

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE.

WPA 10141 of 2021

UNION OF INDIA & ORS.

VS.

PRABIR HAZRA & ANR.

For the Petitioner/UOI : Mr. Dhiraj Trivedi,
Mr. Dwijadas Chakraborty
....Advocates

For the Respondent No.1 : Ms. Somali Mukhopadhyay,
Mr. Sudipta Narayan Ghosh
....Advocates

Heard on : 17.12.2021, 11.01.2022, 11.02.2022,
29.04.2022, 11.05.2022, 17.06.2022,
12.07.2022 and 02.08.2022.

Judgment on : 20th January, 2023.

Arindam Mukherjee, J.:

1. Union of India in this writ petition has challenged the order dated 12th January, 2021 passed by the Court of the Chief Commissioner for Persons with Disabilities appointed under the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the said Act). The said Chief Commissioner being the respondent no.2 herein, recommended for giving appointment to the respondent no.1 against recruitment notification dated

5th April, 2018 bearing no. Rectt./R-100/online/GDS/VOL-VI for appointment of Gramin Dak Sevaks (in short GDS) online selection Cycle-1 for filling up 5778 posts comprising of Gramin Dak Sevak Branch Post Master (in short “GDSBPM”), Gramin Dak Sevak Mail Deliverer (in short “GDSMD”), Gramin Dak Sevak Packer (in short “GDS Packer”), Gramin Dak Sevak Mail Man (in short “GDSMM”), Gramin Dak Sevak Stamp Vendor (in short “GDSSV”) and Gramin Dak Sevak Mail Carrier (in short “GDS Packer”). 220 seats out of the said 5778 seats were reserved for Physically Handicapped (PH) or Disabled candidates. In Clause M of the said recruitment notice the “Permissible Disability for Physically Handicapped Candidates” was clearly stated. For the post of GDSBPM, GDSMD, GDS Packer, GDSMM and GDSSV – One Arm affected (OA), One Leg affected (OL), Low Vision (LV) and Hearing Impaired (HH) were eligible to apply. In case of GDS Mail Carrier Post – OL, LV and HH were eligible to apply.

2. In the said recruitment process, on the recommendation of the GDS committee a reservation quota was introduced within PH Category to fill up the vacancies in reserved post under PH Category from differently abled persons for which paragraph 5 (a) of the Postal Directorate’s letter dated 21st June, 2017 with letter no.17-8/2017-GDS was inserted in the said recruitment notification directing all recruiting authorities to maintain a percentage of reservations for differently abled persons in regular appointment in Gr ‘C’ cadre to all categories of GDS posts except for persons with benchmark disability ‘Blind’ for all categories of GDS.
3. Pursuant to such recruitment notification having been issued the respondent no. 1 applied for the post of GDS Packer under PH Category being differently abled person. The respondent No.1 was shortlisted and

was called for verification of certificates and testimonials. After scrutinizing the disability certificate and verifying the overall physical condition of the respondent No.1, the Assistant Superintendant of Post Offices, Burdwan 1st Sub-Division issued a notification on 29th January, 2020 cancelling the candidature of the respondent no. 1 on the ground that he was not eligible for being appointed to the post of GDS for his disability.

4. Being aggrieved by the cancellation of his candidature at such belated stage, the respondent no.1 made a complaint to the Respondent No.2 – the Chief Commissioner for Persons with Disabilities. Upon perusal of all materials on record, the Commissioner for Persons with Disabilities recommended the appointment of respondent No. 1 in a suitable post of GDS inter alia for filling up of 7 vacant posts. It was such order passed by the Commissioner which was thrown to challenge by the present writ petitions in the instant case.
5. The present writ petition proceeds on the basis that the respondent No.1 was 100 per cent visually impaired, and as such did not come within the category low vision as in the recruitment notice for which the respondent no. 1 could not have applied under PH Category. At the stage of short-listing there was no scope to judge the degree of disability as it was done on the basis of declaration made in the application form. At the earliest when it was detected that the disability of the respondent No.1 being 100% blind was an impediment in carrying out the work responsibilities of the post for which application was made, his candidature was cancelled. There is no malice or illegality according to the writ petitioners in cancelling the candidature of respondent No.1. The short-listing had created no matter of right to get appointment to the post of GDS Packer or to be appointed in

any such post of GDS ignoring the requirement of job profile. The recruitment notification dated 5th April, 2018 allowed only persons with low vision to apply. Moreover, paragraph 5(a) of the memo dated 21st June, 2017 as referred to hereunder have excluded blind persons like the respondent No. 1 from the zone of consideration. The purpose of the notification according to the petitioner was to ensure that the provisions of the said act are strictly complied with so that persons differently abled fulfilling the eligibility criteria get an opportunity to be self-dependant. The petitioners say that they have no adverse interest as against the respondent No.1. The recommendation of respondent No.2 cannot be complied with in view of job profile for which the recruitment notice specified “low vision” instead of “blind”. The online application also provided for the degree of disability to be furnished. In the application the respondent No.1 with clarity did not provide the same which resulted in short-listing of the application of the respondent No.1. On physical verification after short-listing when it was noticed that the respondent No.1 due to his vision condition does not satisfy the eligibility criteria and in any event will not be able to perform the job requirement, his candidature was cancelled. The petitioners had no intention to deprive the respondent No.1. The respondent No.2 according to the petitioner did not take these factors into account while passing the impugned order. The respondent No.2 considered a previous appointment to arrive at the conclusion. In the previous advertisement the vision condition was not mentioned which resulted in selection of candidates who are not in a position fulfill their job requirement due to their vision condition. Special Care was, therefor, taken in the subject recruitment notice specifying “low vision”. An

applicant having vision inferior to the grade of low vision as specified in the said act automatically disqualifies himself/herself for not fulfilling the required criteria laid down in the recruitment notice.

6. The petitioners submit in paragraph N-7 of the said notification it was clearly stated that mere getting SMS or any other communication on selection will not entitle the candidate to claim for regular selection and/or appointment. The final selection for appointment was based on satisfactory completion of verification and genuineness of all educational and other documents relied upon on the same being produced by the candidate to the concerned appointing authorities. The respondent no.1 did not disclose the vision condition with the Disability Certificate which was necessary to compute the percentage of disability i.e. condition of vision which was one of the criteria to be considered at the time of short-listing the application. Had the respondent no. 1 disclosed his vision, his candidature would have been rejected at the threshold for non-fulfilling the eligibility criteria.
7. The petitioners say that the respondent no.1 had been selected on the basis of his academic results and other qualifications but at the subsequent stage when his disability extent became known at the time when originals were produced for physical verification it was found that the said respondent No.1 is not eligible for any of the posts of GDS which resulted in cancellation of his candidature.
8. Challenging such rejection of candidature the respondent no.1 approached the Court of Chief Commissioner for Persons with Disabilities (Divyangjan) which resulted into the order impugned.
9. The respondent no.1 submits that the office memorandum dated 21st June, 2017 specifically provide for preference to be given to persons with

disabilities for appointment to the relevant posts by reserving the same to be filled up by disables (Divyangjan). The reservation was done to fulfill the legislative intent as expressed in 2016 Act and carried forward by the various government departments. Eliminating the petitioner suffering from blindness would frustrate the whole object of the 2016 Act. The government departments to give efficacy to such policy have identified post that can be filled up through Divyangjan. The post of GDS Packer is one of such category.

10. The respondent No.1 by referring to Clause 3, 4 and Clause 6 of the memorandum dated 21st June, 2017 says that persons with 100% visual disabilities are entitled to be appointed to the post of mail carriers and any departure or deviation from such guidelines or direction would tantamount to illegality and arbitrariness in government appointment. Therefore, any stipulation contained in the recruitment notification dated 5th April, 2018 contrary to the stipulation in the memorandum dated 21st June, 2017 thereby excluding persons with 100% visual disabilities from zone of consideration was clearly illegal and could not have conferred any jurisdiction or authority upon the writ petitioners to refuse to offer employment to respondent no.1.
11. The respondent no.1 also drew attention of this Court to the order passed by the Chief Commissioner, respondent no.2 from which it is evident that more than one person with 100% blindness have already been appointed and are successfully discharging their duties as GDS in the district of Murshidabad for several years. The recruiting authorities, therefor, cannot make discrimination as against the respondent No.1 in any arbitrary manner by going against the precedent. The respondent No.1 says when

persons having 100% blindness like respondent no.1 are already employed as GDS for a considerable period of time and have been discharging their duties; the petitioners have no cogent reason to reject respondent no.1 citing his blindness as an embargo in performing the duties.

12. The respondent No.1 submits that an impression is sought to be created by the writ petitioners that in some categories of GDS knowledge of cycling was a mandatory pre-requisite for appointment. Thus, the respondent No.1 suffering from 100% blindness will not be able to do cycling and is as such completely unfit for being considered to be appointed to the relevant post. The respondent No.1 submits that on a proper interpretation of Clause K makes it clear that only those GDS attached with “outdoor activities” are required to know cycling and a GDS is not mandatorily required to perform outdoor duties around for which cycling is mandatory.
13. The respondent No.1 also denies to have suppressed any information or having furnished any false information regarding his physical abilities. The recruiting authority after having considered the respondent no.1 to be fit to appear in the recruitment test taking into consideration the physical disabilities stated in the application cannot subsequently alter their stands or cancel the candidatures of respondent no.1.
14. At the relevant point of time when the recruitments notification dated 5th April, 2018 was published, the Department of Posts, Gramin Dak Sevaks (Conducts & Engagement) Rules, 2011 was in force. The said Rules according to the respondent No.2 had not excluded persons with 100% visual disability from the zone of consideration for recruitment to the posts of Gramin Dak Sevaks. No recruitment notification, therefore, could have validly imported any eligibility condition, that did not find place in the

statutory rules. Such eligibility conditions could also have had no enforceability in law as well by reason of having been de hors the statutory provisions. Exclusion of persons with 100% visual disabilities from the zone of consideration was not only contrary to the prevalent statutory rules but was also in breach of the mandatory provisions of the Rights of Persons with Disabilities Act, 2016. In support of the contention that the recruiting authorities could not have imported an eligibility criteria into the recruitment notification de hors the statutory provisions, the respondent no. 1 relies upon the judgments reported at **2017 (4) SCC 568 [Ranajit Kumar Meher vs. State of Orissa and Others]**. The respondent no. 1 also relies upon judgment reported at **2013 (10) SCC 772 [Union of India and Anr. Vs. National Federation of the Blind and Others]** and **2010 (7) SCC 626 [Government of India and Anr. Vs. Ravi Prakash Gupta and Anr.]** respectively, to fortify the argument that it was mandatory upon the authorities concerned to reserve 3% of the total vacancy in the strength of a cadre in the instant case GDS for persons with disabilities, and not on basis of the vacancies available in the identified posts. The Supreme Court, in the aforesaid judgment held that the differently abled persons cannot be deprived of the appointment on such basis only and to ensure that the hurdles posed by such deficiencies should not affect the service to be provided and has laid down several remedial measures to be provided by the employer.

15. The respondent no. 1 further seeks to rely upon the Judgment passed by an Hon'ble Division Bench of the High Court of Madhya Pradesh in **Rashmi Thakur vs. High Court of M.P. and Others reported at 2018 (4) MPLJ 60**, where the Hon'ble Division Bench has criticized the attitude and mind

set of the employers in denying employment to the visually impaired persons on the basis that their disability as it is likely to hinder them from performing their day to day duties. In absence of any such exemption, the establishment is bound to reserve post for the visually handicapped candidates.

16. The respondent no.1 also relies upon a judgment passed by an Hon'ble Division Bench of this Court in **Eastern Coalfields Ltd. Vs. Sujit Kumar Mahato and Ors.**, reported at **(2019) 1 Cal LJ 474** to buttress the point that it is the substantive nature of work which has to be the primary point of consideration for a Court to decide upon cases where employment of persons with disability is concerned and medical report cannot be sole ground of rejection of appointment of the person with visual impairment. The respondent No.1 submits that writ petitioners have illegally, wrongfully and in an arbitrary manner cancelled his candidature after short-listing on ground of ineligibility to be appointed to the post of GDS being vision impaired. Divyangjan were not ineligible to participate in the selection process for the post of GDS and to get appointment thereunder. The whole basis of the said Act will be frustrated if the Divyangjan are eliminated from participating and getting appointment in Government job like those advertised under the said recruitment notice. Knowing fully well that Divyangjan are specifically abled, the legislature is to provide such Divyangjan with a dignified life, and self dependence and financial support have introduced the said Act. Section 34 of the said Act, the recruiting authorities are obliged to appoint not less than 4% of the total number of vacancies from amongst the persons with disabilities. Out of the said vacancies, 1% of the total number of vacancies was necessarily required to

be filled up by persons with benchmark disabilities like the respondent no.1 Blindness was a benchmark disability, as defined under Section 34(1)(a) of the said Act. By reason of such statutory mandates, no recruitment process for Government jobs could also have excluded blind persons from the zone of consideration and in the instant case for appointment to the posts of GDS. Any interpretation of the recruitment notification dated 5th April, 2018 by the petitioners that frustrate such very object and purpose of the statute is, therefore, not acceptable in law.

17. After hearing the parties and considering the materials on record the questions which fall for consideration are as follows:-

- a) Whether the respondent No.1 satisfies the eligibility criteria laid down in the subject recruitment notice.
- b) Does the 2016 Act and the Rules otherwise permit the respondent No.1 with 100% blindness from being appointed as GDS?
- c) Whether the recommendation made by the respondent No.2 by way of the order impugned is valid and should be accepted by the petitioners.
- d) Whether the respondent No.1 after participating in the recruitment process and on being unsuccessful later on say that the recruitment notice was illegal.

The recruitment notice dated 5th April, 2018 clearly provides that persons with low vision are eligible to attend. The schedule provided under clause 2 (zc) of the said act demarcates Visual impairment into two categories as a)blindness meaning a condition with total absence of sight or visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction or limitation of the field of vision subtending an angle of

less than 10 degree and b) “low vision” meaning visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections or limitation of the field of vision subtending an angle of less than 40 degree upto 10 degree.

18. The question which falls for consideration as to whether the respondent No.1 falls within the category 3 of low vision as specified in the advertisement and can the respondent no.1 perform the primary duties assigned for the post of GDS Packer. The respondent No.1 applied for post of GDS Packer (GDS Packer). In terms of the notification dated 5th April, 2018, the job profile of the GDS Packer primarily includes carriage of mail bag containing registered articles, parcels, insured articles, other valuable documents and cash up to certain limit from one post office to the other. The person appointed also has to assist GDSBPM in managing office duty and marketing, providing door step banking under IPPB alongside counter duties, organizing *melas*, business procurement and combined duty of GDSBPM when ordered. There is no question of presumption that the field work primarily entailed with GDS Packer is not suitable for 100% blind candidate. Reading the addresses, written in ordinary form, managing counters thereby providing banking service or deal with cash is an act of impossibility for a 100% blind like the respondent No.1.

The Ophthalmological test report of the respondent No.1 submitted by the Regional Institute of Ophthalmology, Medical College & Hospital, Kolkata (hereinafter referred to as RIO) after conducting the test in terms of the order dated 11th February, 2022 shows that the respondent No.1 is 100% vision impaired. The respondent No.1, therefor, does not also come under the category low vision even according to the statutory provisions. The

respondent no. 1, therefor, does not fulfill the eligibility criteria of the recruitment notice. The respondent No.1 gets disqualified on this ground alone. Reliance in this context can be placed in the judgment reported in **2011 (12) SCC 85 [Bedanga Talukdar vs. Saifudaullah Khan and Ors.]** as followed in **2019 (17) SCC 373 [Sanjay Kumar Dixit and Ors. vs. State of Uttar Pradesh and Ors.]** and **2021 (3) SCC 755 [High Court of Kerala vs. Reshma A and Ors.]**. In paragraph 11 and paragraph 41 respectively of the judgments in Sanjay Kumar (supra) and Reshma (supra) which clearly hold that a recruitment process is to be conducted as per the eligibility criteria mentioned in the advertisement and no departure therefrom is permitted.

19. The object of 2016 Act has been explained in details by the Hon'ble Supreme Court in the judgment reported in **2021 (3) SCC 370 [Vikash Kumar vs. Union Public Service Commission & Ors.]**. In the said judgment the concept of reasonable accommodation has been discussed in details referring to the remedial measure against disability as a social construct. The conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respect their needs and facilities the creation of an environment in which the societal barriers to disability are progressively answered. In the instant case considering the appointment of the respondent No.1 in the perspective as laid down in Vikash Kumar (supra) does not permit me to uphold the recommendation made by respondent No. 2. 100% vision impaired is an obstacle to perform the responsibilities in the post for which the respondent No.1 applied. If

the respondent No.1 is permitted to work he has to read and deliver mails and parcels or has to manage counter to provide banking services or to deal with cash, the respondent No. 1 being 100% blind will not be able to do so, the society instead of being accommodative will rebuke him on finding the respondent No. 1 being unable to perform his duties which is likely to create an ambiance at the office which will be of disrespect than of self-respect. It is difficult to accept that a person expecting delivery of articles or having come to a post office to avail services will be accommodative when the respondent No.1 will not be able to perform the job responsibilities as GDS Packer due to his 100% vision impaired. In such a case, the respondent No.1 will be subjected to mental stress and even torture. The respondent No.1, if is, unable to fulfill his job profile requirement which involves public dealing is likely be exposed to public outrage even if the respondent No.1 is accommodated by his colleagues as neither the employer nor the colleagues will be able to shield the respondent No. 1 to such an extent on regular basis.

20. The order of the respondent No.2 was passed without taking into account the 100% blindness of the respondent no.1, the practical aspect of the societal barriers and the likelihood of public outrage. The impugned order passed by the Respondent no.2 was mainly on the ground that two Divyangjans suffering from 100% visual impairment were already employed on the post of GDS Murshidabad in 2013. The instant case can be distinguished from the said case as there was no stipulation as to low vision in the advertisement and the applicants therein were not called upon to provide their degree of disability and sub category unlike the case in

hand. In absence of such stipulation the applicants were automatically identified as Divyangjans in terms with the 2013 notification and qualified for the job. In the instant case the applicants were given the opportunity to state their degree of disability and to produce requisite documents to support thereof at the time of verification and scrutiny keeping in mind the provisions of the recruitment notification.

The respondent No.2 also did not make any effort to have the vision of the respondent No.1 tested by an expert board before recommendation. The appointing authority even after the recommendation has the authority in law to inform the recommended candidate the reasons for not being able to appoint him/her. The matter can also be referred to an expert committee to be constituted as per recommendation in *Vikash Kumar (supra)*. The petitioner, although have not resorted to any such step but have filed the writ petition that directly does effect the end result in the instant case as this Court has got the vision condition of the respondent No.1 tested by the RIO and has considered the job requirement of the post for which respondent No.1 has applied.

21. Last but not the least, the law is now well settled as to the scope of judicial interference when a person participates in the recruitment process and then fall back to challenge the same on being unsuccessful. The respondent No.1 has participated in the recruitment process as per the recruitment notice dated 5th April, 2018. After being unsuccessful the respondent No.1 has challenged the same alleging the low vision in an eligibility criteria implanted in the notice de hors the statutory provisions. The Hon'ble Supreme Court in the judgments reported in **1995 (3) SCC**

486 [Madan Lal v. State of J&K], 2002 (6) SCC 127 [Chandra Prakash Tiwari v. Shakuntala Shukla], 2006 (6) SCC 395 [K.H. Siraj v. High Court of Kerala], 2007 (8) SCC 100 [Union of India and Ors. Vs. S. Vinodh Kumar and Ors.], 2008 (4) SCC 619 [Sadananda Halo vs. Momtaz Ali Sheikh] and 2020 (2) SCC 173 [Anupal Singh vs. State of Uttar Pradesh].

In view of the aforesaid discussion the three issues are answered in the negative. The respondent No.1 did not fulfill the eligibility criteria, the provisions of the 2016 Act and the rules framed thereunder applied to the facts of the case does not permit the respondent No.1 being appointed in the post for which he applied and the order of the Chief Commissioner (respondent No.2) dated 12th January 2021 is set aside. The order of cancellation of candidature is also held justified. The writ petition is accordingly allowed.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)