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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.23132 of 2005

*Reserved on: 16th January, 2012.
Pronounced on: 7th March, 2012.*

ALL INDIA CONFEDERATION OF THE BLIND . . . PETITIONER

Through: Mr. Rajan Mani, Advocate.

VERSUS

UNION OF INDIA (MINISTRY OF RAILWAYS) . . . RESPONDENT

Through: Mr. Kumar Rajesh Singh with
Mr. V.S.R. Krishna and Ms.
Harleen Kaur, Advocates for
R-1.

Mr. Neeraj Chaudhari, CGSC
with Mr. Khalid Arshad,
Advocate for Ministry of Social
Justice and Empowerment.

Mr. Naresh Kaushik and Ms.
Aditi Gupta, Advocates for
UPSC.

CORAM :-

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

A.K. SIKRI, Acting Chief Justice

1. The respondent/Railways had issued an advertisement/Employment Notice No.1 of 2005 for recruitment of Group 'D' staff in the Northern Railway. As many as nine categories of posts of Group 'B' staff were mentioned indicating total posts against each category. Bifurcation of these posts were also given, viz., number of posts which were General Category and those in Scheduled Castes, Scheduled Tribes, Other Backward Classes and ESM categories. The petitioner felt dismayed by reading this

advertisement as it did not provide any reservation for Physically Handicapped persons ('PH persons' for brevity) though the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (hereinafter referred to as 'the Disabilities Act') mandates that 3% reservation is to be given to those persons suffering from disability as defined in Section 2(d) of the Disabilities Act. This prompted the petitioner to file the instant petition, in the nature of Public Interest Litigation questioning the non-provision of reservation to the PH persons.

2. The instant petition is filed by Shri M.K. Rastogi, Chairperson, Advocacy & Employment Committee of the petitioner organization of disabled persons. A copy of his attorney is placed as Annexure P-1. The respondent/Department, viz., Railway Recruitment Cell, Northern Railway has issued an advertisement Employment Notice No.1/2005 to fill up thousands of Group 'D' posts in the Employment News (29 October-04, November, 2005). Disabilities Act is a remarkable piece of legislation for its main aim is to provide for and ensure equal opportunity, protection of rights and full participation of disabled persons in every walk of life. As per Section 33 of the Disabilities Act, the respondent is bound to reserve seats for the PH persons to the extent of 3% out of which 1% each must be reserved for the Locomotor (Orthopedically handicapped), hearing impaired and visually handicapped candidates. It is pointed out that authority the Group 'D' posts advertised in the impugned employment notification have also been identified suitable to be held by disabled persons. In this connection, an Expert Committee appointed by the Ministry of Social Justice and Empowerment

(hereinafter referred to as 'the appropriate Government') had dealt with the matter of identification of posts in Groups – A, B, C and D for reservation. The said Committee in its report notified by the appropriate Government vide their Notification dated 31.5.2001 made the following recommendations:

“(b) The nomenclature used for respective jobs in these recommendations shall also mean and include any nomenclature used for the comparable post with identical function of the identified post.

(c) The establishments covered under the persons with Disabilities Act 1995 will have the discretion to identify post in addition to the posts already identified by the appropriate Government. However, no establishment on its own discretion can exclude any post out of the purview of identified post for effecting reservation under Sec. 33 of the Act. In case any establishment feels that it required exemption from filling up a vacancy against an identified post by the appropriate Govt. the establishment under Sec. 33 of PWD Act 1995 can approach the inter departmental committee constituted for the purpose to look in to the matter regarding exemption from Sec. 33 of the PWD Act. Other than this no authority has the jurisdiction to accord exemption from filling up a vacancy against an identified post for person with disabilities.

(d) List of the identified jobs proposed to be notified hereinunder is in addition to an not in derogation of the earlier list published by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Govt. of India in the year, 1986. This is in accordance with Section 72 of the Persons with Disabilities Act, 1995.”

3. It is further specifically stated by the petitioner that the respondent has not obtained any exemption in respect of the said advertised posts for excluding the same from the provisions of reservation to the disabled persons and therefore, 3% posts should have been reserved. Cognizance of this petition was taken by issuing notice on 07.12.2005. On 07.2.2006, an interim order was also made to the effect that

the corrigendum to the aforesaid advertisement be issued for the post which are to be filled on account of 3% reservation for the PH persons pursuant to the applicability of Disability Act to all such posts which have been identified by the respondent for which examination is to be held on 12.2.2006, 26.2.2006 and 05.3.2006. Once examination was scheduled on 12.2.2006 and since it was a too near date when the order was passed on 07.2.2006, issuance of corrigendum for this examination was spared. Thereafter, various orders have been passed from time to time impressing upon the respondents to provide 3% reservation for PH persons in the post which are to be filled up by taking into consideration the backlog as well as in the past, no such reservation was made. We would like to reproduce the order dated 10.3.2008:

"2. By an order dated 7th February, 2006, the respondents were directed to issue a corrigendum to the effect that the posts to be filled up shall have a reservation of 3% for physically handicapped candidates. The Railway Board was also directed to inform the Zonal Railways as to which posts fall within the reserved categories for such candidates. The matter was thereafter adjourned from time to time on one ground or the other till 7th November, 2007 when this Court noted the submission made on behalf of the respondent that Ministry of Railways was in the process of identifying suitable posts for the railways for physically handicapped persons. Learned counsel for the respondent was directed to place on record, within 4 weeks, further developments in the matter. Ms. Mohan today submits that she had received from the respondent a letter together with a list of jobs/posts identified in Gr.-C and Gr.-D categories for persons with disabilities. She seeks and is granted permission to place the same on record. A copy of the same has been given to counsel opposite, who argues that even when posts may have been identified for handicapped candidates against which such candidate can claim reservation, yet the benefit of such reservation is not being given to them. He drew our attention to an advertisement notice dated 29th April, 2006 according to which several posts have been

advertised for being filled up but the advertisement does not made any provision for reservation for the benefit of the handicapped candidates. He submits that similar other advertisements are being issued all over the country in total disregard of the obligation created by the provisions of the Act. When asked whether the respondents have appointed any handicapped candidate against the reserved quota meant for them and, if so, when and against which cadre, Ms. Mohan was not in a position to provide any satisfactory answer without instructions. She sought 6 weeks time to do the needful.

3. In the circumstances, therefore, we deem it just and proper to direct that the requisite information in relation to the posts which have been identified by the Government/Railways for the grant of benefit of reservation to the handicapped candidates and the actual recruitment of handicapped candidates against the quota meant for them shall be furnished by the respondent within 6 weeks from today to the Registrar (Rules) of this Court who shall collate the said information and submit a report after proper consideration whether there is any default in the discharge of the obligation by the Railways/Government and if so the shortfall in the recruitments to be made against the handicapped category. The parties shall, in this regard, appear before the Registrar (Rules) on 13th May, 2008."

4. Thereafter, the information was sought by the Registrar of this Court from time to time. On that basis, Registrar (Vigilance) submitted its report on 06.1.2009. After this report was considered, this Court passed the orders dated 20.1.2009 and the salient features of this report are as under:

"(i) Since there is no direct recruitment to Group 'B' posts, the provision of PWD Act would not apply to any post in the said category.

(ii) The calculation of posts to be treated as reserved for disabled categories has been worked out taking into account the cadre strength of all categories including "safety" category which is otherwise sought to be treated as exempt from reservation.

(iii) The joint report brings out the shortfall in the recruitment of disabled persons which is to the extent of 66 posts in Group 'A' (from the year 1996 upto the year

2007) and 2377 & 1811 in Group 'C' and Group 'D' posts respectively (from the year 1996 upto 31.10.2008).

(iv) The information about Group 'C' and Group 'D' categories, as given in Table -I annexed to the joint report, shows that out of the 24 zones/Production Units of the Railways, as many as 11 have not been maintaining the Roster till date. However, there is an assurance held out by respondent/Railways vide heir affidavit dated 26.11.2008 that the Roster System would be adopted within the time indicated by each zone.

(v) The recruitment to Group 'A' posts being through UPSC, the information on maintenance of roster separately given (in Annexure 'A' to the affidavit of Mr. Iranius Tirki) shows that UPSC has been maintaining Roster System from the year 2006 onwards, for such category."

5. As per the above order, there was a shortfall of 66 posts in Group 'A' , 2377 in Group 'C' and 1811 in Group 'D'. The Court observed that in the case of ***National Confederation of Blinds Vs. Union of India & Others*** [W.P.(C) No.15828/2006] orders dated 19.2.2008 were passed directing the Union of India to constitute a Committee consisting of Chief Commissioner for Disabilities; Joint Secretary, Department of Personnel and Training; Secretary, Ministry of Social Justice and Empowerment and Joint Secretary, Staff Section Commission with direction to take steps for recruitment drive in respect of the vacancies for PH persons in Group A, C and D posts by special recruitment drive by organizing centralized recruitment against backlog so as to fill up the vacancies by utilizing at least 50% of the vacancies available and fill up the remaining vacancies by 31.12.2010. Taking note of that order, in this case on 20.1.2009, the Court directed for launching a special recruitment drive to fill up backlog of vacancies so as to fill up 50% of the available posts

in the respective Zones/Production Units for this purpose alone. Though there was lukewarm response to this order and reluctance in compliance, with little arm twist (which became inevitable and justified), the respondents came around and started taking steps for filling up the backlog. The respondent also filed the affidavit stipulating the time schedule within which the special recruitment drive to fill up backlog PH persons was to be finalized. The fact remains that this schedule is not adhered to and therefore, one of the submission of the petitioner was that fresh schedule has to be laid down with direction to the respondent to strictly follow the same.

6. The respondent filed affidavit dated 06.7.2011 in which it is mentioned that several notifications to fill up vacancies by the Railways including current as well as backlog vacancies of PH persons have been issued. This affidavit refers to the advertisement in December, 2010 whereby 85068 vacancies are invited out of which 3700 have been reserved for PH persons. It is pointed out that this is in addition to 1058 Group 'C' and 1367 erstwhile Group 'D' vacancies already filled up by PH persons.
7. We may note that insofar as backlog of Group 'D' is concerned, the steps have been taken to fill the same and therefore, filling up Group 'D' posts does not pose any problem. The reluctance on the part of the respondent is in respect of filling up of 66 posts in Group 'A' and those Group 'C' posts which are technical in nature, viz., that of Civil, Electrical and Mechanical. The respondent/Railway is apprehensive of the post that PH persons may not be able to discharge the duties of these posts. It is, thus, stated in affidavit dated 06.7.2011 that the Ministry

of Railways has approached the Ministry of Social Justice and Empowerment for grant of exemption from reservation for PH persons in certain posts under Section 33 of Disabilities Act keeping in view the arduous and technical nature of tasks involved in some of the posts in these categories. It is also submitted that even in number of such posts in these categories, the nature of exemption sought is only partial, i.e., for only one of the many sub-categories of disability identified by the appropriate Government. For time being, those posts are lying vacant, identifying the posts which can be meant for PH persons specifying the nature of disabilities as well. It is an admitted case that such an identification has been carried out. It is also an admitted fact that the Railways had approached the appropriate Government for exemption under Section 33 of the Disabilities Act, which was specifically refused.

8. In this backdrop, the question that arises for consideration is as to whether the Railways can stay hands and would not take steps for filling up the posts merely because it has approached the appropriate Government under Section 33 of the Disabilities Act again for exemption.
9. Before we answer this question, we recapitulate the exercise already done and also point out that the request of the Railways for exemption was earlier turned down. The appropriate Government had constituted an Expert Committee on 02.7.1999 in pursuance of the provisions under Section 32 of the Disabilities Act for identifying suitable posts for different kind of disabled persons. The Expert Committee decided that one such Committee should be set up for each of the three categories of the disabilities which was provided reservation

under Section 33 of the Act. Accordingly, three sub-Committees were set up:

- (i) Sub-Committee for Locomotors Disability or Cerebral Palsy;
- (ii) Sub-Committee for Hearing impairment;
- (iii) Sub-Committee for persons with blindness or low vision.

10. According to the appropriate Government itself, these Sub-Committees made an in-depth study of the various jobs done in Government offices as well as Public Sector Undertakings, including the jobs already identified by the Expert Committee in 1996. The Expert Committee submitted its report on 03.3.2001. This report was circulated to all the Central Ministries/Departments to obtain their comments on the recommendations/posts identified by the Expert Committee. Based on the comments received, the appropriate Government issued Notification dated 31.5.2001 notifying the report as Annexure-II for information and further necessary action and also clearly stating that the list of jobs identified by the Committee is by no means exhaustive and Ministries/Departments etc. may have to further supplement this. In the said report which was annexed with the Notification, it was *inter alia* remarked:

“(b) The nomenclature used for respective jobs in these recommendations shall also mean & include any nomenclature used for the comparable post with identical function of the identified post.

(c) The established covered under the Persons with Disabilities Act 1995 will have the discretion to identify post in addition to the posts already identified by the appropriate Government. **However, no establishment on its own discretion can exclude any post out of the purview of identified post for effecting**

reservation under Sec. 33 of the Act. In case any establishment feels that it required exemption from filling up a vacancy against an identified post by the appropriate Govt. the establishment under Sec. 33 of PWD Act. 1995 can approach the inter departmental committee constituted for the purpose to look into the matter regarding exemption from Sec.33 of the PWD Act. Other than this no authority has the jurisdiction to accord exemption from filling up a vacancy against an identified post for persons with disabilities.”

(emphasis supplied)

11. It is not in dispute that the posts which the respondents are not willing to fill as of now are included in the report of the Expert Committee. In fact, vide Notification dated 18.1.2007, the appropriate Government based on the recommendations of the three Sub-Committees which were constituted on 28.2.2005 identified some more posts in Group 'A' and Group 'D' to be suitable for PH persons. These included various posts of Civil Engineers, Electrical Engineers as well as Mechanical Engineers. It is clear from the above that no discretion was left with any Ministry or Department to exclude any post under Section 33 of the Act. The only permission which was given was that these establishments who felt that the required exemption of filling up of posts against identified posts by the appropriate Government could approach for exemption under Section 33 of the Act. The respondents herein did approach and sought exemption under Section 33 of the Act. However, this exemption has been refused repeatedly since 2001.
12. We would like to refer to one such rejection vide Office Memorandum dated 09.2.2010, whereby the respondent was informed as under:

“The undersigned is directed to refer to Ministry of Railways D.O. N.2009/E(GR)1/16/3 dated 19.1.2010 addressed to Secretary (SJ&E) on the subject mentioned above and to say that this Ministry has time and against

informed Ministry of Railways about the decision taken in this regard, which in brief are as under:

- (a) Ministry of Railways vide our O.M. No.16-52/2005-DD.III dated 29.12.2005 (Annex.-I) was informed that the Expert Committee in its meeting held on 14.03.2005 under the Chairmanship of Secretary (SJ&E) had decided that all non-technical services examination included in the Civil Services Examination and Engineering Services were suitable for providing reservation to PWDs.
- (b) It was again informed vide our O.M. No.16-52/2005-DD.III dated 14.02.2006 (Annex-II) that all non-technical services namely Indian Railway Accounts Service & Engineering Services, IRES, IRSEE, IRSME, IRSSEE, IRSS and Assistant Divisional Medical Officer were found suitable for reservation for PWDs.
- (c) Thereafter, Ministry of Railways again and again submitted their proposals to review the matter citing nature of work and work environment of the posts for grant of exemption.
- (d) It was again informed inter alia, vide our OM No.16-27/2005-dd-III dated 24.10.2008 (Annex – III) and dated 10.11.2008 (Annex-V) that **until exemption is granted for any posts of Engineering Services under Section 33 of PwD Act, it is mandatory for Railways to provide 3% reservation to PwDs** (in the matter of Jayanta Kumar Khamri, candidate of Engineering Services Examination 2007, who had obtained a very good position in the merit list.

(emphasis supplied)“

13. We would also like to reproduce a portion of Minutes of the Inter-Departmental Committee (IDC) held on 12.2.2010 regarding exemption of posts/establishments from the purview of Section 33 and 47 of the Persons with Disabilities Act, 1995:

“11. Director NIVH stated that the expert committee while identifying the posts for reservation had gone into

all details including nature of the jobs and suitability of PwDs with particular disability. They had examined the posts of Railways also. There were a number of capable PwDs who deserve to get a chance.

12. Addl. Member, Ministry of Railways informed the Committee that there were 750 categories of posts in Railways and exemption was being sought for a few posts which involved field postings. They were complying with almost 90% of reservation in Group C & D categories. They were seeking reservation in certain Group A and other categories because of functional criticalities. He requested that instead of generalities, the Committee should discuss the merits of each proposal.

13. Thereafter, the Committee first discussed the request for exempting the posts of Asst. Engineers Civil, Mechanical & Electrical (Group A posts) in the Indian Railway Service of Engineers (IRSE). It was felt that the reasons given for seeking exemption for all these posts was based on a surmise that "an officer with a disability may find that field working not only inconvenient but also unsafe for public and himself as well". It was felt by the other members of the Committee that no effort had made to recruit persons with disabilities in such posts and therefore the assumption could not be made that a person with disabilities who was qualified to be considered for such posts would not be able to meet the demands of the jobs. Moreover, the further assumption that "even if an officer with disability is given a specific assignment not involving field/operational posting, this will restrict his exposure to overall railway working and may even affect the promotional prospects due to limited and restricted exposure to railway working causing frustration in such an officer" is also premature. The frustration resulting from denial of opportunity for recruitment to such posts after being suitably qualified, would be much higher. As regards safety of the officer & the public at large is concerned, these aspects can be appropriately considered at the time of recruitment, keeping in view the extent and nature of disability. The committee, thus, did not favour en masse exemption of such posts."

14. It is in this backdrop we have to examine as to whether on the special plea that the respondent is approaching the appropriate Government against for exemption – can it delay the process of

clearing the backlog by filling up the posts which are meant for PH persons? Answer has to be emphatic **"NO"**. In this the first instance, position that prevails as of now in law has to be taken into account. There is no exemption given to the Railways. The vacancies have arisen; there is a backlog. Therefore, the Railways are bound to fill those vacancies once they are identified by the appropriate Government as per which these posts can safely and conveniently be meant for PH persons. The respondent is attempting to do what is not only impermissible in law, but even was specifically forbidden vide Notification of 2001 by the appropriate Government. Once the respondent approached for exemption and it was denied, it cannot still show stubborn attitude on nurturing a feeling of "fear of unknown". When the Expert Committee had made in-depth study and had come to the conclusion that the PH persons suffering from specified disabilities are competent to effectively discharge the duties on these posts, the respondent/Railways cannot sit over the judgment. On the contrary, it is bound to accept the same.

15. We may also note here another interesting argument of the learned counsel for the petitioner. Referring to the provisions of Section 33 of the Disabilities Act, he submitted that as per the proviso thereto, only an "establishment" can be exempted and not a particular "post". From reading of this proviso, it appears to be correct, which reads as under:

"33. Reservation of posts. – Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from –

- (i) blindness or low vision;
- (ii) hearing impairment;

(iii) locomotor disability or cerebral palsy,

in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

16. We must take note of the rapid advancement in medical science and technology which is progressively ameliorating the hardship faced by the persons suffering from various kinds of disabilities. With the advancement in technology and advent of supports, as may be provided through supported employment, the notion of equating disability with inability to work is erroneous and outmoded. There should be a presumption of ability that a person can achieve employment and other rehabilitation goals regardless of the severity of his or her disability, if appropriate services and supports are made available.
17. Thus, 10 years ago, when the Expert Committee was of the opinion that the persons suffering from a particular kind of disability would still be entitled to be appointed to these posts, with the passage of time, these posts would have become more suitable for these PH persons. This is also an indicator that there is hardly any scope for the respondent to get exemption under Section 33 of the Act, moreso, when it is repeatedly refused on the earlier occasions.
18. It is high time that the concerned persons in the respondent Ministry should change their mindset. It has to be recognized that there is a paradigm shift in the approach that is required to deal with the issue concerning disability. The traditional

approaches to disability had depicted it as health and welfare issue, to be addressed through care provided to persons with disabilities, from a charitable point of view. The disabled persons were viewed as abnormal, deserving of pity and not as individuals who are entitled to enjoy the same opportunities to live a full and satisfying life as other members of society. This resulted in marginalizing the disabled persons and their exclusion both from the mainstream of the society and enjoyment of their fundamental rights and freedoms. However, after emphasis on human dignity in the U.N. Charter or Universal Declaration of Human Rights or several International Covenants as well as provisions in the Constitution of India, in the last 50-60 years the concept has acquired new and wider meaning comprehending in its sweep various facets. It has now been evolved as a human rights issue. The move from the patronizing and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of persons with disabilities within the category of universal human rights." (See *Report of United Nations Consultative Expert Group Meeting on International Norms and Standards Relating to Disability 10-2-2001*).

19. Alas! Notwithstanding the aforesaid shift in approach at international level, mindset of some of the Government functionaries has still not changed. We have to remind ourselves that disabled people no longer see their physical or mental limitations as a source of shame or as something to

overcome in order to inspire others. What non-disabled people do not understand is that people with disabilities also have some rights, hopes and aspirations as everyone else. They do not want to depend on others. They want to brave their disabilities. They want to prove to the world at large that notwithstanding their disabilities they can be the master of their own lives. They can be independent. They can be self-reliant. They do not want sympathies of non-disabled. They want to be trusted. They want to be treated as valued member of the society who can contribute to the development and progress of the society. For this they want the proper environment to grow. Our society automatically underestimates the capabilities of people with disabilities. People with disabilities want this change in the thinking of non-disabled.

20. It is to ensure these very rights that Disability Act was enacted which, in fact, reflects the spirit of Indian Constitution itself. The Disability Act places responsibility on the society to make adjustments for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment. There have been and are a number of programmes, schemes and services for disabled people in India but there was no separate law to protect the rights of disabled people. The Act claims to fill that void. It seeks to establish a coherent and comprehensive framework for the promotion of just and fair policies and their effective implementation. It creates formal procedures, which hasten the process of full and total integration of the disabled in the

society. The Act has made education of children with special need a basic focus. The main aim of PWD Act is also to define the responsibilities of the Central and State Governments with regard to the services for disabled persons. The Act aims to ensure full life to a disabled individual so as to enable him to make full contribution in accordance with his disability condition.

21. Employment rights of persons suffering from disability have to be examined in the aforesaid perspective. When Disability Act confers special and preferential rights to persons with disability in Government employment providing 3% reservation of vacancies for them, it has to be taken to its logical conclusion. This right should not be only on papers, but has to be translated into reality. In the present case, when the Competent Authority has itself undertaken the necessary exercise and found that persons suffering from a particular kind of disability are competent to these jobs, then there remains no justification with respondents to deny these benefits.

22. We accordingly allow this writ petition in the following terms:

The respondent shall fill up the backlog of reserved posts of PH persons. For this purpose, special recruitment drive as directed vide orders dated 20.1.2009 shall be undertaken. The revised schedule shall be fixed with two weeks fixing time limit within six months within which all the vacancies in Group – A, C and D shall be filled up. There has to be strict compliance of the aforesaid direction in a time bound manner and no laxity or indiscrimination shall be tolerated in this behalf. We make it clear that since the respondents have already delayed the process, the time schedule should be strictly adhered to and no

further extension shall be granted. The petitioner shall also be entitled to cost quantified at ₹25,000/-.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

MARCH 07, 2012

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