

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.020/00798/2016**

**Date of CAV: 03.09.2018**

**Date of Pronouncement: 09.01.2019**

Between:

Koduru Venkatesu, S/o. Venkaiah,  
Aged 58 years, Senior Section Supervisor (O),  
BSNL, O/o. SDE (CAF), Tikkana Telephone Bhavan,  
Residing at BSNL Staff Quarter No. C-3,  
Brindavanam, Nellore Town, Nellore Dt, AP.

... Applicant

And

1. Chairman cum Managing Director, BSNL, New Delhi.
2. Chief General Manager, BSNL, Hyderabad.
3. General Manager Telecom District, BSNL,  
Nellore, Nellore District, A.P. State.
4. Sub Divisional Officer, BSNL, Udayagiri, Nellore Dt.

... Respondents

Counsel for the Applicant ... Mr. K. Venkatesu, Applicant in Person

Counsel for the Respondents ... Mrs. A.P. Lakshmi, SC for BSNL

***CORAM:***

***Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)***

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

***ORDER***

***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

The OA is filed against the impugned order E1/CAT -Corr/K.Venkatesu-SSS (O)- NLR/08 Dt 6-11-2015 issued by respondents in compliance to this Tribunal order dt. 8.4.2015 in TA No.28/2010.

2. The subject matter of the case is as to the extent of concessions available in matters of promotion to physically challenged persons under the relevant statutory provisions and Government of India instructions

3. Yet another satellite question for consideration is whether a physically disabled person, if selected on his own merit and under the general quota is disentitled to the concessions under the Disabilities Act.

4. The brief facts of the case are that the applicant was appointed as Telecom office Asst. (G) in Group C in Dept. of Telecom. Applicant being physically challenged with 90 % vision loss, has represented on 2.8.2006 to promote him under disability quota. The 3<sup>rd</sup> respondent on rejecting the representation, applicant approached this Tribunal vide TA. 28/2010. Tribunal ordered on 8.4.2015 to promote him under disabilities quota and as per provisions of Persons with Disabilities (PWD) Act 1995. As the Tribunal order was not complied with the applicant filed CP No-01/2016. Noticing this, as per applicants claim, respondents asked the applicant to clarify his claim. Accordingly applicant represented on 16.9.2015 to advance his OTBP and BCR promotions, which was disposed of by the respondents vide the impugned order dt 6.11.2015. C.P was closed on the ground that the impugned order substantially complied with the directions of the Tribunal. However, the applicant was provided with the liberty to challenge the impugned order by filing a fresh OA and hence the present O.A.

5. Applicant's contention is that O.M No. 36035/89/Estt. (SCT) Dt 20.11.89 of DOP&T, provides for reservation for physically handicapped (P.H) in Group C and D posts to be filled up by promotion. The Tribunal after going through the relevant O.Ms, Persons with Disabilities Act 1995 and judgments of different Hon'ble courts has ordered the applicant to be promoted in TA 28/2010 under

P.H category. He represented on 16.9.2015, only when he was informally advised to clarify his claim by the respondents and not on his own volition.

6. The respondents contend that the applicant was appointed on merit basis and hence he cannot claim promotion under P.H quota. Further there is no provision to prepone promotion under OTBP and BCR scheme on P.H basis since these promotions provide only for financial up gradation without any change in the status of the post occupied.

7. Heard the Ld. Counsel for respondent and the party in person. Documents placed on record were perused in detail.

8. The order of the Tribunal directing the respondents to promote the applicant under the disability quota was in tune with the statutory provisions, reinforced by the verdict of the Apex Court. The Apex Court in a very recent case of *Imtiyaz Ramzan Khan vs State of Maharashtra* (2018) 9 SCC 163 has viewed as under:-

*24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD.*

Respondents initiated action only when a C.P was filed for non implementation by acting on a representation made by the applicant on 16.9.2015. The representation did not truly reflect the intention of this Tribunal to grant promotion under disability quota. Instead it went in a different direction where applicant requested to prepone his promotion under OTBP/BCR which is not permissible as these are only financial up gradations acting as antidotes to stagnation in a grade. To this extent the respondents action is correct. However, inaction on part of the respondent to implement the order of this Tribunal in letter and spirit is conspicuous. The order of the Tribunal was univocal,

unambiguous, clear, candid and direct. There was no need for the respondents to seek any clarification as claimed by the applicant. It appears that the same was with a view to covering up the delay in implementing the order of the Tribunal. The respondents' contention that as the applicant was recruited under merit quota he is ineligible for promotion under P.H quota is blatantly incorrect. If a person belonging to a particular category (here physically challenged) is selected on his own merit and on that basis if he is denied the benefits available to that category, then it would amount to giving premium to other less meritorious persons of that category, merit becoming a disincentive, which is illogical and iniquitous. An employee is termed as physically handicapped based on the extent of disability he suffers from and not based on the source of recruitment. The applicant is suffering from 90% vision loss and the concessions available under the extant rules for such visually challenged cannot therefore, be denied to the applicant on the basis of the source of recruitment. He is certainly eligible for all benefits extended to such visually challenged. DOP&T O.M No 36035/1/89-Estt. (SCT) dt 20.11.1989 provides for reservation to P.H personnel in both the identified and the unidentified posts of group C and D to be filled up by promotion. The only condition is that the posts should be capable of being held by the appropriate category of P.H. DOP&T is the nodal agency and its orders are binding on all Central Government departments and Central Govt. Public Sector undertakings. Therefore, this rule applies *mutatis mutandis* to B.S.N.L. More so, in the context of the PWD Act 1995 making it statutory for such reservations to P.H personnel. DOP&T has also identified the posts that can be filled by the P. H employees vide memo no 36035/5/84- Estt (SCT) dt 28.2.1986. ( A-10). A hundred point roster was also prescribed and the methodology to operate it has been detailed in DOP& T memo 36035/3/2004-Estt (Res) dt 29.12.2005. As per

Disability Act 1995 three percent of the vacancies in case of promotions to Group D and Group C posts in which the element of direct recruitment, if any, does not exceed 75% shall be reserved for persons suffering from i) blindness or low vision, ii) hearing impairment and iii ) locomotory disability in posts identified for each disability.

9. The relief sought by the applicant at 8 (b) of the present O.A is to promote him with immediate effect under disability quota. The demand of the applicant is genuine. It is backed by rules explained above. The respondents are bound by the disabilities act 1995 and hence they have to identify posts in Executive Cadre to be filled on promotion. Posts that can be handled by P.H has been listed out as per DOP&T memo dt 28.2.1996. Method of maintaining the roster has been given in DOP&T lr dt 29.12.2005.

10. Above all, Section 47(2) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, no promotion shall be denied to a person merely on the ground of his disability, unless the Government by notification exempts the establishment from the provisions of the said Section. There is nothing on record that the Government has issued any notification exempting the respondents from the provisions of Section 47(2). Therefore, the applicant cannot be validly denied the promotion on the ground of his disability. The decision of the Honourable Supreme Court in Union of India v. Sanjay Kumar Jain [(2004) 6 Supreme Court Cases 708] wherein in spite of the fact that the Supreme Court found that the employee in that case was visually impaired, insofar as no notification exempting establishment from the provisions of Section 47(2) has been issued, promotion cannot be denied to the employee.

11. Another vital judgment of the Honourable Supreme Court in **Rajeev Kumar Gupta vs Union of India (Writ Petition (Civil) 521 of 2008)**, where in the Honourable Supreme Court has set aside Government of India instructions disallowing reservation in promotion for persons with disabilities, and held that wherever posts are identified to be suitable for disabled persons, 3% reservation must be given in direct recruitment as well as in promotion.. Hitherto, disabled persons were likely to stagnate at the lower levels of the organizational hierarchy, as their promotion to higher level posts was made difficult because of their physical disadvantage. In the instant case, Rajeev Kumar Gupta and seven other disabled persons serving as engineers in Prasar Bharti made the grievance that the higher level posts in the engineering cadre were filled mostly by promotion. Although these posts were suitable for persons with disabilities, the Government was denying them 3% reservation in these posts, which amounted to defeating the intent and purpose of reservation provided for in the Persons with Disabilities Act, 1995. At the heart of the problem were the written instructions of Government of India dated 29.12.2005, which prohibited reservation in promotion for disabled persons in Group A and B posts. The Court, noting that the representation of persons with disabilities in Government jobs was admittedly very low, set aside the Government instructions of 29.12.2005, and held that wherever a Government post is identified to be suitable for persons with disabilities, 3% reservation must be provided, irrespective of whether recruitment is direct or by promotion.

12. Based on some key observations of the Honourable Supreme court in regard to service matters of the Persons with disabilities, in **Union of India & Anr vs National Federation of the Blind, decided on 8 October, 2013** in Civil Appeal No.9096 of 2013 ,the OMs referred in paras supra were issued by the

G.O.I. DOP&T has identified the posts. The law is strict to the extent that the nodal officer to implement reservations for physically challenged has to be proceeded against if he fails to implement the directions on the subject. How

13. However, being on the subject we need to also adduce that in a case argued by the Disability Law Initiative (*Rajeev Kumar Gupta Vs. Union of India*), the Supreme Court had decided on June 30, 2016 that wherever a promotional post was identified to be suitable for a person with disability, all public sector employers were to provide the benefit of 3% reservation in promotion to their disabled employees. In Rajeev Kumar Gupta's case, the two judge bench of the Honourable Supreme Court had also held that the bar against reservation in promotion in the Indra Sawhney judgment did not apply to persons with disabilities. The Central Government and most State Governments and Public Sector Undertakings have been examining the provision of reservation in promotion to their disabled employees. In fact, the Central Government issued a notification on 15<sup>th</sup> January, 2018 setting out the norms to be followed in implementing the 4% reservation for public sector employees, provided in Section 34 of the new Rights of Persons with Disabilities Act, 2016. In that notification, procedures have been laid down for providing reservation for disabled persons in direct recruitment only. There is no mention at all of reservation in promotion. Although most State Governments and PSUs are following this line, there are some State Governments such as those of Haryana, UP, Punjab, Goa, AP and Chattisgarh that have issued notifications providing for reservation in promotion for disabled employees in their cadres. There is indication that the Central Government is examining as to whether to implement the Rajeev Kumar Gupta judgment, by claiming that the issue is under judicial consideration in the Honourable Supreme Court in the case of Siddaraju Vs. State

of Karnataka. In that case a disabled employee of the Karnataka Government approached the Hon'ble Karnataka High Court, seeking the benefit of reservation in promotion. The Hon'ble High Court dismissed his case in March 2016, before the Honourable Supreme Court judgment in Rajeev Kumar Gupta's case. He appealed before the Honourable Supreme Court, and on January 5<sup>th</sup>, 2017, a two judge bench presided over by Honourble Justice Adarsh Kumar Goel referred the matter to a larger (i.e. three judge) bench. Honourable Justice Goel's bench felt that the Government's contention that reservation in promotion was constitutionally impermissible, according to the 1992 SC judgment in Indra Sawhney's case, deserved further consideration. Therefore, the matter was referred to the three judge bench headed by the Chief Justice of India, and is pending for final hearing.

14. Thus in view of the matter being under consideration of the larger bench of the Honourable Supreme Court and there being no written instructions of G.O.I in regard to reservation in promotion in higher cadres, there is no scope for the Tribunal to intervene on behalf of the applicant. It is left open to the applicant to approach this Tribunal through a fresh OA based on the outcome of the larger bench of the Honourable Supreme Court. With these observations the OA is dismissed with no order to costs.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)**  
**MEMBER (JUDL.)**

Dated, the 9<sup>TH</sup> day of January, 2019

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