

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

1. Civil Writ Petition No.13575 of 2016

Poonam Manchanda		...Petitioner
	Versus	
Union of India and others		...Respondents

2. Civil Writ Petition No.13577 of 2016

Satyaveer Singh Dagur		...Petitioner
	Versus	
Union of India and others		...Respondents

AND

3. Civil Writ Petition No.14094 of 2016

Balbir Singh		...Petitioner
	Versus	
Union of India and others		...Respondents

Reserved on : January 17, 2019
Date of decision: March 07, 2019

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Arvind Seth, Advocate
Mr.Brijesh Mittal, Advocate and
Mr.M.K.Bhatnagar, Advocate for
Mr.V.K.Sharma, Advocate for the petitioner(s).

Mr.S.P.Jain, Addl. Solicitor General of India with
Mr.Dheeraj Jain, Advocate for respondent No.1 – UOI.

Mr.Amit Jhanji, Advocate for respondent No.3.

HARINDER SINGH SIDHU, J.

This petition shall dispose of three cases bearing CWP
Nos.13575, 13577 and 14094 of 2016 as the issue involved in these cases is
identical. For the purpose of judgment, the facts are being taken from

CWP No.13575 of 2016.

This petition has been filed impugning the order dated 10.2.2016 passed by Central Administrative Tribunal, Chandigarh Bench whereby Original Application No.060/00506/CH/2014 filed by the petitioner has been dismissed.

The petitioner is a physically handicapped person. Her disability certificate dated 28.12.1987 certifies that she is permanently disabled to the extent of 70% because of post polio residual palsy of both lower limbs. She was selected and appointed as Assistant Accounts Officer in PGIMER on 18.5.1999. After completion of probation she was confirmed on the said post w.e.f. 27.5.2001. She was promoted to the post of Accounts Officer on 25.5.2007. It is her case that she did not claim reservation as a physically challenged person either at the time of appointment as Assistant Accounts Officer or when promoted as Accounts Officer. On both occasions she was considered under the General Category. Vide communication dated 23.1.2014 various posts were created in the PGI including two posts of Senior Accounts Officer (SAO) in Pay Band-III which is a Group-A post. In the absence of its own recruitment rules, the PGI intended to fill the said post 100% by promotion on the pattern of AIIMS. The petitioner submitted a representation dated 28.2.2014 requesting therein that the post falling at Roster No.1 be earmarked for physically handicapped person and she be promoted as such. Vide order dated 24.5.2014, she was informed that the Rules did not provide for reservations for 'person with disabilities' in promotion in Group-A and B posts.

The petitioner filed the Original Application challenging the aforesaid order, which has been dismissed by the impugned order. The learned Tribunal considered the various office memorandums, particularly those issued after the enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the 1995 Act') and concluded that various office memorandums and instructions issued since 1989 have provided for 3% reservation of the vacancies in case of promotion to Group C and Group D posts in which direct recruitment does not exceed 75%. There is no provision for any reservation in Group A and B posts in case of promotion.

The judgment of the Tribunal cannot be upheld in the light of the subsequent decision of Hon'ble Supreme Court in **Rajeev Kumar Gupta v. Union of India, (2016) 13 SCC 153** in which it has been held that once a post is identified as suitable for being filled by up by persons with disabilities, it must be reserved for persons with disabilities irrespective of the mode of recruitment adopted by the State for filling up of the said post, whether by direct recruitment or by promotion.

The issues under consideration are spelt out in para 2 to 6 of the judgment as under:

“2. The petitioners are employed with Prasar Bharati Corporation of India (hereinafter “Prasar Bharati”), a statutory corporation brought into existence by the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (hereinafter “the 1990 Act”). The petitioners are “persons with disability” (hereinafter “PWD”) as defined under Section 2(t) of the Persons with Disabilities (Equal Opportunities,

Protection of Rights and Full Participation) Act, 1995 (hereinafter “the 1995 Act”). They filed this writ petition aggrieved by two Office Memoranda No. 36035/16/91-Estt. (SCT) dated 18-2-1997 and No. 36035/3/2004-Estt. (RES) dated 29-12-2005 (hereinafter impugned Memorandum I and II respectively) issued by the Department of Personnel and Training, Government of India. The petitioners’ grievance is that the impugned memoranda deprive them of the statutory benefit of reservation under the 1995 Act w.r.t. Group A and Group B posts in Prasar Bharati.

3. Posts in Prasar Bharati are classified into four Groups—A to D. Each group consists of a number of classes of posts and in each class there are a number of posts. Certain posts were identified by the Government of India vide Notification No. 16-70/2004-DD.III dated 18-1-2007 (hereinafter “the Notification”) as posts suitable for being filled up with PWD (hereinafter “the identified posts”); an exercise in compliance with the mandate under Section 32 of the 1995 Act. After such identification, the “appropriate Government” is mandated under Section 33 to reserve not less than three per cent of identified posts in favour of PWD.

4. Under the regulations framed under the 1990 Act, various posts (falling in Groups A to D) in Prasar Bharati are to be filled up by three different modes i.e. direct recruitment, promotion and some posts partly by direct recruitment and partly by promotion.

5. Memorandum II provides for reservation in favour of PWD to the extent of three per cent in all the identified posts in Prasar Bharati, when these are filled up by direct recruitment. However, it provides for three per cent reservation in identified posts falling in Groups C and D irrespective of the mode of recruitment i.e. whether by direct recruitment or by promotion. As a consequence, the statutory benefit of three per cent

reservation in favour of PWD is denied insofar as identified posts in Groups A and B are concerned, since these posts, under relevant regulations of Prasar Bharati are to be filled up exclusively through direct recruitment.

6. The crux of the issue before us is legality of denial by the impugned memoranda of the statutory benefit of three per cent reservation in identified posts falling in Groups A and B. Such denial, the petitioners contend, violates the State's obligation under Sections 32 and 33 of the 1995 Act and subverts of the object of the said Act enacted by Parliament inter alia to secure opportunities for full participation of PWD in matters of employment."

The conclusion is contained in paragraph 24 and 25 of the judgment:

"24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. 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.

25. In the light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three per cent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."

The office memorandum denying the benefit of three per cent reservation in appointment to Group A and Group B posts were quashed.

It is no doubt true that in **Special Leave to Appeal (C) No(s). 24994/2016 SIDDARAJU Vs. STATE OF KARNATAKA AND ORS** the question whether persons, governed under “The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” can be given reservation in promotion has been referred to a larger bench and the matter is pending consideration before a three judge bench of Hon'ble Supreme Court. However, there is no final determination of the issue so far.

Pending the said decision there is no reason why the petitioners should be denied the benefit of the decision of Hon'ble Supreme Court in **Rajeev Kumar Gupta's** case.

Consequently, these petitions are allowed. The order of the Tribunal is quashed. The respondents are directed to consider the case of the petitioners for promotion being persons with disability under the three per cent reservation provided for persons with disability.

(RAJIV SHARMA)

JUDGE

(HARINDER SINGH SIDHU)

JUDGE

March 07, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No