

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1239/2016

Reserved on: 15.04.2019
Pronounced on: 25.04.2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr.S.N.Terdal, Member (J)

Aman Kaushik,
S/o Shri Ramphool Kaushik,
R/o 75/21, Gopiram Enclave,
Lehri School, Street Patel Nagar,
Sonapat, Haryana-131001.

... Applicant

(By Advocate: Mr.Dhruv Sharma)

VERSUS

1. Union of India through
Secretary,
Ministry of Commerce & Industry,
Udyog Bhavan, New Delhi-110107.
2. National Productivity Council
(Ministry of Commerce and Industry,
Government of India),
Utpadakta Bhavan, 5-6 Institutional Area,
Lodhi Road, New Delhi-110003
3. Controller General of Patents, Designs
& Trade Marks Boudhik Sampada
Bhavan, Antop Hill, S.M.Road,
Mumbai-400037.
Also at
Boudhik Sampada Bhawan,
Dwarka, New Delhi.
4. Sh. Aditya Singh,
R/o Village Dandori, PS Kudra,
PO Dangri, Bhabua,
Bihar-821109
5. Sh. Sandeep Kumar,
R/o WZ-2, Khyala Village near
Hanuman Mandir, Delhi-110018.

... Respondents

(By Advocate: Mr. G.S. Virk)

ORDER**(Hon'ble Mr. S.N.Terdal, Member (J)):**

We have heard Mr.Dhruv Sharma, counsel for applicant and Mr. G.S.Virk, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- “(a). Direct the respondent no. 2 and 3 to comply with the rules framed by the respondent no.1 and base the selection criteria/recruitment process strictly in compliance with the rules framed by the respondent no.1.
- (b) Direct the respondent no. 3 to fill in 5 vacancies out of the total 15 vacancies under the PWD category from the Orthopedically Handicapped (OH) category in compliance with the respondent no.1's mandate calling for a 1% representation from all the PWD categories.
- (c) Any other order/directions, which under the facts and circumstances of the case, this Hon'ble Tribunal might deem just and appropriate.”

3. The relevant facts of the case are that in response to the advertisement in the year 2015 for the post of Examiner of Patents & Designs, the applicant applied under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “PWD category”). He qualified the examination as per the result declared by the respondents on 21.01.2016. Though he scored 129 marks, he was not selected under the Orthopedically Handicapped (OH) category. As per his contention, 589 vacancies were filled up and 15 posts were reserved for PWD category and 5 posts should have been ear-marked for OH category within the PWD category but the respondents have not ear-marked 5 vacancies for OH category. On the above premises he had filed the present OA seeking the above stated reliefs.

4. The respondents have filed detailed counter reply affidavit. Very fairly they have stated that 3% of 589 posts comes to 18 number of posts to be reserved for PWD category and as per the provisions of law and the rules they had to ear-mark 1% of the vacancies to each of Visually Handicapped (VH) category, Hearing Handicapped (HH) category and Orthopedically Handicapped (OH) category; and in the department 3 posts were already occupied by persons belonging to OH category, as such they deducted 3 posts of OH category from 18 posts ear-marked for PWD category and of the resultant 15 posts in the present recruitment they ear-marked 6 posts for VH category, 6 posts for HH category and only 3 posts for OH category and the applicant being far below in the merit list in the OH category, he could not be selected in OH category and that they have strictly followed the rules and instruction on the subject. The relevant portion of the averments is extracted below:

"There are total 589 posts of examiners of Patents and Designs in the office of Controller General of Patents and Designs, out of these 589 posts 3% posts i.e. 18 number of posts are reserved for PWD Category (1% each for VH, HH and OH category). Further, out of these 18 numbers of posts, 3 (PWD) category posts were already occupied by the persons belonging OH category. Therefore, remaining 15 candidates were to be recruited after conducting examination. Accordingly, these 15 posts belonging to VH-6, HH-6 and OH-3 were recruited through examination on the basis of merit. However, marks secured by any other PH i.e. VH or HH category candidate are not comparable with marks secured by Applicant who belongs to OH category. Besides these 15 candidates of PWD Category two more PWD candidates who were recruited. The selection and recruitment of 459 candidate including 15 candidate of PWD Category against the reserved posts/vacancies for PWD category has been in accordance with the rules and instructions on the subject. Therefore, present OA is not maintainable and liable to be dismissed."

5. Regarding the method of arriving at the percentage of marks calculated by using the normalized score the respondents have averred as follows:

"4.5-4.7. It is submitted that the assumption of the Applicant on the basis of his Mark-sheet that the category-wise minimum marks, declared by the Respondent No.2 i.e. NPC, were the actual minimum marks which were required to be scored by him for selection under OH categories is a misinterpretation. The selection of candidates was done on the basis of their "normalized scores", which was assessed on the basis of marks scored by the candidates in respective disciplines.

The "Final Merit List of 459 Successful Candidates" vis-à-vis the "Final Combined Merit/Seniority of 454 Wait-listed Candidates" will reflect that applicant's "normalized score" is less than the "normalized score" of the last Selected OH-Candidate (i.e. Shri Pradip Dhakad) appearing in the "Final Merit List of 459 Successful Candidates".(Copies of these two lists annexed as Annexure R-1 and Annexure R-II of reply of Respondent Nos. 1, 2 & 3). Further, a list of "Discipline-wise Normalized Merit List of PH Candidates" (enclosed as Annexure R-III of reply of Respondent Nos. 1, 2 & 3) shows the marks obtained by the candidates along with their "normalized scores". This list shows that the "normalized score" of the last OH-Candidate selected in the Merit List, Shri Pradip Dhakad, was 57.36% and mark scored by him in his discipline was 152. Whereas, the applicant's "normalized score" was only 48.68% and marks scored by him in his discipline was 129."

The applicant has not filed any rejoinder with respect to the above stated crucial facts stated by the respondents in the counter reply affidavit extracted above. Though the counsel for the applicant had taken us through the provisions of Section 33 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, but however, in view of the averments made by the respondents that as per rules when three (3) persons belonging to OH category were

already working in the department, we are of the view that the action of the respondents do not require to be interfered with.

6. Accordingly, the OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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