

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.4931 of 2012(O&M)
Date of Decision: 13.11.2017

Rajesh Kumar

--Petitioner

Versus

Punjab Public Service Commission
and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Sukhdeep Parmar, Advocate for the petitioner.

Mr. Avinit Avasthi, A.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

Petitioner, who is visually impaired, is aggrieved of the action of the first respondent i.e. the Punjab Public Service Commission (herein after to be referred as the Commission) and the second respondent i.e. the Department of Public Works (B&R) Branch, Punjab in having denied him consideration for appointment to the post of Sub Divisional Engineer (Civil) against the post reserved for the physically handicapped category.

Brief facts are that Advertisement No.03 (Annexure P-1) was issued by the Commission inviting applications from eligible candidates for recruitment to 70 posts of Sub Divisional Engineers (Civil/Mechanical/Electrical) in the Department of Public Works (B&R) Branch, Punjab. In the break-up of posts indicated in the advertisement 53 posts were of Sub Divisional Engineers (Civil). Two posts were reserved to be filled up from the physically handicapped category. The conditions of eligibility as regards essential qualifications, age etc. were also indicated in the advertisement. The prospective candidates were put to notice in the advertisement itself that mere possession of the prescribed essential

qualifications would not entitle a candidate to be called for the Interview. In the eventuality of the number of applications received in response to the advertisement being large, it was open for the respondent-Commission to restrict the number of candidates for Interview to a reasonable limit by resorting to a method of shortlisting by means of holding a screening test.

Clause 8 of the advertisement defined the various categories under which a candidate could apply and each category was assigned a code number. In so far as physically handicapped category is concerned, the same carried Code Number.76. Clause 8 (j) defined the eligibility under the physically handicapped category i.e. for blind, deaf and orthopaedically handicapped candidates and read in the following terms:-

“8. DEFINITION OF CATEGORIES

j. PHYSICALLY HANDICAPPED OF (PUNJAB)

1. The definitions as per Government Instructions issued vide letter No.10/26/95/5-SS/1252 dated 2.5.97 of the handicapped for purposes of reservation in employment is as under:

THE BLIND

The blind are those who suffer from either of the following conditions:-

- a) Total absence of sight.*
- b) Visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses;*
- c) Limitation of the field of vision subtending an angle of 20 degrees or worse.*

THE DEAF

The deaf are those in whom the sense of hearing is non-functional for ordinary purposes of life. They do not hear, understand sounds at all events with amplified speech. The cases included in this category will be those having hearing

loss more than 60 decibels in the better ear (profound impairment) in the conversational range of frequencies.

THE ORTHOPAEDICALLY HANDICAPPED:-

(i) The orthopaedically handicapped are those who have a physical defect or deformity not less than 40% which causes an interference with the normal functioning of the bones.

2. Competent authorities to issue such certificate as under:-

(i) Principal Medical Officer

(ii) Chief Medical Officer

(iii) Civil Surgeon

(iv) Class-I Medical Officer of any Government Medical Institution.

3. This certificate should be issued by the authorities of the concerned District or place of which the candidate is permanent resident.”

Petitioner possessed the essential educational qualifications prescribed and applied for the post of Sub Divisional Engineer (Civil) under the reserved physically handicapped category. He appeared in a screening test conducted by the Commission and the result of which was declared on 5.3.2012. Petitioner is stated to have secured 28 marks in the screening test.

The precise grievance raised by the petitioner is that inspite of being the sole visually impaired candidate, who had appeared in the screening test, he was not even permitted to participate in the Interview held on 19.3.2012. It is contended that only orthopaedically handicapped candidates have been called for the Interview against the two posts of Sub Divisional Engineer (Civil) reserved under the physically handicapped category.

In the reply filed on behalf of the respondent-Commission, it has been stated that keeping in view the large number of applications received in response to the advertisement a decision was taken to conduct a screening test consisting of two parts i.e. Part (i) and Part (ii) carrying 70 and 30 marks respectively. The screening test was for the purpose of shortlisting the candidates and no weightage was assigned to the same for the purpose of determination of final merit. The mode of screening was resorted to, only to call candidates three times the number of vacancies, category-wise for the Viva Voce test. For the two posts reserved for physically handicapped candidates of Sub Divisional Engineer (Civil), six candidates securing the highest marks in the screening test were called for Viva Voce. As per Commission, the last candidate shortlisted under the physically handicapped category secured 41 marks in the screening test, whereas the petitioner had secured 28 marks and accordingly not called for the Interview.

Counsel for the parties have been heard.

On 7.2.1996 the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (herein after to be referred as the 1995 Act) was brought into force making reservation of at least 3% posts in all Govt. establishments to the extent of 1% each for the persons suffering from (i) Blindness or low vision (ii) hearing impairment and (iii) Locomotive disability or cerebral palsy. Chapter VI of the 1995 Act deals with the employment of persons with disabilities. Relevant sections of the said Chapter are as under:-

***“32. Identification of posts which can be reserved for persons with disabilities.—Appropriate Governments shall-
(a) identify posts, in the establishments, which can be reserved***

for the persons with disability;

(b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. Reservation of posts.—*Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from—*

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

36. Vacancies not filled up to be carried forward.

—Where in any recruitment year any vacancy under section 33 cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government.”

The Act is a social legislation enacted for the benefit of

“Persons with Disabilities” (as defined under the 1995 Act) and its

provisions must be interpreted in order to fulfill its objectives. The language of the statutory provision which is clear and unambiguous reflects clearly the intention of the legislature to reserve in every establishment under the Appropriate Govt. not less than 3% of the vacancies for the persons or class of persons with disabilities of which 1% each shall be reserved for persons suffering from blindness or low vision, hearing impairment and locomotive disability or cerebral palsy in the posts identified for each disability. A reference in this regard may be made to the decision of the Hon'ble Supreme Court in ***Union of India and another Vs. National Federation of the Blind and others, 2013 (4) S.C.T, 807.***

In furtherance of the mandate of Sections 32 and 33 of the 1995 Act the Govt. of Punjab, Department of Social Security and Development of Women & Children has issued instructions dated 2.5.1997 (Annexure P-2) on the subject of “reservation of vacancies in direct recruitment for the physically handicapped persons in the State”. Clauses 3, 4, 5, 6 and 7 of the instructions dated 2.5.1997 would be relevant to the issue at hand and read as follows:-

“3. The Government have already decided to reserve 3% vacancies in direct recruitment of class I, II, II and IV services for physically handicapped persons in the State. The break up of this reservation is as under:-

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|--|-----------|
| <i>1. Blindness or low vision</i> | <i>1%</i> |
| <i>2. Hearing impairment</i> | <i>1%</i> |
| <i>3. Locomotor disability or cerebral palsy</i> | <i>1%</i> |
| <i>4. The definitions of the categories of the handicapped for purposes of reservation in employment are given in Annexure 'A' which are as provision contained in “The persons with Disabilities (Equal Opportunities, Protection of Rights and</i> | |

Full Participation) Act, 1995”.

5. The above percentage of reservation should be implemented by means of a 100 point roster and vacancies falling at point 11, 40 & 71 be reserved for the above three categories respectively.

6. The reservation made for the categories is interchangeable amongst themselves, if candidate belonging to a category are not available or if the nature of vacancies in an office is such that a given category of persons cannot be employed.

7. If a vacancy reserved for the handicapped persons is not filled, the reservation shall be carried over for a period of upto three recruitment years. Any recruitment of a physically handicapped candidates will first be counted against the additional quota brought from previous years if an in their chronological order. If such candidates are not available for all the vacancies, the other vacancies carried forward should be filled first and the comparatively later vacancies carried forward.”

The instructions dated 2.5.1997 (Annexure P-2) clearly spell out that there is a reservation to the extent of 3% vacancies in direct recruitment of Class-I, II, III and IV service for physically handicapped persons. The break-up of the 3% reservation is 1% each for candidates, who are suffering from blindness or low vision, hearing impairment and locomotive disability or cerebral palsy. These very instructions reflect a conscious decision that the 3% reservation has to be implemented by means of a 100 point roster and vacancies falling at Roster No.11, 40 and 71 be reserved **“for the three afore-noticed categories respectively”**. Furthermore, reservation made for the categories of handicapped persons in the three categories is interchangeable only if the candidate belonging to one category is not available or if the nature of vacancy in an office is such

that a given category of person cannot be employed.

The issuance of the instructions dated 2.5.1997 (Annexure P-2) and the contents thereof are not disputed by the respondent no.2 i.e. the Department of Public Works (B&R) Branch, Punjab. Even the third respondent i.e. the Department of Social Security and Development of Women and Children (Social Security Branch), State of Punjab admits to the same. It would be apposite to take note that even in the advertisement bearing no.03 (Annexure P-1) the instructions dated 2.5.1997 find a mention in Clause 8 (j) defining categories and particularly the physically handicapped category. In other words, the first respondent i.e. the Punjab Public Service Commission was aware of the issuance of the instructions dated 2.5.1997 (Annexure P-2).

There would be no dispute that the instructions dated 2.5.1997 (Annexure P-2) issued by the Appropriate State Govt. and in furtherance of the mandate contained in Sections 32 and 33 of the 1995 Act would hold the field in so far as recruitment against the two posts of Sub Divisional Engineer (Civil) reserved for physically handicapped category. By applying the 3% reservation envisaged under the 1995 Act and in terms of the implementation of such percentage of reservation against a 100 point roster as per clause 5 of the instructions dated 2.5.1997 (Annexure P-2) the first post out of the two reserved posts of Sub Divisional Engineer (Civil) for the physically handicapped category ought to have been made available to a candidate suffering from blindness or low vision i.e. visually impaired.

The assertion of the petitioner that he was the sole visually impaired candidate, who had appeared in the screening process has gone un rebutted. On behalf of the Commission a stand has been taken that there

was no vacancy reserved specifically for the blind or visually impaired candidates. In other words the Commission has proceeded to hold a screening test pertaining to the 3% reservation provided for physically handicapped without keeping in mind the bifurcation amongst the 3% reservation i.e. 1% each for blind/low vision, hearing impaired and locomotive disability/cerebral palsy. The Commission has proceeded by completely discarding the decision taken by the State Govt. that vacancies falling at Point Nos.11, 40 and 71 in a 100 point roster were reserved for the three categories i.e. blind or low vision, hearing impaired and locomotive disability or cerebral palsy in the same order. The stand taken on behalf of the Commission that there was no vacancy specifically reserved for the blind or visually impaired candidate, is ill founded. The fallacy in the stand taken on behalf of the Commission stands exposed inasmuch as there were no vacancies reserved specifically even for the orthopaedically handicapped candidates. Limiting consideration for appointment against the physically handicapped category on the basis of marks obtained in the screening test and thereby confining consideration to only orthopaedically handicapped candidates, cannot hold good. Such, course of action runs counter to the decision of the State Govt. contained in instructions dated 2.5.1997 (Annexure P-2).

In the reply filed on behalf of the Commission, it has been stated that the instructions dated 2.5.1997 were issued by the Govt. of Punjab (Department of Social Security) and the bifurcation of the vacancies of 1% for each category of physically handicapped candidates was to be done at the level of the Govt., which is the requisitioning and appointing authority. Such stance taken by the premier recruitment agency of the State

can only be termed as unfortunate. A bifurcation of the vacancies of 1% for each category of physically handicapped persons at the hands of the State/Appointing Authority was possible only if the Commission had made specific recommendations for appointment in respect of each category. To the contrary, the Commission has limited the participation of candidates at the stage of Interview for the physically handicapped category only on the basis of marks obtained in a screening test and in derogation to the instructions dated 2.4.1997 (Annexure P-2). The Commission has faulted in taking the 3% reservation for physically handicapped persons as one composite unit and thereby in not having made recommendations separately towards 1% reservation provided for blind/low vision, hearing impaired and locomotive disability/cerebral palsy each. The respondent no.2 department has compounded the mistake by accepting the recommendations made by the Commission blindly. There has been a complete lack of coordination between the requisitioning State Govt. department and the State Recruitment Agency.

A short reply by way of affidavit of the Chief Engineer, Punjab P.W.D. (B&R) Branch on behalf of second respondent has been placed on record. A rather strange stand has been taken and to the following effect:-

“The answering respondent is merely a perform party and has no role to play in the matter pertaining to selection of candidates from amongst the eligible applicants. The selection for the post of S.D.E has been done solely by the PPSC.”

Respondent no.2 department has thus virtually washed its hand off the matter. This Court would have no hesitation in holding that the present case reflects a complete lack of will on the part of the respondent

authorities in carrying forth the mandate of the 1995 Act. Even the decision of the State Govt. contained in instructions dated 2.5.1997 (Annexure P-2) which otherwise held the field in so far as the recruitment process initiated vide advertisement no.03 (Annexure P-1), has been flouted with impunity.

The action of the respondent authorities in having denied to the petitioner consideration for appointment to the post of Sub Divisional Engineer (Civil) as a visually impaired candidate and against the two posts reserved for physically handicapped category is held to be bad in law.

Accordingly, the present petition is allowed. Directions are issued for a process of Interview to be conducted to consider the petitioner for appointment to the post of Sub Divisional Engineer (Civil) under the Department of Public Works (B&R) Branch, Punjab. Such consideration would be against a vacancy that may have arisen subsequent to the issuance of the advertisement at Annexure P-1 or by creating a supernumerary post. In the eventuality of the petitioner being found suitable for being appointed to the post, such appointment would be towards consuming a roster point identified by the State Govt. against the visually impaired category as per decision contained in instructions dated 2.5.1997 (Annexure P-2).

Such exercise be completed within a period of two months from the date of receipt of a certified copy of this order.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

13.11.2017
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No