

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 2973/2016

Reserved on: 19.04.2017

Pronounced on: 21.04.2017

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Mr. P.K. Basu, Member (A)

G.M. Ganesh aged 28 years
E-209, Bathla Apartments
43 I.P. Extension, Patparganj
New Delhi-110092

... Applicant

(Through Mr. Rishabh Sancheti with Ms. Padma Priya,
Advocates)

Versus

1. Controller and Auditor General of India
9, Deen Dayal Upadhyaya Marg
New Delhi-110124

2. Union of India
Through Secretary,
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training
Govt. of India
North Block, New Delhi-110001

... Respondents

(Through Ms.Ishita Baruah for Mr.Gaurang Kanth, for respondent
no.1
Mr. Yogesh Mahur for Mr. Gyanendra Singh, for
respondent no.2)

ORDER

Mr. P.K. Basu, Member (A)

The Staff Selection Commission (SSC) had advertised on
18.01.2014 calling for applications for Combined Graduate Level
Examination 2014 for recruitment to various posts including the

post of Auditor in the Controller and Auditor General (C&AG) Organization.

2. The applicant, being hearing impaired, submitted his application pursuant to the aforesaid advertisement under "HH category" within "PH category". He successfully cleared the exam and was recommended for appointment to the post of Auditor under C&AG. His rank was 7074 in the merit list.

3. The applicant was informed vide office notification dated 15.02.2016 that he had been allocated to the A.G. Office, Punjab at Chandigarh. He made a representation dated 18.02.2016 requesting to change State allocation from Punjab (Chandigarh) to Delhi. This was replied to by the respondents vide letter dated 21.03.2016 and the applicant was informed that his request cannot be acceded to. Thereafter the impugned letter dated 2.08.2016 was issued offering him appointment to the post of Auditor in the Office of the Principal Accountant General (Audit) Punjab, Chandigarh. Through this letter, he was also informed that no request for extension to join the post of Auditor will be entertained. Being aggrieved, the applicant has filed this OA seeking the following reliefs:

- "a) Quash the letter dated 2.08.2016 by which the applicant has been directed to join the Respondent no.1's office at Chandigarh, Punjab and the Office Notification issued by respondent no.1 dated 15.02.2016 whereby the applicant has been allocated to the AG Office, Punjab at Chandigarh;
- b) Direct that the recruitment must be done in accordance with law, by reserving and providing 1% post to each candidate from the given three categories, as mandated in law; and quash and set

aside the impugned proceedings in so far as they reserve both seats only for one category of disabled persons;

- c) Consequently direct the respondents to take corrective measures to provide posting to the applicant against 1 vacancy that was required to be reserved for hearing disabled category; and provide that the applicant be deemed to have joined such post from the date on which the letter of appointment was issued."

4. The thrust of the argument of the learned counsel for the applicant is that there were two posts available for physically handicapped candidates in respondents offices at Delhi. Both the vacancies were allotted to the candidates falling under the sub-category of "Orthopedically Handicapped" and no candidate of the other two sub-categories, i.e., Visually Handicapped or Hearing Handicapped has been posted at Delhi. It is argued that Department of Personnel & Training (DoP&T) instructions dated 29.12.2005, Clause 2(i) stipulates that 3% of the vacancies in the 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 (iii) locomotor disability or cerebral palsy in posts indentified for each disability. It is further stated that clause 16 (a) of the instructions provides for reservation for each of the three categories of persons separately.

5. It is the contention of the learned counsel for the applicant that in view of these provisions, it is incorrect to fill both the posts at Delhi for physically handicapped category by only one sub-category, i.e., Orthopedically Handicapped. In this regard,

he also relied on **Union of India and Another Vs. National Federation of the Blind & Others**, 2013 (12) SCALE 588 in which the Hon'ble Supreme Court held that out of minimum 3% of vacancies in the establishments 1% each has to be given to each of the 3 categories of disability.

6. The respondents in their reply have stated that in Delhi, there are two offices of the C&AG, namely, office of Director General Audit (CE), New Delhi and office of PDA (ESM), New Delhi. Therefore, there was only one post in each of the Delhi offices, independent of each other. It is also pointed out that the DoP&T OM dated 29.12.2005 provides in para 15(b) that all establishments shall maintain separate 100 point roster and 15(g) provides as follows:

"If the number of vacancies in a year is such as to cover only one block or two, discretion as to which category of the disabled should be accommodated first shall vest in the head of the establishment, who shall decide on the basis of the nature of the post, the level of representation of the specific disabled category in the concerned grade/post etc."

It is, therefore, argued that since there was one post each of physically handicapped in the two offices at Delhi, in accordance with 15(g), the discretion lies with the head of the establishment to decide as to which category of disabled should be accommodated first on the basis of the nature of the post, the level of representation of the specific disabled category in the concerned grade/post etc.

7. It is stated by the learned counsel for the respondents that in view of the above, one vacancy which was available in the office of the DGA (CE), New Delhi was allocated to Shri Vimal Kumar, rank 5919 and the other vacancy which was available in the office of PDA (ESM), New Delhi, was allocated to Shri Gurpreet Singh, rank 6150. As stated earlier, rank of the applicant was 7074, which was much lower than the persons who were appointed in Delhi region against the vacancies available. It is thus contended by the learned counsel for the respondents that the respondents have not violated the instructions contained in DoP&T OM dated 29.12.2005 nor the ratio laid down by the Hon'ble Supreme Court in National Federation of the Blind (*supra*).

8. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgment cited.

9. In our opinion, the whole confusion has arisen in the mind of the applicant because he felt that vacancies in all the offices at Delhi have to be clubbed together, in which case there are two vacancies in "Delhi Establishment", and has, therefore, claimed that both the vacancies cannot go to the same category of physically handicapped. But he has overlooked to notice that the two vacancies in Delhi are in two separate establishments, namely, office of Director General Audit (CE), New Delhi and office of PDA (ESM), New Delhi. Therefore, there was one vacancy each in the office of Director General Audit (CE), New

Delhi and office of PDA (ESM), New Delhi. Thus, they become two separate establishments with one vacancy each and 15(g) will apply. The applicant has, therefore, been accommodated at Chandigarh establishment.

10. Obviously, the respondents have not committed any irregularity or illegality in the posting orders and we, therefore, refuse to intervene in this matter. The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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