



\$~68

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 16550/2024 & CM APPL. 69999/2024**

VIJAY PRATAP SINGH CHAUHAN

.....Petitioner

Through: Mr. Uddhav Pratap, Mr. Y.R. Sharma,
Advocates

versus

**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH
DISABILITIES & ORS.**

.....Respondents

Through: Mr. Nitinja Chaudhary, SPC with
Mr. Rahul Mourya, Advocate with
Mr. Kanishk Kharbanda, GP

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

02.12.2024

%

1. The present petition impugns order dated 01st May, 2024 passed by the Chief Commissioner for Persons with Disabilities (Divyangjan).¹ Through the impugned order, the Chief Commissioner declined the relief sought by the Petitioner with respect to his promotion, on the ground that he had failed to demonstrate any deprivation of his rights as a person with disabilities or any discrimination on account of his disability.
2. The Petitioner asserts that he is a "Person with Benchmark Disability"² as per Section 2(r) of the Rights of Persons with Disabilities Act, 2016, with 85% permanent disability in both ears, caused by hearing

¹ "Chief Commissioner"

² "PwBD"



impairment during discharge of service. He states that he joined the services of the Naval Armament Inspectorate, Ministry of Defence as Chargeman (Mech) in NAI, Goa on 13th July, 2015. Thereafter, he got transferred from Goa NAI to Delhi DGNAI and was also promoted as Foreman (Mech) from Level 6 to Level 7, and has since been discharging his duties as such.

3. The Petitioner places reliance on the Permanent Disability Certificate dated 19th January, 2023, which stipulates that he has 85% permanent disability in both ears. In furtherance of the said development, Respondent No. 2 had issued communication dated 9th March, 2023, informing the Petitioner regarding change of his category from General to General PwBD.

4. The Petitioner had applied for promotion to the post of Civil Technical Officer (Mech)³. He contends that although his name was reflected in the Seniority List, yet he was not considered for promotion despite being the only PwBD in the said List. In this regard, the Petitioner made representation dated 21st April, 2023 to Respondent No. 4 for consideration of his candidature. Parallely, he also invoked the jurisdiction of this Court by filing W.P.(C) 6419/2023 against non-consideration of his candidature in promotion to CTO (Mech) against PwBD quota as per Office Memoranda dated 17th May, 2022, 20th September, 2022 and subsequent OMs.

5. The Division Bench of this Court disposed of the said petition through order dated 16th May, 2023 in the following terms:

“1. Vide the present petition, petitioner prays as under:

a) To quash/set-aside the Penal List of Promotion dated 03.05.2023 to the Grade of Civil Technical Officer Mechanical for the year 2023;

³ “CTO (Mech)”



b) To direct respondent nos.2 & 3 to issue a fresh penal list of promotion, including the name of the petitioner in the same as promoted from level 7 to level 8.

2. Learned counsel for the petitioner submits that for the aforesaid relief(s), petitioner made representations dated 21.04.2023, however, till date, the said representation has not been decided by the respondents.

3. In view of the above, we hereby direct the respondents to decide the above-said representation filed by the petitioner within four weeks from today and communicate the decision thereof to the petitioner within one week thereafter with reasoned order.

4. With the aforesaid directions, the present petition as well as pending application are disposed of.

5. Needless to say, if the petitioner feels aggrieved by the decision of the respondents on his representation, he may approach the appropriate forum.

6. We hereby make it clear that no promotion shall be affected by the respondents till the representation of the petitioner is decided.

6. Aggrieved by the denial of promotion under PwBD quota, the Petitioner also approached the Court of the Chief Commissioner to consider his promotion. In the said proceedings, the Chief Commissioner passed the impugned order dated 1st May, 2024, recording the following observations:

"7. Observations and Recommendations:

7.1 After hearing both the parties, this Court observed that he Complainant's disability certificate is dated 19.01.2023. As per the DOP & T's O.M. dated 10.06.2009, he will be eligible for benefit of disability from the date he submitted the copy of his disability certificate in his office.

7.2 This Court is of the opinion that the request for relaxation of qualifying service by three months is in the nature of relaxation in the eligibility criteria and is not a relaxation in the standards of suitability. In terms of para 8 of the DoPT OM dated 17.05.2022, such relaxation is not permissible. In so far as his claim for promotion on the grounds that one vacancy was reserved for PwBD and he was the only person with benchmark disability in the feeder grade is concerned, the opening sentences of para 13.1 of the aforesaid instructions of the DoPT is relevant and is quoted as under:

"13.1 While filling up the reserved vacancies by promotion by selection, those PwBD candidates who are within the normal zone of consideration, shall be considered for



promotion. However, if adequate number of PwBD candidates of the respective category are not available within the normal zone, the zone of consideration may be extended to five times the number of vacancies and the PwBD candidate falling within the extended zone may be considered for promotion. In the event of non availability of candidates even in the extended zone, the vacancy shall not be filled and be carried forward to the subsequent year ... "

7.3 There is no provision to further extend the extended zone of consideration for effecting reservation in promotion.

7.4 This Court concludes that the Complainant has failed to establish any case of deprivation of his rights as a person with disabilities or of any discrimination on the grounds of disabilities. As such, the relief sought can not be granted.

7.5 However, the Respondent made a mistake by filling all the seven vacancies including the one reserved for PwBD and merely carrying forward the reservation. As per section 34 of the RPwD Act, 2016 and para 13 of the DoPT OM dated 17.05.2022, the reserved vacancy should not have been filled in the first recruitment year and it should have been carried forward to the subsequent year.

7.6 This Court directs the Respondent to submit an Action Plan outlining the corrective measures it wishes to take for the above-mentioned irregularity within one month from the date of this Order. No further intervention is required in this matter.

7.7 The Case is disposed of accordingly."

7. The Petitioner, in fact, filed another W.P.(C) 8151/2024 before this Court, alleging violation of his fundamental rights. In the said petition, the Petitioner reiterated the grievance concerning the denial of promotion, raising the same grounds as those presented in the present petition. Mr. Nitinjya Chaudhary, Senior Panel Counsel for the Union of India, states that the Petitioner also challenged the transfer order in the said petition. The petition was disposed of by the Division Bench *vide* order dated 20th May, 2024 in the following terms:

"1. Mr. Nityanjay Chaudhary, learned CGSC appearing for the respondent submits that the petitioner being a holder of civil post, the subject matter of the petition shall lie before the Central Administrative Tribunal.



2. This submission of Mr. Chaudhary is contested by the counsel for the petitioner by stating, there are violation of fundamental rights, which shall make the petition maintainable. We do not agree with the submission as the Tribunal can also consider such a plea of the petitioner.

3. We deem it appropriate to relegate the petitioner to the Central Administrative Tribunal. The petitioner shall approach the Tribunal in accordance with law. The petition and the connected application are closed with liberty as above.”

8. The Division Bench of this Court has opined that the appropriate remedy for the Petitioner’s grievance lies before the Central Administrative Tribunal. It is pertinent to note that the role of the Chief Commissioner is primarily focused on safeguarding the rights of persons with disabilities, and operates within a limited scope, specifically to determine whether a complainant has suffered any discrimination or deprivation of rights on the ground of disability. On this aspect, the Chief Commissioner acted well within the scope of its powers in concluding that the Petitioner has failed to demonstrate violation of fundamental rights on the ground of disability. As can be seen from the extracted portion of the impugned order, the Chief Commissioner has held that there is no provision to extend the extended zone of consideration for effecting reservation in promotion. Furthermore, with respect to the mistake noted by the Chief Commissioner, Respondent Nos. 3 and 4 have been directed to submit an Action Plan to redress the anomaly.

9. As regards the issue of the Petitioner’s entitlement to promotion, the Court is of the opinion that the Chief Commissioner is not the appropriate forum to grant such relief, and that the appropriate remedy thereof lies before the Central Administrative Tribunal.

10. In light of the above, the Court is not inclined to entertain the present



petition.

11. Accordingly, the present petition is dismissed along with pending application.

SANJEEV NARULA, J

DECEMBER 2, 2024/ab