

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.20079 of 2002 (O&M)

Date of Decision:15.09.2017

K.C. Gupta

... Petitioner

Vs.

The Oriental Insurance Company Limited and another ... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Amit Aggarwal, Advocate for the petitioner.

Mr. Ashwani Talwar, Advocate for the respondent.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has prayed for following relief:

“(a) issue an appropriate writ, order or direction commanding upon the respondents to follow the policy of reservation for Physically handicapped persons in terms of Sections 32 and 33 of 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act No.1 of 1996) and reserve 3 per cent vacancies for appointment to Assistant Administrative Officers by promotion from Group C posts as notified vide circulars Annexures P-6 and P-7.

(b) set aside the order dated 27.09.2002 (Annexure P-14) passed by respondent No.2 refusing to consider the application of the petitioner against reservation for Physically Handicapped category by declining to reserve a vacancy for Physically Handicapped persons for promotion from Group C posts to Group A posts in violation of Sections 32 and 33 of the Act;

(c) direct the respondents to consider the application of the petitioner for promotion to the post of Assistant Administrative Officer in the category of Physically Handicapped candidates;

(d) issue any other writ, order or direction as may be deemed

fit and proper by this Hon'ble Court on the facts and in the circumstances of the case.

(e) exempt the filing of certified copies of Annexures and dispense with the requirement of serving advance notices upon the respondents.”

The petitioner while working in the respondent-the Oriental Insurance Company Limited was eligible for the post of Assistant Administrative Officer. Respondents invited applications from the eligible candidates for the purpose of promotion.

The petitioner's contention is that he is physically handicapped person. Therefore, reservation in promotion for physically disabled persons are to be identified and extended in view of Section 33 of the 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short “1995 Act”). Government of India instructions dated 5.11.2001 relating to reservation of posts for Persons with Disabilities-Intimation of posts identified as suitable for reservation to UPSC etc. which restricts reservations in promotion (i) within group 'D', (ii) from Group 'D' to group 'C' and (iii) within Group 'C' posts and there is no reservation in promotion for the persons with disabilities when promotions are made too within group 'A' and Group 'B' posts, the respondents while following the same implemented the Government of India Policy on 26.11.2001 (Annexure R-1). It is crystal clear from the implementation of Government of India instructions dated 5.11.2001 on 26.11.2001 that reservation in promotion for physically handicapped persons is not applicable to the AAO cadre and it is applicable only in promotions (i) within Class IV (ii) from Class IV to Class III & (iii) within Class III cadres only. Since petitioner's claim is with reference to Section 33 of 1995 Act

issued on 20.11.1989, 18.2.1997 and 16.1.1998 to contend that reservation for physically handicapped in the posts filled by promotion are applicable to AAO posts also. The respondents have rightly or wrongly implemented the Government of India instructions dated 5.11.2001 on 26.11.2001 while excluding Group-A and Group-B which included AAO post. Petitioner has not challenged the implementation of the Government of India instructions dated 5.11.2011 on 26.11.2001 so as to contend that the above instructions are contrary to OM dated 20.11.1989 read with 18.2.1997 and 16.1.1998. Moreover, during pendency of this petition, petitioner is stated to have been promoted to the post of AAO in the year 2014. Further the respondents have issued a letter dated 18.5.2017 by virtue of which latest decision of the Supreme Court relating to reservation for handicapped persons to the post filled by promotion had been extended and it would be prospective.

In view of the above facts and circumstances, petitioner has not made out case so as to interfere with the prayer sought in the present petition.

Petition stands dismissed.

15.09.2017

rajeev

(P.B. Bajanthri)

Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No