

**Central Administrative Tribunal
Principal Bench**

OA No.425/2013

New Delhi, this the 13th day of March, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Nityesh Kumar, Aged about 44 years,
S/o Late Om Prakash,
R/o Near St. Mary School,
Bijnor.

...Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

1. Union of India,
Through its Secretary,
Ministry of Communication and I.T.,
Department of Posts, DAK Bhawan,
Sansad Marg, New Delhi.
2. Chief Post Master General,
U.P. Circle, Lucknow (U.P.)
3. The Post Master General,
Bareilly Region, Bareilly (U.P.)
4. The Superintendent of Post Offices,
Bijnor Division, Bijnor-(UP)-246701.
5. Sh.Ashok Kumar,
PA, Post Office, Nazibabad,
Distt-Bijnor (U.P.)
6. Smt. Seema Devi,
PA, Divisional Office,
Superintendent of Post Offices,
Bijnor (U.P.).

...Respondents

(By Advocate : Shri Aamir Shaikh for Shri Hanu Bhaskar)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant is an employee of Department of Posts. He is a physically handicapped candidate and in the context of promotion to the Lower Selection Grade (LSG), he claimed reservation. The respondents, however, did not accede to his request. This OA is filed with a prayer to direct the respondents to follow 100 point roster for promotion in LSG cadre, in accordance with relevant instructions, issued by the DOP&T, and to direct them to conduct a review DPC to consider the case of the applicant for promotion to LSG cadre against the vacancies of the year 2008, and to extend him the consequential benefits.

2. The applicant contends that once the persons with disability are extended several benefits in the context of appointment and other avenues, as part of obligation arising out of the provisions of the Rights Of Persons With Disabilities Act, 2016, there is no justification for the respondents, in not extending the benefit of reservation in the context of promotion.

3. The respondents filed detailed counter affidavit opposing the OA. It is stated that the reservation in promotion can be provided only by amending the Constitution and such a facility does not exist in favour of physically handicapped persons.

4. We heard Shri M.K. Bhardwaj, learned counsel for applicant and Shri Aamir Shaikh for Shri Hanu Bhaskar, learned counsel for respondents.

5. The applicant claims reservation in promotion. It is fairly well known that the reservation in promotion cannot be effected unless the Constitution of India provides for it. As of now, it is only in respect of SC and ST candidates, that reservation in promotion is provided by amending the Article 16(4) of Constitution of India. Unless and until a corresponding amendment is caused providing for reservation in favour of physically handicapped candidates also, the same cannot be permitted. The existence of a provision either in the Act or any observation in the Official Memorandum does not constitute the basis to provide reservation in favour of physically handicapped category. Such a step would be in the teeth of right to equality guaranteed under Articles

14 and 16 of the Constitution of India. The respondents can take into account, the representation dated 10.10.2011, submitted by the applicant, and give a suitable reply.

6. Therefore, the OA is disposed of, directing the respondents to pass appropriate orders on the representation dated 10.10.2011, submitted by the applicant within a period of six months duly taking into account, the various aspects involved in the matter.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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