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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7893/2012

Reserved on : 29th April, 2016
Date of decision: 5th August, 2016

DELHI JAL BOARD

..... Petitioner

Through: Mr. Karunesh Tandon, Advocate.

Versus

DALBIR SINGH RAWAT

.... Respondent

Through: Mr. Umakant Mishra, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.:

C.M.No. 14901/2014

The Delhi Jal Board by this writ petition assails the order dated 4th March, 2011 passed by the Principal Bench of the Central Administrative Tribunal in T.A. No. 521/2009 filed by Dalbir Singh Rawat, the respondent herein. The impugned order, in fact, disposed of several other TAs with which we are not concerned.

2. This writ petition was earlier allowed vide order dated 20th February, 2013 and the order passed by the Tribunal in T.A. No.521/2009 was set aside. A review petition was filed and the same was also dismissed vide order dated 12th March, 2013. The respondent had thereupon preferred

Special Leave to Appeal (C) Nos.24472-24473/2013 against the orders dated 20th February, 2013 and 12th March, 2013 passed in W.P.(C) No.7893/2012 and Review Petition No.154/2013, respectively. The Special Leave to Appeal was disposed of with the following directions:-

“Having regard to the nature of order we propose to pass, it is not necessary to recapitulate the factual matrix of the case in detail. Suffice it is to state that the petitioner is a handicapped person and he was claiming relaxation in marks while appearing in the test for promotion to the post of Junior Accountant. Since his request was not accepted by the Department, the petitioner approached the Central Administrative Tribunal by filing an O.A., which was allowed by the Tribunal. However, the High Court has set aside the order of the Tribunal. The petitioner filed review petition seeking review of the order passed contending that there should have been reservation of posts for physically handicapped persons as per the provisions of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This review petition was dismissed by the High Court observing that in case the provision for reservation is not made, remedy for the petitioner is to approach the Chief Commissioner for Persons with Disabilities under the aforesaid Act. The petitioner has now produced some documents which he has obtained under the provisions of Right to Information Act, which inter alia, disclose that reservation had been provided by the respondent for physically handicapped persons way back in the year 1982.

In view thereof, it would be open to the petitioner to approach the High Court again with the aforesaid information and seek necessary direction.

The special leave petitions are disposed of with the aforesaid liberty to the petitioner.

3. Consequent to the order passed by the Supreme Court, directions were given by order dated 16th November, 2015 to the petitioner to file an affidavit clearly stating whether there was any post available in the Physically Handicapped quota for Junior Accountant. The affidavit was also required to meet the assertions made by the respondent relying upon file notings obtained by him under the Right to Information Act, 2005.

4. In order to appreciate the limited controversy, we would like to refer to the relevant facts. On 8th August, 1994, Delhi Water Supply and Sewage Disposal Undertaking, the predecessor of Delhi Jal Board had invited applications for vacant posts of Junior Accountant from Upper Division Clerks and Lower Division Clerks, who had completed/would complete five and eight years of regular service respectively in their grade as on 31st December, 1994. It was stated that a panel of selected candidates would be prepared to fill up anticipated posts of Junior Accountant. By circular dated 12th December, 1995, issued in continuation of the earlier circular dated 8th January, 1994, it was directed that the applicants would have to qualify the limited departmental competitive examination as per the syllabus prescribed. The limited departmental examination was held on 26/27th August, 1996. Twenty persons including the respondent i.e. D.S. Rawat were promoted to the post of Junior Accountant, after D.S. Rawat was given relaxation in the qualifying marks as he was physically handicapped. The respondent was promoted vide order dated 18th April, 2000 and given a posting. However, after more than two years, vide order dated 20th September, 2002, the

respondent without any notice was reverted to the post of Upper Division Clerk.

5. By office order dated 5th May, 2000, the panel of selected candidates was directed to be scrapped with a stipulation that fresh examination would be conducted. By then, 31 empanelled candidates had been appointed as Junior Accountant. This office order dated 5th May, 2000 led to unrest and protests and the decision was reversed vide order dated 17th September, 2001. Accordingly, the decision to scrap the empanelled list vide order dated 5th May, 2000 was withdrawn by order dated 17th September, 2001. It was directed that the existing panel would be valid and would remain in operation till it was exhausted. In terms of the said order, other successful empanelled candidates, 61 in number, were promoted as Junior Accountants.

6. The aforesaid situation had caused discontent, with objections being raised by those who were not eligible for participation in the limited departmental competitive examination. They filed writ petitions before the High Court for prohibiting the Delhi Jal Board from making further appointments from the panel and for holding a fresh limited departmental examination. In some of the writ petitions, challenge was also made to the appointment of D.S. Rawat. D.S. Rawat had also filed Civil Writ Petition No.6141/2002, which on transfer to the tribunal was numbered as T.A. No.521/2009. The High Court vide order dated 25th September, 2002 had stayed the operation of order dated 20th September, 2002 reverting D.S. Rawat to the post of Upper Division Clerk.

7. The impugned order, as noticed above, disposes of several TAs and has held that the select list or panel was to remain in operation till the last person selected was appointed. It is only after the last person in the select

list was/would be appointed that a fresh panel would be prepared. To this extent, the impugned order passed by the tribunal has attained finality and is not under challenge. The challenge, as noticed, is to the relief granted to D.S. Rawat. The impugned order holds that D.S. Rawat being orthopaedically handicapped, with more than 40% disability, was entitled to relaxation in the qualifying marks as applicable to physically handicapped persons in the limited departmental competitive examination.

8. The tribunal in the impugned order has relied upon O.M. No.14016/1/85-Estt.(SCT) dated 4th September, 1985, which provides for relaxation of standards for physically handicapped persons and reads as under:-

“Subject:- Relaxed standard of selection of physically handicapped persons against reserved vacancies.

According to the instructions in this Department's O.M. No. 1/1/70-Estt. (SCT), dated 25-7-1970, (See Order 32 under Section 2) in the case of direct recruitment, whether by examination or otherwise, if sufficient number of Scheduled Castes/Scheduled Tribes candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to these communities are allowed to be selected under the relaxed standard of selection to make up the deficiency in the reserved quota, subject to the fitness of these candidates for appointment to the post/posts in question. The question of extending this concession to physically handicapped persons has also been under consideration of the Government of India and it has been decided that the instructions of the OM, dated the 25th July, 1970, aforementioned will apply mutatis mutandis to physically handicapped persons also.”

9. Reference was also made to DoP&T's OM No. 36035/1/89-Estt. (SCT) dated 20th November, 1989, which again for the sake of convenience, has been reproduced below:-

Subject :- Reservation for the physically handicapped in Groups 'C' and 'D' posts filled by promotion.

The undersigned is directed to say that the Government has under consideration a proposal to introduce reservation in favour of the physically handicapped persons in posts filled by promotion. The matter has been examined and it has now been decided that when promotions are being made-

(i) within Group 'D', (ii) from Group 'D' to Group 'C', and (iii) within Group 'C', reservation will be provided for the three categories of the physically handicapped persons, namely, the visually handicapped, the hearing handicapped and the orthopaedically handicapped.

The applicability of the reservation will, however, be limited to the promotions being made to those posts that are identified as being capable of being filled/held by the appropriate category of physically handicapped.

2. Each of the three categories of the physically handicapped persons will be allowed reservation at one per cent each. Though the reservations will be effective only in those posts that are identified as being capable of being held by the appropriate category of the physically handicapped persons, the number of vacancies that will be reserved for the physically handicapped persons when promotions are being made to such identified posts will be computed

by taking into account the total number of vacancies that arise for being filled by promotion in the recruitment year both in the non-identified as well as identified posts. If the appropriate category of the physically handicapped persons are not available in the feeder grade from which promotion is being made to the next higher grade of the identified posts, then an inter se exchange will be permitted, subject to the conditions that-

(i) the post to which promotion is to be made is one that can be held by the category of physically handicapped persons available in the feeder grade; and

(ii) the reservation so exchanged is carried forward to the next three recruitment years after which the reservation shall lapse

3. Ministry of Finance, etc., are requested to give immediate effect to these orders.”

The latter OM specifically refers to reservation for physically handicapped persons in Group C and D posts to be filled by promotion and refers to the mandate of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

10. The Delhi Jal Board, in their affidavit filed on 25th April, 2016, pursuant to the order dated 16th November, 2015, have stated that the post of Junior Accountant was a category ‘C’ post and as per the DoPT’s guidelines and instructions, reservation for physically handicapped persons is applicable to promotions within Group ‘D’, from Group ‘D’ to Group ‘C’ and within Group ‘C’. It is also accepted that the Delhi Water Supply and Sewage Disposal Undertaking in their earlier circulars inviting applications from departmental candidates in existing and anticipated vacant posts in the

grade of Junior Accountant had included reserved vacancies for physically handicapped candidates. This is also mentioned/recorded in the file notings. There were in all 75 sanctioned posts of Junior Accountant in Delhi Jal Board, out of which 18 were lying vacant, and 9 posts were to fall vacant on account of promotions. Out of these 9 posts, 4 posts were under 50% test quota and 5 posts under 50% promotion quota. Reference was made to the post based roster as per which 11 posts were for Scheduled Caste candidates and 5 posts for the Scheduled Tribe candidates. There were already 13 candidates from the Scheduled Caste category but none from the Scheduled Tribe category. It was specifically recorded that 2 posts would be reserved for physically handicapped candidates. On the question of qualifying marks in the limited departmental examination, it was observed that the criteria for selection was fixed at 40% in each grade with a minimum aggregate of 45% marks for general category candidates. D.S. Rawat had obtained 42% marks in the first paper and 40% in the second paper (i.e. total 82 marks out of 200) and was declared unsuccessful as a general category candidate. As per O.M. No.14016/1/85-Estt.(SCT) dated 4th September, 1985, the physically handicapped candidates were entitled to the same relaxation as Scheduled Caste and Scheduled Tribe category candidates. Accordingly, the notification issued in case of SC/ST candidates will apply mutatis mutandis to physically handicapped candidates. The Scheduled Castes and Scheduled Tribes candidates were entitled to 5% relaxation in marks in the limited departmental competitive examination for the post of Junior Accountant and Accountant. Thus, reserved category candidates were required to score 35% marks in each grade and an aggregate of 40% marks. If the said criteria is applied and made applicable to D.S. Rawat, he has cleared the said

examination, having secured 41% marks. It would be pertinent to refer to a recent judgment of the Supreme Court dated 30th June, 2016 in ***Rajeev Kumar Gupta & Ors. v. Union of India & Ors.***, Civil Appeal No. 5389 of 2016, wherein principles for reservation for physically handicapped candidates under the Disabilities Act, 1995 were examined and on the question of reservation when the mode of recruitment is only through promotion, it was observed:-

“21. The principle laid down in Indra Sawhney is applicable only when the State seeks to give preferential treatment in the matter of employment under State to certain classes of citizens identified to be a backward class. Article 16(4) does not disable the State from providing differential treatment (reservations) to other classes of citizens under Article 16(1) if they otherwise deserve such treatment. However, for creating such preferential treatment under law, consistent with the mandate of Article 16(1), the State cannot choose any one of the factors such as caste, religion etc. mentioned in Article 16(1) as the basis. The basis for providing reservation for PWD is physical disability and not any of the criteria forbidden under Article 16(1). Therefore, the rule of no reservation in promotions as laid down in Indra Sawhney has clearly and normatively no application to the PWD.

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24. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of

recruitment adopted by the State for filling up of the said post.”

11. In view of the aforesaid position, we allow the present application. The result thereof would be that the order dated 20th February, 2013 would be treated as recalled/withdrawn. Resultantly, the writ petition would be treated as dismissed. The order passed by the tribunal is upheld. The Delhi Jal Board would comply with the directions given therein within four weeks from the date a copy of this order is received by them.



(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

AUGUST 5th, 2016
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