

**Central Administrative Tribunal
Principal Bench**

**RA No.187/2017
and MA No.756/2019
in OA No.1105/2012**

New Delhi, this the 11th day of September, 2019

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

Central Provident Fund Commission
O/o EPFO, Ministry of Labour
Through its Regional Provident fund Commissioner
Delhi(North), 28, Community Centre
Wazirpur Industrial Area
Delhi-110052. ...Review Applicant/
Respondent

(By Advocate : Shri Satpal Singh)

Vs.

Smt. Bhupinder Kaur
Senior Social Security Assistant(Sr. SSA)
Office of Regional Provident Fund Commissioner
Delhi(North), 28, Community Centre
Wazirpur Industrial Area
Delhi-110052. ...Respondent/Original
Applicant

(By Advocate: Shri O.P. Gehlot)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant joined the service of the Central Provident Fund Commission, as an LDC on 05.01.1990 under the Physically Handicapped Category. She was

promoted to the post of UDC. Promotion from that post is to Section Supervisor. 33% vacancies of that post are to be filled by conducting a Limited Departmental Competitive Examination. The applicant participated in such an examination conducted in the year 2007. The minimum marks stipulated for general candidates is 40% and for SC/ST candidates it is 35%. The applicant was awarded 35% marks and as such she was not treated as qualified. She made a claim that the benefit of relaxation in favour of SC/ST candidate is available to physically handicapped candidates also and she was entitled to be treated as qualified. Since that request was not acceded to, the applicant filed OA No.1105/2012. The OA was allowed through a detailed order dated 22.03.2017. It was directed that the applicant shall be extended the benefit of the relaxed standards which are available to SC/ST candidates, and then her candidature be considered.

2. The respondents in the OA filed this Review Petition stating that the extension of the benefit of relaxed standards to physically handicapped candidates is not automatic and that as per the Office

Memorandum dated 29.12.2005, issued by the DOP&T, such benefit can be extended only when the sufficient number of persons with disability are not available on the basis of general standards, to fill the vacancies. It is also stated that there are other meritorious PH candidates who are qualified in that examination.

3. We heard Shri Satpal Singh, learned counsel for the review applicant and Shri O.P. Gehlog, learned counsel for the review respondent.

4. The ground on which the applicant was denied promotion under the LDCE category was that she did not secure the minimum of 40% marks. By placing reliance upon certain circulars and orders she claimed the benefit of the relaxed standards as to the eligibility. That was accepted in the O.A. and certain directions were issued. Para 24 of the Order in the OA reads as under:-

"24. In view of above discussion, we dispose of this OA with a direction to respondents to grant the benefit of relaxed standard at par with SC/ST to the physically handicapped candidates (including the applicant) for 2007 results and reconsider the promotion of physically handicapped candidates to the post of SS within a period of 90 days from the receipt of a certified copy of this order.

The physically handicapped candidate who obtained the highest marks if need be by relaxed standards, should be offered the appointment. The candidate so appointed will be given notional benefit of seniority and pay fixation from the date of appointment of others in the 2007 LDE batch. It is made clear that in case there is no vacancy available in SS posts then a supernumerary post would be created by the respondents to appoint the physically handicapped candidate so selected. No costs."

5. The whole controversy is as to whether the benefit can be extended even when the eligible candidates according to the ordinary norms, are available. Paragraph 22 of the OM dated 29.12.2005 reads as under:-

"22. Relaxation of standard of suitability: 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. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post/posts in question."

6. From a perusal of this, it becomes clear that the necessity to extend the benefit of relaxed standards to PH candidates, at par with the SC/ST candidates would arise if only adequate number of persons in that category are not available.

7. The respondents in the OA plead that two candidates who too were physically handicapped secured higher marks than the applicant and they became eligible to be considered, without the necessity of the relaxation of the minimum marks. This is a question of fact which needs to be taken into account while taking steps for implementation of the directions issued in the OA. Certain clarification, however, is needed in this behalf.

8. Three situations need to be dealt with here;

(a) A PH candidate takes part in the competitive examination and he makes it to the selection, without the necessity of any reservation at all. In other words, if the last candidate selected in the general category secured 70% marks and a candidate, though physically handicapped,

secured 72 marks, his appointment cannot be treated against the PH vacancy.

(b) A PH candidate was qualified in the examination, as per the normal standards, but could not make it to the selection in competition with the general candidates, he has to be selected and appointed against a vacancy reserved for the PH category, if there are no other meritorious candidates than him, in that category.

(c) The candidate is not qualified as per the ordinary norms and was not selected though the vacancy was available for that category. In such cases he needs to be extended the benefit of relaxation on par with the SC/ST candidates as provided for under the O.M.

9. The whole controversy in this case turns around the fact whether the candidates who were selected from the physically handicapped category, with reference to the examination conducted in 2007, fall into illustration(a) or (b), furnished above. If the vacancy was filled, as provided for in the illustration (b), the necessity to relax does not arise. If on the

other hand, the selected candidate in PH category was appointed, as provided for under illustration (a) above, then the search for other candidates, if necessary, by relaxing the standards, as provided for by the Tribunal, may arise.

10. We, therefore, clarify that the occasion to extend the benefit of relaxation of the minimum standards on par with the SC/ST candidates to the applicant would arise, if only there was no other meritorious candidate who got qualified without the aid of relaxation. This is subject to the condition that if the qualified candidate was selected and appointed on the basis of merit without the benefit of reservation in favour of a PH candidate, the same shall not come in the way of the relaxation being extended to the applicant. RA stands disposed of.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

/vb/