

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.01.2017

Delivered on: 23.02.2017

Coram

The Honourable Mr. Justice K.K.SASIDHARAN
and
The Honourable Mr. Justice V.PARTHIBAN

W.P.No.25321 of 2015

N.Sankar

.. Petitioner

versus

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 002.

2. Union of India,
rep. by the General Manager,
Cordite Factory,
Aravankadu,
The Nilgiris-643 202.

.. Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records pertaining to order passed in O.A.No.887 of 2013 vide order dated 21.04.2015 on the file of the first respondent and quash the same.

For Petitioners: Mr. R.Rajeshkumar

For Respondents: Mr. P.Saravanan for R2

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order passed by the learned Central Administrative Tribunal (in short, 'the Tribunal'), Madras in O.A.No.887 of 2013, dismissing the original application filed by the petitioner herein.

2. The writ petitioner herein, has approached the learned Tribunal, seeking the following relief:

"To direct the respondent to promote the applicant to the post of Chargeman-T (Mech) from 18.7.2012 and further direct the respondent to

render all consequential and attendant benefits with effect from 18.7.2012."

3. According to the petitioner, he was differently able person and the Government of Tamil Nadu issued a Disability Certificate assessing his disability at 40%. He was initially recruited as Fitter (Semi skilled) against the quota reserved for physically handicapped. Thereafter, he was promoted to the higher post and became eligible for consideration for appointment to the post of Chargeman-T (Chem.) Chargeman-T (Mech.) and Chargeman-T (Elect.). In 2012, the second respondent conducted LDCE for the above said posts, wherein, the petitioner appeared and stood 7th position. However, eventually, he could not be appointed, which prompted him to approach the learned Tribunal by way of application with the aforesaid prayer.

4. The petitioner contended before the learned Tribunal that there was backlog vacancy reserved for physically challenged persons which existed from 2008 and the same had to be carried forward and the petitioner ought to have been accommodated pursuant to the selection held in the year 2012. Apart from that, it was also contended that being ranked 7th position, the petitioner ought to have been accommodated in unreserved category on the basis of his merit.

5. The said contention of the petitioner was sought to be refuted by the the second respondent, stating that though he ranked 7th position, he could not be accommodated for want of vacancy and as regards the claim for accommodation against PH quota, it was stated that no reservation for PH was available in Group B service as the post of Chargeman belongs to Group B service and hence, accommodating the petitioner under the said quota was not feasible.

6. Before the learned Tribunal, it was also admitted that during 2008, a vacancy was notified against PH quota which could not be filled for want of candidates and on introduction of VI Central Pay Commission with effect from 1.9.2008, the post of Chargeman was brought under Group B service and therefore, the quota for PH was no more applicable and hence, the claim of the petitioner would not be entertained.

7. After taking note of the submissions of the parties, the learned Tribunal dismissed the application holding that there were only 6 unreserved (UR) vacancies and the persons who were accommodated against those vacancies were more meritorious than the petitioner and hence, the petitioner could not be accommodated. The Tribunal also held that in view of the submission of the 2nd respondent, that there was no quota for PH for Group B service, no such direction could be given. Against the said order of the learned Tribunal, the present Writ Petition was filed by the petitioner.

8. Shri R.Rajesh Kumar, learned counsel appearing for the petitioner strenuously contended that the stand of the second respondent that no quota was available for PH in Group B service, was not correct and in support of his contention, the learned counsel has produced a copy of the Office Memorandum issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, dated 29.12.2005 instructing that 3% reservation must be made available in respect of Group A, B, C and D posts. Elaborate instructions have been issued by the said Memorandum as to the identification of the post and also relaxation of standard suitability. According to the learned counsel for the petitioner, this Office Memorandum was also followed by another Office Memorandum dated 3.12.2013 in pursuance of implementation of the judgment of the Hon'ble Supreme Court in "Union of India & another versus National Federation of Blind & Others" in Civil Appeal No.9096 of 2013. Although it appears that these materials were not placed for consideration before the Tribunal and it appears that no arguments were advanced on such materials which produced before us, there was no occasion for the learned Tribunal to appreciate the arguments put forth by the learned counsel appearing for the petitioner in regard to reservation for PH quota even for Group A, B, C and D posts. From the order passed by the learned Tribunal, we could not find any whisper of any such argument being advanced on behalf of the petitioner herein. It is also clear from the prayer sought for in the Original Application, that originally, the petitioner bolstered his claim on the basis of his meritorious ranking and having found that he could not be accommodated for want of vacancy, he had changed his stance from being accommodated against merit quota and sought for being accommodated against quota reserved for PH.

9. Per contra, the learned counsel appearing for the second respondent reiterated the submissions which were found in the impugned order passed by the learned Tribunal.

10. The learned counsel appearing for the second respondent would contend that there was no vacancy earmarked or notified for PH quota and as such, the claim of the petitioner cannot be countenanced in law or on fact. The question of carrying forward vacancy which existed in 2008 cannot be given effect to in view of subsequent development in respect of the post of Chargeman becoming as Group B service after implementation of VI Pay Commission with effect from 1.9.2008. In such view of the matter, the learned counsel appearing for the second respondent sought for dismissal of the writ petition.

11. We have given our anxious consideration to the submissions made on behalf of the parties and perused the pleadings and materials available on record.

12. As regards the contentions put forth by the learned counsel for the petitioner that Official Memorandum was issued as early as on 29.12.2005 which was followed by another Office Memorandum dated 3.12.2013 in pursuance of implementation of the judgment of the Hon'ble Supreme Court, providing reservation for disabled persons in all services in the Government including Group A, B, C and D posts, the stand of the Government before the Tribunal that there was no reservation available for Group B post may not be correct. Moreover, we do not find any material on record to show that the Office Memorandum dated 29.12.2005 was placed for consideration and arguments were advanced on that document and in the absence of such materials being placed for consideration before the Tribunal, we cannot find fault with the order passed by the learned Tribunal. Howsoever, in the interest of justice and for better adjudication of claim of the petitioner vis-a-vis administration, it is just and fair that the matter is remanded back to the learned Tribunal/first respondent herein for consideration of the claim of the petitioner afresh with regard to application of Office Memorandum dated 29.12.2005 and the claim for his appointment to the post of Chargeman against quota reserved for PH. It is up to the petitioner to demonstrate before the learned Tribunal as to his entitlement under the PH quota in terms of the Office Memorandum and in terms of other instructions issued on the subject matter and on such demonstration, it is open to the Tribunal to adjudicate the claim after affording opportunities to the parties and pass orders therein.

13. In such view of the matter, the impugned order dated 21.4.2015 is set aside and consequently, Original Application in O.A.No.887 of 2013 is restored to the file of the Tribunal. The petitioner is permitted to raise additional grounds if any available to him on the date of his filing of the Original Application. The Tribunal is directed to take up the matter and dispose of the Original Application as expeditiously as possible since it is of the year 2013.

With the above direction, this Writ Petition is disposed of.
No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

suk

To:

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 002.

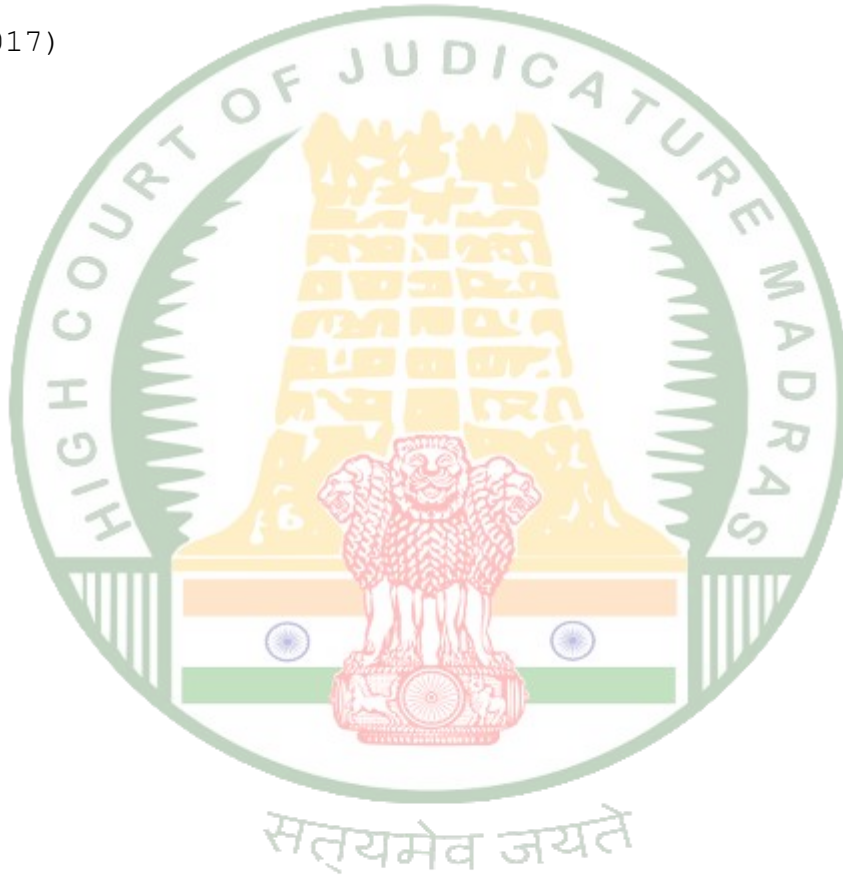
2. The General Manager,
Union of India,
Cordite Factory,
Aravankadu,
The Nilgiris-643 202.

+1cc to Mr.R.Rajeshkumar,Advocate sr.11961

+1cc to Mr.P.Saravanan,Advocate sr.11539

Pre Delivery order in
W.P.No.25321 of 2015

lrs(co)
ss(13/3/2017)



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