

**Central Administrative Tribunal
Principal Bench**

OA No. 4159/2012

with

OA No. 1863/2013

Order Reserved on: 09.12.2015
Order Pronounced on: 27.01.2016

Hon'ble Shri A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

OA No. 4159/2012

Manoj Ram Meena,
C/o Nisha Sharma,
WZ-405, Janak Park,
Hari Nagar Clock Tower,
New Delhi-110064

-Applicant

(By Advocate: Shri N.K. Singh for Ms. Avnish Ahlawat)

VERSUS

1. UPSC
Through Secretary,
Dholpur House,
Shahjahan Road, New Delhi
2. Ministry of Social Justice & Empowerment,
Room No. 609 A, Wing Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi-110001 (India)
3. Railway Board,
Through its Chairman,
Rail Bhawan, Raisina Road,
New Delhi-110001
4. Jt. Director Estt. (GR),
Railway Board,
Room No. 304, Railway Bhawan,
Raisina Road, New Delhi-1
5. Rajiv Ranjan, Rank No. 219,
6. Vivek Joshi,
Rank No. 243,
(Respondent No.5 and 6 are served
through Respondent No.2 & 3)

(By Advocates: Shri Shailendra Tiwary, Sh. Rajesh Katyal
and Shri Ravinder Aggarwal)

OA No. 1863/2013

Rajiv Ranjan, IDSE,
Asstt. Executive Engineer (Civil)
HQ Chief Engineer Delhi Zone,
Military Engineering Service,

Delhi Cantt-110010

R/o P-111/2,
MES Civilian Officers' Enclave,
Kabul Lines,
Delhi Cantt

-Applicant

(By Advocate: Shri MS Saini)

VERSUS

1. Union of India,
Ministry of Railways,
Through Chairman,
Railway Board, Rail Bhawan,
Raisina Road, New Delhi-110001

2. The Secretary,
Department of Disability Affairs,
Ministry of Social Justice & Empowerment,
Shastri Bhavan, New Delhi-110001

3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110069

-Respondents

(By Advocates: Shri Shailendra Tiwary, Sh. Rajesh Katyal
and Mr. Ravinder Aggarwal)

O R D E R

By Dr BK Sinha, Member (A):

The issue involved in the above two OAs being one and the same, (viz., reservation for the physically challenged persons), these two OAs are disposed of by this common order and for reference purpose, OA No. 4159 of 2012 has been taken as a lead case. Respondent No. 5 in this OA is the applicant in the other OA No. 1863/2013.

2. The applicant in OA No. 4159/2012 belongs to Physically Challenged "OL" (one leg affected) category. Respondent No.5 in the said OA (i.e. applicant in the other OA No. 1863/2013) belongs to the Physically Challenged "BL" (Both legs affected) category. And, respondent No. 6 in the said OA, a general candidate belongs to Physically Challenged "OA" category

3. The case of the applicant, in OA No. 4159/2012, is as hereinafter stated:

- (a) That the applicant belongs to ST category and is also a physically challenged individual coming under the category of OL (one leg affected).
- (b) That in response to notification dated 08-01-2011 issued by the Railway Recruitment Board, he had applied for category I i.e. Civil Engineering Group A Services post under ST category.
- (c) In August 2012, in the results published, the name of the applicant figured at Rank No. 242 and he was declared as fit under OL category. However in the final Select list published on 08-11-2012, his name did not figure in.
- (d) the applicant penned a representation against his non-allocation of seat despite his having been declared as fit. In his representation the applicant claimed that as per the notification, two seats should have been allocated to PDOA (persons disabled with one arm) and only one seat has been allotted to OA& OL (one arm and one leg affected) and thus the other seat should have been allotted to him. It has also been represented that in IRSE, seat meant for OL stood allotted to a BL (Both legs affected) category (Respondent No. 5).
- (e) Further, Respondent No. 6, who had secured a lower Rank had been selected for the post under general category and physically handicapped quota which is again illegal and
- (f) In addition, according to the applicant the total number of seats of PH3 category should have been 14 while only 13 had been selected.
- (g) The applicant therefore has prayed for the following reliefs: –
 - (i) Direct the respondents to allot one seat in PH category of the applicant;

- (ii) Declare that respondent Nos. 5 and 6 are not eligible for appointment.

4. In their counter affidavit, official respondents (Railways) had made certain preliminary objections contending that the original application filed by the applicant is premature. They have relied upon the Full Bench decision in **B. Parmeshwara Rao Vs. Divsl. Engineer Telecom Eluru** CAT FB Vol. II 1989-91 page 50. The allotment of candidates on the basis of the ESE is made based on the notified criteria for allocation which takes into account the

- (i) merit position secured by the candidates;
- (ii) the preference for the various services/posts exercised by them;
- (iii) the availability of vacancies in the services/posts for the specific categories i.e. SC/ST/OBC/UR to which they belong; and
- (iv) their medial fitness for specified services/posts. The official respondents deny any ambiguity in allocation and submits that there was no vacancy in the Indian Defence Service of Engineers (IDSE) in the OL (One Leg Affected) sub-category of disability, while there were two PH vacancies in IDSE – one for Partially Deaf (PD) and the other for the One Arm Affected (OA) sub-categories of disabilities. However, there were 3 PH vacancies – all for the one arm affected (OA) in Border Roads Engineering Service (BRES) against one of which one OA candidate was allotted. There were 2 PH vacancies in IDSE – one for Partially Deaf (PD) and the other for the One Arm affected (OA) sub-categories of disabilities in terms of the Engineering Service Rules 2011.

5. It is further submitted by the official respondents that the respondent No.5 is an OBC and Both Leg Affected (BL) candidate recommended by UPSC. An OBC seat has been blocked for him in OL sub category of PWD in

IRSE and the matter stands referred to the respondent No.2 for their option/guidance. All the candidates mentioned are higher in rank to the applicant and have been adjusted in the categories where one of their disabilities has been identified. The respondent No.6 is a candidate of OA affected category and not BL affected category as alleged by the applicant and has rightly been allotted to IRSS against one PH vacancy reserved for OA. It has also been stated that the Railways placed requisition for selection of five posts – i.e. for IRSE, IRSME, IRSEE, IRSSE and IRSSA. The applicant belongs to OL subcategory of disability, for which there is no vacancy in some of the services including Indian Defence Service of Engineers. In Indian Defence Services of engineers, one vacancy pertained to PD OA, partially deaf-One Arm affected. The abbreviated form PDOA, however, had been, inadvertently, interpreted by the UPSC as Person Disabled with one Arm, which expansion is not available as per the nodal Ministry, viz., Ministry of Social Justice And Empowerment Notification/ (PWD) Act. As regards selection of Respondent No. 5, he is an OBC candidate with BL sub category, an OBC seat has been blocked in OL subcategory of PWD in IRSE. Respondent No.6 is a candidate of OA (One Arm affected) category and not BL and it was against the said OA category in IRSS that he has been accommodated. Other selected had all secured higher ranks than the applicant. There were in all a total of five such candidates and since they had all been recommended for allotment by the Commission, after careful consideration it was decided to block one vacancy each in the services they were due for allotment based on merit position secured by them till the green signal was given by the Commission as well as the Ministry of Social Justice and Empowerment. There has been no arbitrariness in the selection conducted.

6. The applicant filed his rejoinder to the counter filed by the official respondents alleging that the respondents have followed pick and choose method in the selection. OL vacancy has been diverted to BL and further,

persons with low of merit (Respondent NO. 6) has also been selected. It has also been stated by the applicant that two vacancies are still available against which he could be accommodated. The applicant had also annexed to the rejoinder a copy of DoPT Office Memorandum dated 29th of December, 2005 and a copy of judgement of the High Court of Delhi at New Delhi in CWP No. 639/2011.

7. A short counter had been filed by the Ministry of social Justice and Empowerment (Respondent No.2) , wherein it has been stated that the list of posts identified suitable for reservation for Persons with Disabilities in 2007 had been notified. However, the list of posts notified is not exhaustive. In so far as allocation of Ministries is concerned, the same is left with the prerogative of the Union Public Service Commission. In so far as respondent No. 5 is concerned the Ministry justified his selection.

8. The Union Public Service Commission also filed a short affidavit in pursuance of a direction by this Tribunal and in the said affidavit, the Commission only explained that the term PDOA was used by the indenting Ministry, i.e. Military Engineering Service in their vacancies for IDSE. The same is "Physically Disabled with One Arm Affected".

9. Respondent No. 5 as well as Respondent No. 6 has filed respective counters to which the applicant has filed separate rejoinders as well. Respondent No. 5 He said that there are total six vacancies reserved for PH category in IRSE and the applicant being 11th rank holder cannot be appointed against any one of them. While the respondent No.5 is second rank holder of all the 17 candidates recommended by the UPSC. He further submits that save recommending 17 candidates, the UPSC had not made any further intermediate classification like OA, OL, BL, etc. on the basis of ESE-2011. Further, the UPSC had never uploaded the details of the vacancy on the website nor had it sub-categorized the vacancies in its advertisement No. 4/2011 dated 08.01.2011. He had further given an account of his

having served as Junior Engineer in CPWD for more than a decade and that he has now joined the Indian Defence Service of Engineers (IDSE) in Military Engineer Services of Ministry of Defence on 15.11.2012 on the basis of ESE-2010 held by the UPSC. Since then the respondent No.5 has been working in the capacity of Assistant Executive Engineer (Civil) and performing duties as expected from an Engineering Officer (Group A). Taking a note of the fact that the respondent No.5 had served such departments with distinction, the Court of CCPD directed the Railway Board for consideration of his appointment to Civil Engineering Post/Services earmarked for Person with Locomotor disability as per rank and preference. The respondent No.5 has also relied upon a judgment in **Ms. N. Manjushree Vs. Union of India & Ors.** in OA No. 353/2010 wherein it was ruled that the applicant (Ms. N. Manjushree) was both leg affected disabled person satisfying seven of the functional requirements out of eleven. So long as the candidate fulfills the functional requirements irrespective of the distinction of BL and BA, he can avail of the benefit of reservation.

10. In his counter, Respondent No.6 has stated that the general principle is that the policy of reservation for PH category is subject to vertical and horizontal reservation, as the applicant has no right to challenge the reservation in another social group. The applicant having participated in the recruitment process and not appointed, now cannot question his non-selection. He also disputes the assertion that he ranks lower to the applicant. The applicant deserves no appointment on the basis of the decision of the Hon'ble Supreme Court in **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission & Ors.** 2007(8) SCC 788 which distinguishes between the vertical and horizontal reservation and that vertical reservation takes precedence to the horizontal reservation and thus candidates selected on merit as per the vertical reservation quota will be counted against their horizontal reservation as well. Thus, it is possible for a candidate securing lesser rank be appointed against quota for in his social

group. In IRSS Civil Engineering category, no post was reserved for PH category in OL disability. The only post reserved in horizontal reservation categorically belongs to OA category for which the applicant has been selected. Thus, there is no equity amongst unequals.

11. The counsel for the applicant submitted that even as per the respondents, when a person belonging to BL category could not be selected under BL category, he was allotted the seat of OL, whereas, it was to be given to the applicant instead. He has also submitted that under PH-3 category, the respondents have filled up only three vacancies out of 5 notified for them and the applicant could have easily be accommodated against one of these vacant post under the terms of DOPT's clause 16 (A) of the DoPT instructions dated 29.11.2005 which provides that where the nature of vacancies in an establishment is such that a person of a specific category of disability cannot be employed, vacancy could be interchanged amongst three categories with the approval of the respondent No.2. The counsel further submitted that his case is also supported by Section 6 of the Disability Act which provides that where suitable candidates are not available, vacancies can be forwarded in the succeeding recruitment, where such vacancies are even in the succeeding year, and the vacancies are not filled up, they stand to be interchanged amongst the three group of PH. The counsel for the applicant has relied upon decision of the Hon'ble High Court in the case of **Sunita Rani Vs. District Judge-I and Sessions Judge, Tis Hazari, Delhi** (CWP No. 639/2011 decided on 12.10.2011).

12. The counsel for the applicant further submits that the category of PDOA is to be interpreted as Partial Deaf with one arm affected instead of person disabled with one arm. Para 4.9 of the counter reply (PG-169). However, as per RTI information, PDOA employees for persons disabled with one arm and not Partial Deaf one arm affected. It is only on account of the illegal and arbitrary action of the respondents that seats have been allotted

to those who are not even eligible for the post as per their own instructions and lower in rank.

13. Counsel for the respondents stated that UPSC recommends candidates as per their place in merit and as per the reported vacancies inter alia duly factoring the PH category of the candidates. The applicant could have been allotted against two unfilled vacancies in BRES. However, Border Roads Development Board (BRDB) had earlier not accepted a one leg affected (OL) candidate. One Manish Vaishnav allotted to BRES on the basis of ESE-2009 on the plea that the OL sub-category is not identified for the service as it requires a lot of trekking on difficult terrain and the matter is currently sub-judice in CAT, Jodhpur and the official respondents have, thus, pleaded for dismissal of the OA. The counsel further submits that the applicant has not challenged the distribution of handicapped quota made through the advertisement and submits that no injustice has been made to the applicant. It is the submission on behalf of the respondent No.6 that even after having provided for horizontal reservation, the horizontal of reservation in backward classes of citizen should remain the same.

14. We have carefully perused the pleadings of the parties including the written submissions made by the applicant, the respondent No.5 and 6 and have patiently listened to the oral submissions made by the learned counsel appearing on behalf of the respective parties and bestowed our careful consideration,. We find that the following issues need to be deliberated upon and resolved in order to arrive at a solution to the instant case:-

- (i) What is the scope of vertical and horizontal reservation in respect of PH category in Civil Engineering Services in ESE - 2011?**
- (ii) Whether the seat had been allotted to the respondent No.5 contrary to the notification and the provisions of law?**

- (iii) Whether the seat had been incorrectly allotted to the respondent No.6?**
- (iv) Whether of the two seats remaining, one seat should have been allotted to the applicant?**
- (v) What relief, if any, could be granted to the applicants in both the cases?**

15. As regards the first issue, certain parts of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are relevant and these are as hereunder:-

Section 19 of the Act provides:

“19. HORIZONTALITY OF RESERVATION FOR PERSONS WITH DISABILITIES: Reservation for backward classes of citizens (SCs, STs and OBCs) is called vertical reservation and the reservation for categories such as persons with disabilities and ex-servicemen is called horizontal reservation. Horizontal reservation cuts across vertical reservation (in what is called inter-locking reservation) and persons selected against the quota for persons with disabilities have to be placed in the appropriate category viz. SC/ST/OBC/General candidates depending upon the category to which they belong in the roster meant for reservation of SCs/STs/OBCs. To illustrate, if in a given year there are two vacancies reserved for the persons with disabilities and out of two persons with disabilities appointed, one belongs to a Scheduled Caste and the other to general category then the disabled SC candidate shall be adjusted against the SC point in the reservation roster and the general candidate against unreserved point in the relevant reservation roster. In case none of the vacancies falls on point reserved for the SCs, the disabled candidate belonging to SC shall be adjusted in future against the next available vacancy reserved for SCs.”

In other words, it clearly emerges that under the system of horizontal promotion, if in a given year there are two vacancies reserved for the persons with disabilities and out of two persons with disabilities appointed, one belongs to an SC and the other to general category then the disabled SC candidate shall be adjusted against the SC point in the reservation roster and the general candidate against un-reserved point in the relevant reservation roster.

16. Section 25 of the Act further provides that all the reserved vacancies identified are to be clearly notified in the advertisement.

17. In addition, Sections 32 and 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 32 of the Act *ibid* provide as under:-

“32. 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 update the list taking into consideration the developments in technology.”

18. Section 33 of the Act *ibid* deals with reservation of posts which provides as under:

“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) Locomotors 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, may, as may be specified in such notification, exempt any establishment from the provisions of this section.”

19. The above two provisions of law are intertwined and deal with different stages of the same process of reservation for the persons suffering with disabilities. In the first instance, there has to be identification of such posts which, keeping in view the functional responsibilities, may be tenable by the persons with any particular disabilities. In other words, though the intention is mainly to induct physically challenged candidates, at the same time, there shall be no compromise to the fulfilment of the functional responsibilities to the extent of the requisite standard warranted by the post. Again, this is subject to periodical review and updating of these posts but at an interval of

three years of less. Section 33, on the other hand, follows the process of identification by which 3% of vacancies shall be reserved for persons with disabilities (with intermediate allocation of one percent each of the three sets of disabilities, The Ministry of Social Justice and Empowerment is the nodal Ministry of this purpose and is responsible for identification. No Ministry or Department is entitled to exclude at its own discretion, any such post identified by the nodal Ministry.

20. Further, Section 16 of the Act *ibid* provides that vacancies may be either inter-changed between the categories and are to be carried forward. Where a vacancy cannot be filled up due to non-availability of candidate, the same can only be filled up by inter-change. Where a vacancy is filled up by a person other than the reserved category, the reservation shall be carried forward for a period of further two years.

21. It follows from the above provisions that the reservation for disabled persons is different from the reservation for the social groups which operates vertically. This reservation operates both horizontally and vertically. Moreover, this reservation is subject to fulfillment of a few conditions as hereunder:-

- (i) A person seeking advantage of reservation of disability must fulfill the criterion of 40% disability as certified by the competent medical authority.
- (ii) Such candidates shall also be required to meet one or more of the prescribed requirements/abilities which may be necessary for performing the concerned duties in the concerned Services/Posts.
- (iii) Reservation of disabled person is to be distinguished from the social reservation in the sense that the candidate belonging to this category being placed in the unreserved category will not be counted against the unreserved vacancy but against his own categorization. (Reference is invited to the decision of the Apex

Court in para 9 of the Judgment in the case of **Indira Sawhney vs. Union of India**, 1992 Supp. (3) SCC 217. Para 9 of this judgment is being reproduced as below:-

“9.all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [(under Article 16(4))] may be called vertical reservations whereas reservations in favour of physically handicapped (under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains- and should remain- the same.”

- (iv) Provision 22 of the OM dated 29.12.2005 provides that if sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. In the fifth instance, the list of posts identified is subject to revision at periodical intervals not exceeding three years and as per Section 2(a) of the PWD Act, 1995, appropriate Government means in relation to the Central Government or any establishment wholly or substantially financed by that Government or a Cantonment Board constituted under the Cantonment Act, 1924, the Central Government”. So, concerned Ministries/Departments are “Appropriate Government”. This case is to be decided within the boundaries of the above prescribed parameters. In the instant case, it is seen that in allocation of seats for the Physically

handicapped category the Horizontal/vertical reservation has been duly followed.

22. Thus even if a person is 40% disabled, he cannot be appointed unless he is fulfilling the physical requirements and abilities which have been deemed necessary for performing the duties involved in the service concerned.

Issue No. 1 is answered accordingly.

23. As regards the second issue as to whether Respondent No.5 has been incorrectly allotted to the Indian Railway Service of Engineers (IRSE). The facts have already been enumerated in part. The number of vacancies to be filled up in the category of Civil Engineering were 745, including 50 PH vacancies, the break-up of which is as follows:-

S.No.	Name of Services	Total vac.	SC	ST	OBC	Gen.	PH Vac.
	Category I- Civil Engineering						
1.	Indian Railway Service of Engineers	74	10	4	21	39	11(6(2OA, 4OL)+5HH)
2.	Indian Railway Stores Service	10	2	0	3	5	1OA
3.	Central Engineering Service	23	3	1	6	13	
4.	Indian Defence Service of Engineers (Civil Engg.)	51	8	4	14	25	2 PD OA
5	Indian Ordnance Factories Services (Engg. Br.)	19	3	1	5	10	1LDCP
6.	Central Water Engineering Service	18	2	0	4	12	1 LDCP
7.	Central Engineering Service (Road) Gr. A	2	0	0	1	1	
8.	AEE in P&T Build. Works Gr. A	4	1	0	1	2	
9.	Assistant Executive Engineer	90	12	8	23	49	3LDCP

	(Civil) in Border Roads Organization						
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24. On the basis of the examination, the following results were declared:-

ENGINEERING SERVICES EXAMINATION 2011

SI. No.	Roll No.	Name
201	045057	Ajay Meena
219	010568	Rajiv Ranjan
236	050102	Mohmmad Islam
238	100262	Amresh Kumar Meena
239	154798	Randhir Kumar Choudhary
240	036617	Chandra Shekhar Kumar
242	084726	Manoj Ram Meena
243	069880	Vivek Joshi

25. It is an admitted position that Respondent No.5 was placed at SI. No. 219 that being 2nd position in the merit position prepared for PH candidates and has been provisionally allotted to IRSE. He belongs to the OBC category and has been placed in PH-1 BL (one leg affected and the other marginally affected with 56% disability). It is an admitted fact that the respondent No.5 had been working as Junior Engineer in CPWD since 2003 and had been performing field duties, including challenging tasks of Planning, Structural Designing and Construction of important and prestigious Civil Engineering. The name of the respondent No.5 had not been included in the list of medically fit candidates. He filed case No. 133/1015/12-13 before the CCPWD. After going through the facts and circumstances, the CCPWD directed the Railway Board vide order dated 16.10.2012 to consider and appoint him to Civil Engineering Post/Services earmarked for Person with Locomotor Disability as per rank and preference. Thereafter, he was provisionally allotted IRSE and his case has been forwarded to the respondent No.2. Since he had not been given appointment, he filed OA No. 1863/2013. In this regard, we have taken note of other points while dealing with OA No. 4159/2012. We have also noted that in OA No. 1863/2013, Respondent No.2, in their counter affidavit, have stated that the applicant (respondent No.5 in OA No. 4159/2012) belongs to the BL (Both Leg

affected). The advice of the CCPD in this regard is that the function of a Civil Engineer is more or less similar to that of Junior Engineer and the post of Civil Engineer constitutes the feeder cadre for promotion to the Asstt. Engineer (Civil). Hence, under Section 47(2) of the PWD Act 1995, he cannot be denied promotion merely on grounds of disability. Even if the promotional post was not identified for the applicant (respondent No.5 in OA No. 4159/2012). We have also taken note of the submissions of respondent No.2 that it is for the individual Ministry to supplement the list, which, by no means is exhaustive. We further take note of para 7 of the short reply filed by the respondent No.2 in OA No. 4159/2012, which read as under:-

“7. It may further be noted that Shri Rajiv Ranjan (Person with Disabilities with both leg affected) had also filed an OA i.e. OA No. 1863/2013 before this Hon’ble Tribunal seeking his appointment in Indian Railways based on the Engineering Services Examination 2011. The Department of Disability Affairs had already filed a counter reply before this Tribunal in February, 2014. The Department was of the view that given the fact that Shri Rajiv Ranjan has been working in CPWD as Jr. Engg. (Civil), there appears no justification for denying allocation of Group A post such IRES to him by Railway Board with the stipulation that he could be posted to look after constructions activities other than railway tracts.”

26. The averments made in para 4.8 are wrong, disputed and is specifically denied. It is wrong and is specifically denied that applicant’s seat has been allotted to non-deserving candidate and person junior to him. As already submitted in preliminary submission that it is a matter of record that the respondent No.6 (Rank No. 243) is a person with disability of one arm, who has been allotted seat in IRSS as per advertisement of vacancies of Railway Board (Annexure-D to the OA), wherein total 10 vacancies were available in different categories i.e. 2 seats for SC, 3 seats for OBC and 5 seats for general categories, out of such 10 seats 1 vacancy has to be filled up by the PH Disability candidate of one arm (OA), the respondent No.6 being successful and eligible candidate of PH Disability category of one arm (OA) was rightly allocated such seat in IRSS of unreserved category after making adjustment by way of horizontal reservation in unreserved seat and

same is in consonance with to seat allocation scheme of Railway Board in IRSS. Needless to mention that in IRSS, there was no vacancy for ST category as such there is no question of adjusting applicant within his quota of ST category as also that there was no quota for PH Disability candidate of one leg (OL) in IRSS. From the Annexure D filed by the applicant with the OA, it is clear that in its advertisement, Railway has advertised total 3 vacancies of PH OA i.e. 2 vacancies of PH OA (One Arm) has been advertised for the IRSE and 1 vacancy of PH OA (One Arm) has been advertised for the services of IRSS. For total 3 vacancies of PH OA only 3 candidates were successful, and accordingly the 3 vacancies of PH OA which has been rightly allotted to 3 successful and deserving candidates including respondent No.6 in consonance with the advertisement made and by horizontal (special) reservation in the respective categories of the candidates in the following manner:-

Roll No.	Rank	Name	Category of Vacancy Allotted	PH Cat	Allotment	Allotment status
033353	195	Laxma Reddy Kolla	PG1	OA	IRSE	Final
050102	236	Mohmmad Islam	PQ1	OA	IRSE	Candidature Provisional
069880	243	Vivek Joshi	PG1	OA	IRSS	Candidature Provisional

Since in PH OA (One Arm) category, 1 candidate was from the OBC category, so he was adjusted by horizontal (Special) reservation against his quota of Vertical (Social) Reservation. Similarly other 2 candidates, including respondent No.6 were candidates from the General Category, so they were adjusted by horizontal (special) reservation against their quota of General Category.

27. From the Annexure D filed by the Applicant with the OA, it is also clear that in its advertisement Railway has advertised total 4 vacancies of PH category of OL (One Leg) for the IRSE, for which though 7 candidates were successful, it is the first four in merit that have been accommodated under

the horizontal (special) reservation against their quota of vertical (social) reservation as under

Roll No.	Rank	Name	Category of Vacancy Allotted	PH Cat	Allotment	Allotment Status
131087	234	Pankaj Kumar Nagwani	PG1	OL	IRSE	Candidature Conditional
070107	235	R Srinivasan	PO1	OL	IRSE	Final
004502	237	Priyam Shankar	PG1	OL	IRSE	Candidature Conditional
154798	239	Randhir Kumar Choudhary	PG1	OL	CWES	Candidature Provisional

28. Since the applicant is a candidate of PH category of OL (one Leg) as such he cannot claim the seat which is identified and is reserved for the candidate of PD OA (One Arm) Category.

29. In so far as the case of the applicant (OA No. 4159/2012) is concerned, it is to be taken note of that the applicant and the respondent No.5 belong to different social groups and different disabilities. While the applicant is ST belonging to OL category, the respondent No.5 is an OBC belonging to BL category. Further, the respondent No.5 is higher in rank to the applicant. Therefore, the respondent No.5 has been provisionally included in the list and the decision has been left to the official respondents to take while holding him fit to discharge the duties of Asstt. Engg. (Civil) in IRSE. We also take note of the fact that since the respondent No.5 is admittedly higher in list and belongs to a different social group as compared to the applicant, the comparison between the two is misplaced.

30. Insofar as the seat allotted to the respondent No.6 is concerned, the argument of the applicant is that respondent No.6 (Rank No.243) is lower in list and has yet been allotted IRES (OA) seat, even though he is disabled in BL category. The challenge to the appointment of the respondent No.6, therefore, rests on the issue of lower rank and belonging to different category. Here, we take note of the reply of the respondent No.6 as also the reply of the official respondents that former is OA category candidate, who

has been allotted seat in IRSS as per advertisement of vacancies of Railway Board wherein total 10 vacancies were available in different categories i.e. 2 seats for SC, 3 seats for OBC and 5 seats for General categories. Out of such 100 seats, 1 vacancy has to be filled up by PH Disability candidate of one arm affected (OA). Insofar as the contention of the applicant that the OA seat has been filled up by a BL person, namely, Vivek Joshi is concerned, as already submitted in preliminary submission that it is a matter of record that the respondent No.6 (Rank No. 243) is a person with disability of one arm, who has been allotted seat in IRSS as per advertisement of vacancies of Railway Board (Annexure-D to the OA). The respondent No.6 being successful and eligible candidate of PH Disability category of **one arm (OA)** was rightly allocated such seat in IRSS of **unreserved category** after making adjustment by way of horizontal reservation in unreserved seat and same is in consonance with to seat allocation scheme of Railway Board in IRSS. Needless to mention that in IRSS, there being no vacancy either for ST category or for OL category, there is no question of adjusting applicant within his quota of ST category in IRSS. Similarly applicant cannot claim parity with respondent No.5 by vertical (social) reservation, who is not candidate of ST but is candidate from OBC.

31. It is well recognized that special reservation cannot exceed the prescribed quota of social reservation, as we held in **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission & Ors.** (supra). Therefore, we find no substance in the argument of the applicant vis-à-vis respondent No.6.

32. In view of the above, the applicant has not made out a case against respondent No. 5 or 6. Thus, no relief is granted to the applicant against respondent No. 5 ad 6. However, one aspect has to be kept in mind. It is stated that there are still some vacancies to be filled by Physically Challenged candidates. If so, it is purely left to the Ministry concerned to consider the case of the applicant. It is the prerogative of the Ministry either

to fill up the post or not and if the concerned Ministry is desirous of filling the vacancy, it is left to its discretion and in consultation of the Commission.

33. In so far as OA No. 1863/2013 is concerned, we have taken note of the counter affidavit filed by the respondent no.2 wherein the view of the Department of Disabilities has been enunciated that there appears no justification in denying allocation of Group 'A' post such as IRES to the respondent no.5 (applicant in OA No. 1863/2013). The same view has been reiterated by the respondent no.2 in OA No. 1863/2013. In view of the above and the conclusion arrived at in OA No.4159/2012, we direct the respondent no.1 (i.e. Ministry of Railways) to take a decision on appointment of the applicant (respondent no.5 in OA No. 1459/2012) in consultation with the respondent no.3 (UPSC) within a period of three months from the date of production of certified copy of this order. No order as to costs.

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

(A.K. Bhardwaj)
Member (J)

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