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

+ **W.P.(C) 9903/2024 and CM APPL. 40651/2024**

**ASHISH DIXIT**

.....Petitioner

Through: **Mr. Siddharth Krishna Dwivedi  
and Ms. Nidhi Singh, Advocate.**

versus

**NATIONAL EDUCATION SOCIETY  
FOR TRIBAL STUDENTS & ANR.**

.....Respondents

Through: **Mr. Somesh Chandra Jha & Mr.  
Akash Kishore, Advocates for  
NESTS. [M:-9654659775]**

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**ORDER**

% **28.04.2025**

1. The petitioner was a candidate for the post of Trained Graduate Teacher [“TGT”] (Mathematics) in a recruitment drive conducted by National Education Society for Tribal Students [“NESTS”] for various teaching and non-teaching posts in the Eklavya Model Residential School [“EMRS”]. He assails a communication dated 24.06.2024, by which a provisional letter of appointment issued to him on 02.03.2024 was cancelled.
2. By an advertisement-cum-notification issued in July-August 2023, NESTS invited applications for various posts, including that of TGT (Mathematics), for which a total of 686 posts in various categories were advertised. Horizontal reservation of 28 posts was provided for Persons

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with Benchmark Disabilities [“PwBD”]. Seven posts each were reserved for the four categories of disabilities, being Orthopedically Handicapped (OH), Visual Impairment (VI), Hearing Impairment (HI), and Others. Each of the four categories was further elaborated.

3. We are concerned in this petition with the categories “HI” and “Others”. The nature of disabilities for the “HI” category was identified as “Hard of Hearing” (HH) and in the “Others” category, “Multiple disabilities mentioned in Col.I to III”.

4. The petitioner is a PwBD. A copy of a disability certificate dated 12.05.2019 has been placed on record, which certifies that he has hearing impairment, with the diagnosis of “B/L Severe Hearing Loss”. His disability has been assessed at 50% permanent disability in relation to his ear, as per the applicable guidelines.

5. The difficulty that has arisen in the present case is that the petitioner, while filling up the application form, applied in the category of “Other Disabilities”, instead of “HI”. He participated in a written test and was issued a provisional offer of appointment on 02.03.2024. However, by the impugned communication dated 24.06.2024, his candidature was cancelled on the following ground:

*“In the notification of NESTS against every post, the nature of allowed disability was specifically mentioned. On examination of the documents submitted by you during the document verification it was noticed that your disability is not under the category as listed in the notification of NESTS which makes you ineligible for the post of TGT MATHS as per the notification issued by NESTS.”*

[Emphasis supplied.]

6. It is undisputed that the petitioner belongs to the “HI” category, but erroneously applied in the multiple disability category- “Others”. The

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submission of Mr. Siddharth Krishna Dwivedi, learned counsel for the petitioner, that the petitioner is eligible under a notified benchmark disability, and an error in filling the form ought not to come in his way. He relies upon the Division Bench judgment of this Court in *Monika v. DSSSB & Anr.*, [WP(C) 2831/2021, decided on 18.03.2024], in support of his contention that a change of category can be permitted even at a later stage.

7. Mr. Somesh Chandra Jha, learned counsel for NESTS, however, submits that the information bulletin contains several cautionary provisions, advising candidates to verify their eligibility for the category in which they are applying. The petitioner, having applied in a particular category under the PwBD quota, was considered against other candidates, who had applied in the same category, and a provisional offer of appointment was issued on this basis. He submits that a change of category at this stage, after the recruitment process in the PwBD category is over, may affect the position of other successful candidates.

8. Pursuant to the order dated 25.04.2025, an additional affidavit dated 26.04.2025 has been handed over by learned counsel for NESTS. It is stated therein that, out of 28 posts of TGT (Mathematics) reserved for PwBD candidates, offers of appointments were issued only to 20 candidates. Out of the eight remaining vacancies, three are in the category of “Hearing Impairment”, and five are in the category of “Others”. These vacancies, according to NESTS, would have to be carried forward to the next recruitment drive. It has also been stated categorically that the petitioner would be eligible for an offer of appointment in case the

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category is changed from “Others” to “HI”. The permissibility of such a change is, however, resisted on the grounds mentioned above.

9. Having heard learned counsel for the parties, and considering the present case on its facts, I am of the view that the relief sought by the petitioner can be granted. The petitioner admittedly satisfies the category of “HI”, which is one of the categories in which the recruitment was undertaken. The specific ground upon which the petitioner’s candidature has been rejected by NESTS is, thus, erroneous. In NESTS’s communication dated 24.06.2024, it has been stated that the petitioner’s *‘disability is not under the category as listed in the notification of NESTS’*. However, a perusal of the notification admittedly shows that the “HI” sub-category was one of the notified disabilities, for vacancies for the post of TGT (Mathematics). The counter affidavit, to the extent that it relies upon the discrepancy between the petitioner’s application to the “Others” category, and his disability certificate is in “HI” category, goes beyond the ground listed in the impugned communication dated 24.06.2024.

10. It is evident from the affidavit of NESTS dated 25.04.2025 that, in the “HI” category, insufficient eligible candidates were found. The category in which the petitioner applied (“Others”) also did not attract sufficient eligible candidates. The consequence is that, by reason of an error by the petitioner in categorisation while filling up the form, both the petitioner and NESTS stand to lose. The petitioner is, of course, deprived of employment, for which he was found otherwise eligible on merit, and NESTS is deprived of a PwBD teacher for its schools, until the next

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recruitment drive. I am of the view that the law does not mandate such a consequence for an error of this nature.

11. The purpose of the Rights of Persons with Disabilities Act, 2016 [“2016 Act”], is to ensure employment opportunities to PwBDs. Persons who apply under the said category must, of course, conform to the eligibility requirements of the concerned sub-category. However, in a case where vacancies have not been filled, either in the sub-category in which the candidate applied or in the sub-category in which he ought to have applied, and the candidate has been found otherwise eligible for appointment on merits, I am of the view that equity permits the relief sought. The writ Court is ultimately guided by the principles of equity and good conscience. To keep the vacancies open for future recruitment only on the ground that a meritorious candidate has applied in the wrong sub-category would, in my view, defeat the purpose of the reservation.

12. In taking this view, I am guided also by the purposes of the reservation provided for PwBDs in public employment, and the objective of ensuring that all citizens live a life of dignity and empowerment. In *Union of India v. National Federation of the Blind* [(2013) 10 SCC 772], the Supreme Court expressed this objective, in the context of the predecessor legislation [Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995], in the following terms:

*“23. India as a welfare State is committed to promote overall development of its citizens including those who are differently abled in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalisation of opportunities to the differently abled citizens in our country could be traced in Part III*

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and Part IV of the Constitution. For the persons with disabilities, the changing world offers more new opportunities owing to technological advancement, however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the need of the hour.

24. Although, the Disability Rights Movement in India commenced way back in 1977, of which Respondent 1 herein was an active participant, it acquired the requisite sanction only at the launch of the Asian and Pacific Decade of Disabled Persons in 1993–2002, which gave a definite boost to the movement. The main need that emerged from the meet was for a comprehensive legislation to protect the rights of persons with disabilities. In this light, the crucial legislation was enacted in 1995 viz. the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which empowers persons with disabilities and ensures protection of their rights. **The Act, in addition to its other prospects, also seeks for better employment opportunities to persons with disabilities by way of reservation of posts and establishment of a special employment exchange for them.** For the same, Section 32 of the Act stipulates for identification of posts which can be reserved for persons with disabilities. Section 33 provides for reservation of posts and Section 36 thereof provides that in case a vacancy is not filled up due to non-availability of a suitable person with disability, in any recruitment year such vacancy is to be carried forward in the succeeding recruitment year. The difference of opinion between the appellants and the respondents arises on the point of interpretation of these sections.

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50. **Employment is a key factor in the empowerment and inclusion of people with disabilities.** It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.”

[Emphasis supplied.]

13. After the 2016 Act came into force, the Supreme Court in *Vikash Kumar v. UPSC & Ors.* [(2021) 5 SCC 370, paragraph 43], has noted the “qualitative difference” in the barriers faced by PwBDs, even when compared to other marginalised groups. Although these observations were

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in the context of provisions for reasonable accommodation to PwBDs, I am of the view that they also provide guidance, while considering whether relief can be granted to a person in the position of the petitioner herein. Such an approach is also indicated in *Sunanda Bhandare Foundation v. Union of India* [(2014) 14 SCC 383], which reads *inter-alia* as follows:

*“9. Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. **In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief-oriented and not obstructive or lethargic.** A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. **A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.**”*

[Emphasis supplied.]

14. These judgments have been referred to, and relied upon in the recent judgment in *Recruitment of Visually Impaired in Judicial Services, In re*, [2025 SCC OnLine SC 481].

15. I would like to add two caveats. The first is that this case turns on these facts, particularly that the vacancies remain available, which would otherwise be carried forward. It is not intended to lay down as a general proposition of law, that shifting from one category to the other must be permitted at any stage, particularly if it would unsettle a recruitment which has already concluded. Further, I do not propose to decide as to whether a belated change of sub-category from one benchmark disability

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to another is generally permissible, or on the effect of decision in *Monika*, cited by Mr. Dwivedi, on such a situation. The second caveat is that the onus remains on the candidate to ensure that his/her application is correctly submitted in the right category. However, relief is being granted to the petitioner only because vacancies in the relevant sub-category remain to be filled, and the respondent has not been able to attract sufficient PwBD candidates for all reserved vacancies in question.

16. In view of the discussion above, the writ petition is disposed of with the direction that the petitioner's candidature will be processed in the "HI" category. A letter of appointment/posting order be issued to him within a period of three months from today.

17. Pending application also stands disposed of.

**PRATEEK JALAN, J**

**APRIL 28, 2025/uk/JM/**

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