

12.03.2025
Court No.23

DL/Item No.-4
[AB/Milan/PP]

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 25030 of 2023

Union of India & Ors.
versus
Sri Bablu Haldar & Anr.

Mr. Dwijadas Chakraborty
....for the Petitioners

The respondents remained unrepresented on 16th November, 2023. Again on 15th January, 2025 when the matter was taken up and then again on 12th February, 2025, the respondents remained unrepresented, even though the respondents were served. The presence of the respondent no. 1 was absolutely necessary as his rights are likely to be affected in the event an order is passed in favour of the petitioners.

The petitioners are the Union of India and the officers of the Department of Posts, Ministry of Communications. On 3rd March, 2025 when the matter was last taken up, on finding that the respondents and in particular the respondent no.1 remained unrepresented, the petitioners were directed to issue fresh notice to the respondents.

The affidavit of service filed in Court today demonstrates that the respondents, and in particular the respondent no.1 have received the notice as well as

the supplementary affidavit, which the petitioners intended to file.

The respondents and in particular the respondent no.1 remains unrepresented even today and as such, the matter is taken up in the absence of the respondents.

The case of the petitioner is that on 5th April, 2018, the petitioner invited applications for the post of Gramin Dak Sevak (in short, "GDS") which is equivalent to the post of Village Postman. The respondent no.1 applied for the post of GDS Packer under Bathuadahari S.O. under Nabadwip Head Office.

In terms of the procedure laid down, the respondent no.1 was selected without detailed scrutiny of his disability. However, before any appointment was offered as per the laid down procedure, it was necessary for physical verification of the documents. The respondent no.1 approached the concerned authority of the petitioner for scrutiny of documents but on production of documents and considering the information contained in the application form as well, it was found that the respondent no.1 was 100% blind. The selection of the respondent no.1 was, therefore, cancelled and the respondent no.1 was declined the appointment.

The respondent no.1 had challenged this decision before the Chief Commissioner for Persons with

Disabilities (Divyangjan). The said Chief Commissioner passed an order on 27th December, 2022. The operative portion of the said order is set out hereunder:-

“5.5 Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Persons with Disabilities Act, 2016”.

The petitioner (employer) has filed this writ petition challenging the order of the said Commissioner dated 27th December, 2022.

After hearing the petitioners and considering the materials on record, I find that the advertisement provided for allowing persons with low vision to apply for GDS Packers. The respondent no.1 is 100% vision impaired and, as such, cannot be considered for being appointed for GDS Packers where at the place work such GDS Packers are required to perform certain duties including riding of bicycle which cannot be done by 100% vision impaired person. A person with 100% vision impaired cannot, therefor, be appointed where the person has to perform duties outside the office premises with the support of vision which may be low but not 100% impaired.

It is also seen in a relevant circular dated 8th March, 2019 issued by the Government of India, Ministry of Communications, Department of Posts, which is annexed to the writ petition, that a candidate with blindness or even low vision was entitled to apply for the post in question.

The petitioners says that after considering the case of the respondent no.1 in the light of his disablement as appears from the disablement certificate issued by the Kandi S.D Hospital, Murshidabad that the petitioner is 100% blind. The respondent no.1, therefor, does not fulfill the requisite criteria under the concerned advertisement. The candidature of the respondent no.1 was, therefor, rightly rejected by the petitioners.

The respondent no.1 being aggrieved by and dissatisfied with such decision, approached the Court of the Chief Commissioner for Persons with Disabilities (Divyangjan) thereby challenging the act of disqualify the respondent no.1.

On a perusal of the records, it is apparent that the respondent no.1 has not fulfilled the requisite criteria fixed under the selection process. That apart and in any event, being 100% vision impaired, the respondent no.1 cannot ride bicycle which is a mandatory requirement for performing the duties of GDS. The respondent no.1 with 100% vision impaired also cannot perform most of the functions of GDS Packer.

The Commissioner, therefor, did not take into account this aspect as also the Government Circular dated 8th March, 2019 specifying the persons with disabilities who can be considered for being appointed as GDS/GDS Packer. It also appears from the supplementary affidavit used by the petitioners that the vacancy against which the respondent no.1 applied for has been filled up in the year 2022.

It is well-settled principle of law that in the event the vacancies are filled up, a candidate even if satisfies the Court to hold in his/her favour then also such appointment cannot be either recommended or given due to the fact that there exists no vacancy to accommodate him/her.

In this context, one can rely upon the judgment reported in **2010(2) SCC 637 (Rakhi Ray & Ors. Vs. High Court of Delhi & Ors.)** and **2010(12) SCC 204 (Public Service Commission, Uttaranchal Vs. Mamta Bisnt & Ors.)**.

That apart and in any event, the Commission has failed to consider the medical disability certificate issued in favour of the respondent no.1 by a Government Hospital.

In the facts and circumstances, as aforesaid, the order dated 27th December, 2022 passed by the Court of the Chief Commissioner for Persons with Disabilities

(Divyangjan) is set aside and/or quashed. The respondent no.1 is held to be unfit for the post of GDS/GDS Packer.

Nothing further remains in this writ petition to be decided. The same is disposed of accordingly.

Since the respondents remain unrepresented and no affidavits have been called for, the allegations made in the writ petition are deemed to have not been admitted by the respondents.

The petitioner shall serve a copy of this order on the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)