

**CDJ 2013 CAT CHENNAI 009**

**Court :** Central Administrative Tribunal, Madras Bench

**Case No :** Original Application No. 1268 of 2010

**Judges:** THE HONOURABLE MR. K. ELANGO, JUDICIAL MEMBER & THE HONOURABLE MR. R. SATAPATHY, ADMINISTRATIVE MEMBER

**Parties :** K. Mahendiran Versus The Union Territory of Puducherry, rep. by the Secretary to Government Agriculture & Forest Department & Others

**Appearing Advocates :** For the Applicant : K. Venkataramani Senior counsel for M/s S. Srinivasan, A.R. Suresh & L. Janakiraman, Advocates. For the Respondents: R. Syed Mustafa, Advocate.

**Date of Judgment :** 14-02-2013

**Head Note :-**

Administrative Tribunals Act, 1985 - Section 19 -

**Judgment :-**

R. Satapathy, Administrative Member

This application has been filed under Sec. 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“this tribunal may be pleased to call for all relevant records relating to the Impugned Notification for the recruitment to the post of Agricultural Officer issued in no. 628/Ag/Estt./A42010 dated 30.03.2010 issued 2nd respondent herein and the consequential select list issued in Notification No. 167526/1/CS(Agrl)/A1/2007 dated 02.10.2010 passed by the 3rd respondent herein and quash the same as arbitrary, unreasonable, improper, illegal, against the rules and regulations of the respondent, violating the principles of the natural justice and fundamental rights guaranteed under the Constitution of India and thereby directing the respondents herein to select and appoint the applicant to the post of Agricultural Officer under the Directorate of Agriculture, Government of Puducherry, the respondents herein by extending the privilege of reservation and concessions guaranteed to the physically handicapped category to the applicant immediately without delay and pass

such further or other orders as this Hon'ble Tribunal may deems fit and proper in the circumstances of this case and thus render justice.”

2. The case of the applicant is that the respondents herein have issued a notification calling for applications from eligible candidates for filling up 28 posts of Agricultural officer in the pay band Rs. 9300-34800 with Grade pay of 4200. The break up details are as follows: UR-10, OBC-5, MBC-11 and SC-2. The last date for submission of application was prescribed as 30.04.2010.

3. The applicant is physically handicapped person. He has passed B.Sc (Agri). Competent authority has certified that applicant is having more than 50% disability. Since no posts were earmarked for physically handicapped candidate, he has submitted a representation dated 05.04.2010 to the authorities to reserve/allot appropriate post and consider his case under the physically handicapped category. The applicant had applied for the post mentioning that he is a physically handicapped person. He appeared in the written examination held on 26.09.2010 and came out successful. On being successful in the written examination, he was called for the viva voce test to be held on 28.09.2010 and he attended the same. According to him he fared well in the interview also. Results were published on 02.10.2010 in which the applicant's name did not figure and no one has been appointed under the PH category. Hence he is challenging the result dated 02.10.2010 in this O.A.

4. The main contention of the applicant is that the respondents have violated the fundamental rights guaranteed under Art. 14 and 16 of the Constitution of India. It is also his contention that some over aged candidates were also selected. Hence applicant has asked for granting the relief as prayed in the O.A.

5. The respondents have filed a detailed reply. It is stated that out of sanctioned strength of 87 posts, 78 posts (90% of the sanctioned strength) were earmarked for direct recruitment. It is there contention that in the year 2008 they have issued a notification for filling up 22 posts of Agricultural Officer (UR 6, OBC 13 and ST 03). As there was no provision for earmarking the vacancy for ST category, they have issued another notification dated 30.03.2010 revising the posts as under: UR-10 OBC- 5, MBC-11 and SC-2. As there was an error in the earmarking the vacancy, they have issued corrigendum dated 24.05.2010 to the notification dated 30.03.2010, earmarking the posts as under: UR -10, OBC-16 and SC-2. The respondents have submitted that as per GO Ms. No. 8/Ag dated 08.03.2002 out of 78

posts meant for direct recruitment quota, 2% posts were earmarked for PH candidates i.e. 1.56 rounded off to 2 posts. It is their contention that PH quota reservation had already been filled one in the year 1979 and the another in the year 2003, hence no post was earmarked for PH category in the notifications dated 16.05.2008, 30.03.2010 and the corrigendum dated 24.05.2010. It is further submitted that the applicant has secured 47 marks (40 marks in the written examination and 7 marks in the viva voce) whereas the cut off mark for OBC and UR candidate were 61 and 67 respectively. It is averred that appointment orders dated 02.10.2010 were issued before receipt of interim order dated 22.10.2010 passed by this Tribunal keeping one post vacant, they were unable to keep one post vacant for the applicant till the filing of the reply. The respondents have prayed for the dismissal of the O.A.

6. We have heard the learned counsel for both sides and perused the records. This O.A came up for admission on 22.10.2010. A Bench of this Tribunal gave the following interim direction:

“The respondents are directed to keep one post of Agricultural officer as vacant for the applicant till the filing of the reply. Issue today.”

7. The case of the applicant is that the respondents ought to have issued notification for filling up the post of Agricultural Officer by earmarking/reserving appropriate number of posts of Agricultural Officer for Physically Handicapped persons. The applicant had also submitted a representation on 05.04.2010 requesting reserving/earmarking appropriate number of posts of Agricultural Officer.

8. Though the respondents have issued corrigendum on 24.05.2010, they have not earmarked/ reserved any post of Agricultural Officer for PH candidates. The Government of India issued instructions all departments/States and Union Territories to reserve appropriate number of posts to be filled under direct recruitment quota meant for physically handicapped category. Admittedly, in this case, the respondents have not notified any post of Agricultural Officer for PH candidates in the notifications dated 16.05.2008, 30.03.2010 and the corrigendum dated 24.05.2010. This is in clear violation of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

9. In response to the notifications, the applicant has applied for the post of Agricultural officer by stating that he is a physically handicapped candidate. He has been issued hall

ticket and attended the written test as well as viva voce and secured 47 marks.

10. It is not the case of the respondents that they need not implement the instructions of the Government of India so far it relates to Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. They are duty bound to earmark/reserve appropriate number of posts to be filled under direct recruitment quota for physically handicapped candidates. The stand of the respondents in the reply is, out of 78 posts to be filled under direct recruitment category two posts are to be filled by physically handicapped candidates. It is their contention that they have already appointed two physically handicapped persons in the years 1979 and 2003. THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995- Act No. 1/1996, came into effect from 1995 onwards. Therefore, vacancy filled in the year 1979 by a physically handicapped candidate cannot be taken into account, as the post had been filled prior to coming into effect of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995- Act no.1 of 1996.

11. We are, therefore, of the considered view that the respondents cannot take shelter that there is no post available to be filled by a physically handicapped candidate after 2003 in the cadre of Agricultural Officer, since both the posts are already filled. The respondents have also not shown any document to the effect that the vacancy which they have filled in 2003, was earmarked for PH candidate.

12 This tribunal, by way of interim order, on 22.10.2010, already directed the respondents to keep one post Agricultural Officer vacant for the applicant. It is not the case of the respondents that the applicant cannot perform the duties of Agricultural Officer. In view of the above discussion, this application succeeds. As the applicant had secured 47 marks, (40 marks in the written examination and 7 marks in the viva voce) he has qualified in the written test and viva voce. Respondents have failed to comply with the mandatory provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

13. In view of the above discussion, the respondents are directed to appoint the applicant as Agricultural officer under Physically Handicapped category, within a period of three months from the date of receipt of a copy of this order. O.A is allowed. No costs.

