without glasses" is repeated identically in sub-clause (i) also even though it finds place in sub-clause (ii). If the words "shall be free from colour blindness" appearing in sub-clause (ii) were applicable also to sub-clause (i), the other

expression "visual acuity (both eyes) 6/12 without glasses" would not have been repeated in sub-clause (i) when it finds place in sub-clause (ii). That apart, **there is clearly discernible basis for the disqualification of colour blindness for persons appointed as Drivers and traffic staff, the nature of whose duties are different from that of a Sub-Inspector (Executive).** The only contention advanced in support of the appellants cannot, therefore, be accepted."

(Emphasis supplied)

42. The case in **Govt. of NCT of Delhi vs. Bharat Lal Meena** (supra) before the Hon'ble Delhi High Court concerned Physical Education Teachers, in which no element of public safety was involved, and related to a candidate who was a physically handicapped person with locomotor disability, and, therefore, this case does not have any relationship with the present case relating to issues of colour-blindness and public safety, and the ratio of that cited judgment cannot be applied in this case.

43. In the judgment in the case of **Suresh Ram vs. Union of India & Others** (supra), Hon'ble Delhi High Court has considered its earlier judgments in the cases of **Sudesh Kumar vs. Union of India and Another in Suresh Ram vs. Union of India & Others** W.P. (C) No. 5077/2008 decided on 22.03.2011, and connected Writ Petitions, and judgment in W.P.(C) No. 356/2013, **P. Suresh Kumar vs. Union of India & Others**, and another judgment in the case of **Mohan Lal Sharma v. Union of India & Others** dated 16.03.2011 in W.P. (C) No. 11855/2009. In that case, the Hon'ble High Court had upheld the prescription regarding colour-blindness of Constables and Head Constables of CRPF, and had upheld the prescription that all duties where use of

firearms/identification of various types of coloured signals/identification of criminals in mob/use of specialized equipments are not regularly required, and public safety is not involved, may be justified as non-technical duties. This case also does not enure any benefit to the applicant before us, because the Hon'ble High Court had nowhere held that where duties requiring identification of various types of coloured signals are involved, like in the case of Drivers and Conductors of DTC Buses, colour-blindness would not be a disqualification.

44. The applicant had already dropped his prayer in regard to the policy directions of the Ministry of Social Justice and Empowerment, and he has himself filed the categories of eligible disabilities for the job of Bus Conductors at S1 No. 219, as notified by the Respondent No.3, Ministry of Social Justice and Empowerment. As already cited above, this includes the categories of OA=One Arm effected, OL= One Leg effected, BL=Both Legs effected, MW=Muscular Weakness and HH=Hearing Handicapped only. We also do not find any case for us to issue any directions whatsoever to disturb the recommendation of the Expert Committee even a challenge to which had been withdrawn by the present applicant.

45. Therefore, the OA is devoid of any merit, and the same is dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.