

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

R.A. No.181 of 2018
IN
O.A. No.1238 of 2016

Orders reserved on 28.05.2019

Orders pronounced on : 31.05.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Shri Nilesh Kumar Ram,
s/o Shri Ramayan Ram,
R/o. Village – Basdila
Distt. Saran, Chhapra,
Bihar-841412

....Applicant

(By Advocate : Shri Krishna Kumar)

VERSUS

1. Union of India
Through the Secretary,
Ministry of Railways,
Railway Board,
New Delhi-110001.
2. The Chairman,
Ministry of Railways,
Railway Board,
New Delhi-110001.
3. The Chairman,
Railway Recruitment Cell,
Parcel Depot,
Alibhai Premji Marg,
Grant Road (E)
Mumbai-400007.
4. Ministry of Social Justice & Empowerment,
Through the Secretary,
Department of Empowerment of Persons with
Disabilities
Sarojini House, 6 Bhagwan Dass Marg,
New Delhi-110001.

.....Respondents

(By Advocate : Shri Krishna Kant)

ORDER

Heard Shri Krishna Kumar, learned counsel for the review applicant and Shri Krishna Kant, learned counsel for the review respondents.

2. The review applicant, who approached the Hon'ble Delhi High Court by filing the Writ Petition (Civil) No.3042/2018 challenging the Order dated 4.10.2017 passed by this Tribunal in OA No.1238/2016, withdrew the said Writ Petition with liberty to approach this Tribunal by filing a review application for pointing out the correct legal position as obtained on 19.4.2017 when the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, were amended, vide Order dated 10.9.2018.

3. The contention of the learned counsel for the review applicant is that as per the provisions of Section 34 (1) Clause (e) of the amended Act, multiple disabilities are covered and therefore, the applicant's case is required to be considered for appointment to the post of Helper.

4. On the other hand, learned counsel for the review respondents submitted that the provisions of the amended Act of 2016 are not applicable to the case of the applicant, as the applicant's disability is not covered under Section 34(1) (e) and as such the question of applying the said provisions does not arise. He further submitted that the recruitment to

the post in question pertains to the year 2012 and the rules which were in force at the relevant point of time are to be taken into consideration while initiating the process of the said recruitment and any subsequent amendment in the Rules is not applicable to the same. He also submitted that the learned Court of Chief Commissioner for persons with disabilities while deciding the applicant's representation has observed that RRC-WR has not violated any rules issued in favour of physically handicapped persons and non empanelment of the applicant against E.No.2/2012 by RRC-WR is as per extant rules and as such the case has been closed vide order dated 6.10.2015.

5. After noting the contentions of the learned counsel for the parties and having perused the pleadings available on record, this Court observe that the short question required to be adjudicated in this case is whether the provisions of the Rights of Persons with Disabilities Act, 2016, (hereinafter referred to as 'the amended Act') which came into force w.e.f. 28.12.2016, are applicable in the case of the applicant or not. It is an admitted fact that the applicant was one of the candidates aspirant for the post in question which post(s) was/were advertised by the respondents in 2012 and the amended Act of 2016 was not given retrospective effect and the Hon'ble Supreme Court in the case of **Marripati**

Nagaraja vs. Govt. of A.P, 2007 11 SCC 522, had observed as under:-

“12. The State, in exercise of its power conferred upon it under the proviso appended to Article 309 of the Constitution of India, is entitled to make rules with retrospective effect and retro-active operation. Ordinarily, in absence of any rule and that too a rule which was expressly given a retrospective effect, the rules prevailing as on the date of the notification are to be applied...”

Further in the case of ***A.Manoharan & Ors. Vs. Union of India & Ors***, (2008) 3 SCC 641, the Hon'ble Apex Court has held that :

“16. Furthermore, Regulations have been amended only with effect from 11.08.2004. It would have a prospective effect. It cannot be applied retrospectively. Any vacancy which has arisen prior to coming into force of the said amended regulation must be filled up in terms of the law as was existing prior thereto.”

We also note the fact that the applicant had made a representation to the learned Chief Commissioner for persons with disabilities, who is the authority on this matter and who had observed that respondents have not violated any rules issued in favour of physically handicapped persons and non-empanelment of the applicant against E.No.2/2012 is as per extant rules.

6. Since in this Review Application the issue is only confined to the aforesaid aspect, we do not find any merit in the present Review Application as the law is well settled by the Hon'ble Apex Court that if any rule is amended

prospectively, the same has to be applied prospectively and not retrospectively.

7. In the result, for the forgoing reasons, the present RA is dismissed being devoid of merit. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

/ravi/