



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 17TH DAY OF FEBRUARY, 2025

**BEFORE
THE HON'BLE MR. JUSTICE M.NAGAPRASANNA**

WRIT PETITION NO.103250 OF 2024 (S-PRO)

C/W

WRIT PETITION NO. 104135 OF 2021 (S-RES)

IN WRIT PETITION NO.103250/2024

BETWEEN:

MOHAMMED GOUSE ATTAR,
AGE: 58 YEARS,
OCC: SENIOR TECHNICIAN,
R/O: BANDIWADE BASE,
PATTHAR POD GALLI,
C.B.T. HUBBALLI – 580 020.

...PETITIONER

(BY SRI ABHISHEK L. KALLED, ADVOCATE)

AND:

THE SOUTH WESTERN RAILWAY,
THROUGH ITS GENERAL MANAGER ,
PERSONNEL DEPARTMENT,
HEAD QUARTERS OFFICE
GADAG ROAD, HUBBALLI – 580 020.

...RESPONDENT

(BY SRI M.B.KANAVI, CGSC)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT ORDER IN THE NATURE OF CERTIORARI TO QUASH THE ANNEXURE-H NO.SWR/P.(P).209/CASE NO.102165/2023 ISSUED BY THE RESPONDENT DATED 28/12/2023 IN THE INTEREST OF JUSTICE AND EQUITY. ISSUE A WRIT ORDER OF DIRECTION IN THE NATURE OF MANDAMUS DIRECTING THE RESPONDENT TO IMPLEMENT THE OBSERVATIONS AND RECOMMENDATIONS MADE BY THE COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN) DATED 17/08/2020 AS PER ANNEXURE-D IN THE ENDS OF JUSTICE AND EQUITY AND ETC.,



IN WRIT PETITION NO.104135/2021

BETWEEN:

UNION OF INDIA
REP . BY GENERAL MANAGER,
THROUGH DEPUTY CHIEF
PERSONAL OFFICER,
SOUTH WESTERN RAILWAYS
HUBBALLI.

...PETITIONER

(BY SRI M.C.HUKKERI, ADVOCATE)

AND:

1. COMMISSIONER FOR PERSONS
WITH DISABILITIES,
SOAJINI HOUSE -6,
BHAGWANDAS ROAD,
NEW DELHI - 110 001.
2. MOHD. GOUSE ATTAR,
BANDIWADE BASE,
PATTAR PODGALLI,
C.B..T. HUBBALLI - 580 020.

...RESPONDENTS

(BY SRI ABHISHEK L. KALLED, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI TO QUASH THE ORDER PASSED BY THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYYANGJAN) IN COMPLAINT NO.10576/1021/018 AT NEW DELHI DATED 17.08,2020 ANNEXED AS ANNEXURE-A AND ETC.,

THESE WRIT PETITIONS, COMING ON FOR PRELIMINARY HEARING B GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE M.NAGAPRASANNA)

1. The petitioner in W.P. No.103250/2024 is before this Court seeking the following prayer

- "I. *Issue a writ order in the nature of Certiorari to quash the Annexure-H No.SWR/P.(P).209/CASE No.102165/2023 issued by the respondent dated 28/12/2023 in the interest of justice and equity.*
- ii. *issue a Writ order of direction in the nature of Mandamus directing the respondent to implement the observations and recommendations made by The court Of chief Commissioner for persons with Disabilities (Divyangjan) dated 17/08/2020 as per Annexure-D in the ends of justice and equity.*
- iii. *Issue such other order or direction that is deemed fit under the facts and circumstances of the petition including costs of this petition in the interest of justice and equity.*

2. Learned counsel for the petitioner now files a memo seeking leave of this Court to dispose the petition in terms of the memo. The memo reads as follows;

MEMO

Herein the petitioner respectfully submits as under-

That the petitioner is a person having locomotor disability at 85%, who is appointed against physically handicapped quota in the respondent's railway establishment. The petitioner throughout this service has been effected promotion under unreserved quota despite of being appointed under physically handicapped quota. As such the



petitioner has sought for reservation in promotion for persons with benchmark disabilities as per the Rights of persons with disabilities acts of 1995 & 2016 and so also in the backdrop of various decisions of the Hon'ble Apex court and instructions issued by the Department of Personnel and Training (hereinafter referred to as DOPT in short) to the respondent establishment. If the petitioner who ought to have been promoted under physically handicapped (reserved quota) then the petitioner had become Senior Technician (Fitter) way back in the year 2008, the said post which the petitioner is serving only from 17/12/2022 having promoted against unreserved quota in the respondent establishment as per Office Memorandum No.22 & 24/2022 dated 14/03/2022.

That now the petitioner owing to his particular locomotor disability could not be able to carry out the functions of next promoted post of junior engineer, in which mobility of the petitioner towards mechanical works are involved requiring the petitioner/employee to survey coaches of railway boggies, carry out inspection, mechanical repairs etc., in the said background the petitioner intends to stick on to the present promoted post of Senior Technician (Fitter) under the respondent establishment and most respectfully pray this Hon'ble Court to direct the respondent to consider the said promoted post of Senior Technician (Fitter) from the earlier date of eligibility on notional promotion basis under reservation in promotion for persons with Benchmark Disability quota (in short referred to as PwBD), where in the respondent railway board are duty bound to extend the said benefit of notional promotion to the petitioner in terms of the Hon'ble Supreme Court decision in Contempt Petition (Civil) NBo.873/2023 in W.P.(Civil) No.521/2008 and instructions issued by the DOPT with consequential benefits in the ends of justice and equity.



3. Learned counsel for the petitioner would further seek an observation to the effect that the office memorandum dated 28.12.2023 should be followed making it applicable to the petitioner.

4. Learned CGSC-Sri.M.B.Kanvavi would submit that they would be bound by the office memorandum dated 28.12.2023 and it would undoubtedly be made applicable in accordance with law to the petitioner and grant all consequential or notional benefits as is observed in the office memorandum dated 28.12.2023.

5. In the light of the said submission, keeping the petition further pending would not arise. I deem it appropriate to dispose the petition W.P. No.10325/2024 in the light of the memo and the observations made herein above.

6. In the light of the aforesaid as a matter of form the impugned order dated 28.12.2023 vide Annexure-H stands quashed.



7. The respondent to implement the observation and recommendation made by the Court of Chief Commissioner for Persons with Disabilities (Divyangjan) dated: 17.08.2020 vide Annexure-D within a period of three months from the date of receipt of a copy of this order.

8. In the light of the observation made in W.P. No.103250/2024 the subject petition in W.P. No.104135/2021 also stands disposed as the learned counsel for the petitioner would submit that the petition be disposed observing that the office memorandum dated 28.12.2023 in W.P. No.103250/2024 would become applicable to the case at hand as well it is already narrated in the companion petition. Therefore further observation in this case would not arise.

Ordered accordingly.

Sd/-
(M.NAGAPRASANNA)
JUDGE