

Allahabad High Court

Anil Kumar Gupta Son Of Late Sri Om ... vs The Oriental Insurance Company ... on 7 July, 2006

Author: V Shukla

Bench: V Shukla

JUDGMENT V.K. Shukla, J.

1. Civil Misc. Writ Petition No. 52516 of 2003 has been filed by the petitioner for issuing a writ in the nature of mandamus commanding the respondents to make promotion of petitioner on the post of Senior Assistant against 3% reservation quota for physically handicapped persons in pursuance of Government order dated 20.11.1989 with effect from 1996-97 and also further to award seniority and consequential benefits from the said date.
2. Civil Misc. Writ Petition No. 6201 of 2003 has been filed by the petitioner for quashing the communications dated 24.11.2003 and 03.12.2003 rejecting the candidature of petitioner for the post of Assistant Accounts Officer (A) and further for providing statutory reservation of 3% meant for physically handicapped persons in promotional exercise 2003 in terms of Section 33 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and thereafter accord promotion accordingly.
3. Brief facts giving rise to instant writ petitions are that M/S Oriental Insurance Company Limited is a constituent company of General Insurance Corporation of India. It is wholly owned and controlled by Central Government under the provisions of General Insurance Business (Nationalization) Act, 1972 and M/S Oriental Insurance Company Limited is obligated to act in the discharge of its function as per direction issued by the Central Government with regard to matters involving public interest and policy. The Central Government (Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training), New Delhi, vide office Memorandum dated 20.11.1989 introduced policy for providing reservation to physically handicapped incumbents in posts to be filled by promotion. The said policy was extendable to promotions when they were made (i) within Group D, (ii) from Group D to Group C and (iii) within Group C. The said reservation was to be provided to three categories of physically handicapped persons, namely, visually handicapped, hearing handicapped and orthopedics handicapped. Applicability of reservation was limited to the promotions being made to those posts which were identified as being capable of being filled/held by appropriate category of physically handicapped persons. Each one of the three categories of handicapped persons were allowed reservation at one percent each. It was also provided that though reservation would be effective only in those posts that are identified as being capable of being held by appropriate category of physically handicapped persons. Number of vacancies that will be reserved for the physically handicapped persons when promotions are being made to such identified posts will be computed by taking into account the total number of vacancies that arise for being filled up by promotion in a recruitment year both in non identified as well as identified posts. It was also provided that if appropriate category of physically handicapped persons are not available in the feeder grade from which promotion is being made to the next higher grade of the identified posts, then an intense exchange will be permitted subject to the condition that-

(i) The post to which promotion is to be made is one that can be held by the category of the physically handicapped persons available in the feeder grade;

(ii) The reservation so exchanged is carried forward to the next three recruitment years after which the reservation shall lapse

4. There was no comprehensive legislation with regard to rights of physically disabled persons enacted by Parliament, as such Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act No. 1 1996) was introduced. The said Act was enforced in order to give effect to the proclamation on Full Participation and Equality of the People with Disabilities in Asian and Pacific Region. India has been signatory to the proclamation which was made in the meeting to launch Asian and Pacific Decade of Disabled persons 1993-2002 convened by Economic Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992 and pursuant to the same, Act in question has been enforced. Section 32 of the Act in chapter VI provides for employment. The said Section being relevant is being quoted below:

32. Identification of posts which can be reserved for persons with disabilities.- Appropriate Government shall-

(a) identify posts in the establishment, which can be reserved for the persons with disability;

(b) at periodical intervals not exceeding three years, review the list of posts identified and update the list taking into consideration the development in technology.

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 such 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.

5. Subsequent to the same office memorandum was issued on 04.07.1997, wherein it was provided that in the matter of promotion physically handicapped persons shall get reservation on point Nos. 1, 34 and 67 in cycle of 100 vacancies in 100 point roster. Petitioner has contended that as per promotion policy, the assistant clerks, who have put in at least seven years' service in the cadre, were entitled to promotion on the post of Senior Assistant. Petitioner has contended that he is orthopedic physically handicapped with incapacitation in the lower half of his body and as the petitioner

completed seven years' service as assistant clerk, he was entitled to be promoted qua the post reserved for physically handicapped persons. Petitioner has contended that he was entitled to be promoted on the post of Senior Assistant in the year 1996-97, but he was illegally deprived of his promotion. He continued to represent the matter, but no action was taken on the same. Petitioner has contended that promotion list was published on 29.06.2001 and he was not promoted, as such he filed objection. Petitioner has contended that when he was denied promotion under physically handicapped category, he filed claim before the Chief Commissioner for Persons with Disabilities. Petitioner has contended that thereafter procedural formalities were undertaken by the Chief Commissioner and final judgment was delivered on 25.09.2002 and directives for providing promotion to the petitioner was passed. Petitioner has contended that in review exercise which was undertaken, he was promoted on the post of Senior Assistant with effect from the year 2002. Petitioner submits that said promotion ought to have been given with effect from 1996-97, when he became entitled for promotion to the post of Senior Assistant. Exercise was also undertaken for promotion in the category of AAO (O) both by way of promotion as well as by direct recruitment. Petitioner applied for consideration of his candidature under both the categories. Petitioner's application has been rejected. At this juncture writ petition No. 6201 of 2004 has been filed complaining illegal rejection of candidature and also complaining that 3% reservation ought to have been provided in the category of AAO(O) as per 1995 Act.

6. Counter affidavit has been filed in the main writ petition, and there in it has been contended that Circular dated 20.11.1989 provided reservation for physically handicapped persons in respect of promotions for the cadres i. e. (i) within Group D, (ii) from Group D to Group C and (iii) within Group C. The Government has not extended the reservation to the cadres of Group A and Group B in respect of promotions. The General Insurance Corporation of India has also issued directions in this regard prohibiting promotions to physically handicapped persons in groups B and A posts. It has also been contended that provision of 3% reservation for physically handicapped employees in the posts filled by promotion under promotion policy for supervisory, clerical and subordinate staff was introduced vide Head Office Circular dated 08.12.2000 preceded by amendments subject to Promotion Policy approved by the Board of GIC dated 24.11.2000. It has also been contended that Oriental General Insurance Company Ltd. being a Public Sector General Insurance Company duly incorporated under the Companies Act, 1956 is bound by the Rules and Regulations framed by the Board of Directors of General Insurance Corporation of India of which the Oriental Insurance Company Limited was a subsidiary company. It has been contended that after 2002, it received instruction for introducing 3% reservation to physically handicapped employees in class III promotions vide Circular dated 08.12.2000, the same was introduced immediately from 2001. Details have been set out in respect of grant of promotion to petitioner vide order dated 23.10.2002. It has also been contended that reservation was duly implemented and due promotions have been provided. It has also been asserted that in the year 1996, there was no reservation in promotion and it has been introduced in the year 2000, as such petitioner has no claim to promotion since the year 1996. It has also been clearly mentioned that Groups A and B posts are not to be filled up by promotion from physically handicapped incumbents, and in this regard promotion policy has been referred to.

7. Amendment application has been filed contending therein that promotional exercise which has been undertaken to the cadre of AAO (O) is liable to be quashed.

8. Rejoinder affidavit has been filed, and therein it has been contended that petitioner is eligible as he holds computer diploma from NIIT. Petitioner submits that his candidature has been illegally rejected. It has also been contended that in continuation of earlier circular dated 20.11.1989 Office Memorandum dated 16.01.1998 has been issued whereby existing policy of reservation qua SC/ST, including Physically handicapped persons, has been extended to all Groups (including Group A and Group B service) where the element of direct recruitment does not exceed 75%. It has been contended that as per circular dated 16.01.1998 it is not open to the respondents to plead that they required circular and direction from the Central Government. Section 33 of 1995 Act provided for 3% reservation in the posts identified and promotional posts of Assistant Manager, Administrative Officer and Assistant Administrative Officer are identified posts for being held by physically handicapped persons in Group A and Group B as, per Circular dated 25.11.1986. In this background, it has been contended that plea which is being set up is unsustainable. Supplementary counter affidavit has been filed giving therein the fact that petitioner was promoted to the cadre of Senior Assistant in promotional exercise 2002 and he accepted and joined the post of Senior Assistant on 31.10.2002. It has been contended that promotional exercise for the year 2002 was issued on 21.08.2003, whereas on 30.10.2003 notice dated 30.10.2003 was issued for promotional exercise-2003. Supplementary rejoinder affidavit has been filed, wherein it has been accepted that petitioner was promoted to the cadre of Senior Assistant on 31.10.2002. Much assertion has been made that promotion ought to have been accorded in favour of physically handicapped persons since the year 1996. It has been further contended that petitioner fulfills eligibility criteria for promotion to the cadre of AAO (O), as provided in paragraph 30 (Departmental Category) and paragraph 31 (Competitive Category). In this regard, it has been contended that candidature of petitioner has been wrongly rejected.

9. After pleadings aforementioned have been exchanged, both the writ petitions have been taken up together for final hearing and disposal with the consent of the parties.

Civil Misc. Writ Petition No. 52516 of 2003

10. Sri P. K. Singh, learned Counsel appearing for the petitioner, contended with vehemence that in the present case, in terms of Office Memorandum dated 20.11.1989, petitioner became eligible to be promoted as Senior Assistant after seven years of service and as such in all eventuality, petitioner was entitled to be promoted since year 1996-1997, as such writ petition in question is liable to be allowed.

11. Sri A. B. Saran, learned Senior Advocate, assisted by Sri V. C. Dixit, Advocate, on the other hand, contended that when promotional exercise has been conducted, claim of petitioner has been adverted to and promotion has been accorded, as such grievance sought to be raised is unsustainable.

12. After respective arguments have been advanced, issuance of office memorandum dated 20.11.1989 is not disputed which provides for reservation in the matter of promotion in Group C and Group D services. Petitioner submits that the moment he fulfilled qualification for being promoted, since then he is entitled to be promoted. Respondents have countered the said submission by contending that policy of promotion was adopted in the year 2000, and thereafter promotions have been made. In the entire body of writ petition there is no pleading on behalf of the petitioner that since 1996 whenever exercise qua promotion was taken up, right of petitioner has been defeated. Petitioner has not disclosed that during all these years promotional exercise has been undertaken and his rights have been defeated. From the own showing of petitioner, promotional exercise was undertaken on 29.06.2001 and list was published, and therein name of petitioner was not there, to which petitioner objected to, and his grievance stood remedied, as promotion was provided. Promotion is not fundamental right, rather consideration of candidature of an incumbent is fundamental right and occasion for consideration arises only when process of promotion is to be undertaken. Here, it has not at all been contended by the petitioner that process of promotion was undertaken in the year 1996-97 and his claim for promotion was not adverted to as such, claim of petitioner that he is entitled to be promoted with effect from 1996 is unfounded and without any force.

13. At this juncture, judgment of Hon'ble Apex Court in the case of Ajit Singh (II) v. State of Punjab is being perused and paragraphs 22 to 27 thereof being relevant are being quoted below:

22. Articles 14 and 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that-

there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

It has been held repeatedly by this Court that Clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the state of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"promotion" based on equal; opportunity and "seniority" attached to such promotion are facets of fundamental right under Article 16(1).

23. Where promotional avenues are available, seniority becomes closely interlinked with promotion provided such a promotion is made after complying with the principles of equal opportunity stated

in Article 16(1). For example, if the promotion is by rule of "seniority-cum-suitability", the eligible seniors at the basic level as per seniority fixed at that level and who are within the zone of consideration must be first considered for promotion and be promoted if found suitable. In the promoted category they would have to count their seniority from the date of such promotion because they get promotion through a process of equal opportunity. Similarly, if the promotion from the basic level is by selection or merit or any rule involving consideration of merit, the senior who is eligible at the basic level has to be considered and if found meritorious in comparison with others, he will have to be promoted first. If he is not found so meritorious, the next in order of seniority is to be considered and if found eligible and more meritorious than person who is first promoted will normally count his seniority from the date of such promotion. (There are minor modifications in various services in the matter of counting seniority of such promotees but in all cases the senior most person at the basic level is to be considered first and then the others in the line of seniority.) That is how right to be considered for promotion and the seniority attached to such promotion become important facets of the fundamental right guaranteed in Article 16(1).

Right to be considered for promotion is not a mere statutory right

24. The question is as to whether the right to be considered for promotion is a mere statutory right or a fundamental right.

25. Learned Senior counsel for the general candidates submitted that in *Ashok Kumar Gupta v. State of U.P.*, it has been laid down that the right to promotion is only a "statutory right" while the rights covered by Articles 16(4) and 16(4-A) are "fundamental rights". Such a view has also been expressed in *Jagdish Lal* and some latter cases where these cases have been followed. Counsel submitted that this was not the correct constitutional position.

26. In this connection our attention has been invited to para 43 of *Ashok Kumar Gupta*. It reads as follows: (SCC p. 239)

43. It would thus be clear that right to promotion is statutory right. It is not a fundamental right, the right to promotion to a post or a class of posts depends upon the operation of the conditions of service. Article 16(4-A) read with Articles 16(1) and 14 guarantees a right to promotion to Dalits and Tribes as fundamental right where they do not have adequate representation consistently with the efficiency in administrationbefore expiry thereof (i.e. 5 years rule), Article 16(4-A) has come into force from 17.6.1995. Therefore, the right to promotion continues as a constitutionally guaranteed fundamental right A similar view was expressed in *Jagdish Lal v. State of Haryana* and followed in some later cases. In the above passage, it was laid down that promotion was a statutory right and that Articles 16(4) and 16(4A) conferred fundamental rights.

27. In our opinion, the above views expressed in *Ashok Kumar Gupta* (supra) and followed in *Jagdish Lal* and other cases, if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right. We cannot accept the proposition. We have already stated earlier that the right to equal opportunity in

the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta right from 1950.

14. As per this judgment of the Apex Court right guaranteed to an employee for being considered for promotion according to relevant rules of recruitment is not statutory right but fundamental right. Right to be considered for promotion is fundamental right. Merely because one has attained the eligibility for being considered for promotion, does not automatically entitle the incumbent to be promoted, as a matter of course. For according promotion requisite exercise as per statutory rules and regulations will have to be undertaken. Here, the petitioner has not disclosed as to when exercise for promotion was undertaken and he was denied opportunity of consideration of his candidature. Thus, the claim made by the petitioner for promotion w.e.f. year 1996-97 is devoid of substance, and as such writ petition, as it has been framed and drawn, is liable to be dismissed.

Civil Misc. Writ Petition No. 6201 of 2004

15. Sri P.K. Singh learned Counsel for the petitioner contended with vehemence that candidature of his client for the post of AAO(A) has been wrongfully deprived and further 3% statutory reservation has illegally not been provided for whereas petitioner is entitled to be promoted to the cadre of AAO (O) in promotional exercise, and in the absence of same Promotional Exercise-2003 to the cadre of AAO (A) is unsustainable and liable to be quashed

16. Sri A.B. Saran, learned Senior Advocate, assisted by Sri V.C. Dixit Advocate, on the other hand, contended that there is no provision of promotion against Group A and Group B posts for physically handicapped category candidates and till date no identification has been made and as petitioner was not eligible, his claim has rightly been rejected.

17. After respective arguments have been advanced, undisputed position which emerges is to the effect that in office memorandum dated 20.11.1989 reservation for physically handicapped persons in the posts to be filled up by promotion was confined to only Group D and Group C posts. Petitioner is placing heavy reliance on office memorandum dated 16.01.1998, which provides for procedure to be followed for promotion. In the said office memorandum it has been provided that the existing policy of reservation for SCs/STs including for the physically handicapped in promotion in all Groups is applicable to all grades and services, where the element of direct recruitment does not exceed 75%. Qua Group C and Group D posts, it has been mentioned that manner of calculation of the vacancies for physically handicapped shall be as laid down in the Departments Office Memorandum dated 20.11.1989. As to whether Office Memorandum dated 16.01.1998 is only in context to Group C or Group D or it brings within its fold Group A and Group B posts also is a question essentially to be answered. Much capital is sought to be made out from the use of the word "All Groups" in paragraph 1 (ii) of the Office Memorandum dated 16.11.1998. In this connection, the opening paragraph of Office Memorandum has been looked into, which clearly reflects that after issuance of Office Memorandum dated 20.11.1989, various queries were raised on account of difficulties being faced in calculating/operating the post reserved for physically handicapped persons as per office memorandum. In the light of problems faced decision has been taken.

Paragraph 1 of the Office Memorandum dated 16.11.1998 deals with preparation and implementation of roster. Paragraph (ii) deals with applicability of existing policy of reservation for SCs./STs, including for physically handicapped person in promotion in all Groups is applicable to all grades and services, where element of direct recruitment does not exceed 75%. Here, relevant words are "the existing policy for the physically handicapped in promotion in all Groups, is applicable to all grades and service, where the element of direct recruitment does not exceed 75%." There has been no existing policy of promotion for Group 'A' and Group 'B' posts for the physically handicapped persons in promotion, as such it is wholly inappropriate to read something which is totally out of context. Office Memorandum dated 16.01.1998 is being totally misread and misinterpreted, whereas in pith and substance, the difficulties which had arisen in complying with/operating in terms of Office Memorandum dated 20.11.1989 was sought to be remedied, and at no place it ever intended to enlarge its scope and bring within its ambit Group 'A' and Group 'B' posts also.

18. At this stage it would also be relevant to note that in the past there had been growing demand from physically handicapped persons for providing reservation in Group 'A' and Group 'B' posts. Under Central Government, Ministry of Welfare, Government of India had a Standing Committee for identification of jobs for physically handicapped persons in various Ministries/Departments and PSUs. On 30.12.1995, Government of India directed the Standing Committee to undertake this identification of job for the physically handicapped persons in Group 'A' and Group 'B' services under the Government and PSUs. The Standing Committee undertook the exercise of identification of jobs and thereafter submitted its report which was published on 31.10.1986. The Committee after detailed discussion and on the spot study prepared a comprehensive list of 416 categories in Group 'A' and 'B' posts in Government Offices and PSUs, with their job description, the physical requirement and the categories of disabled suitable for the job. Government of India accepted the report of the Committee and issued Office Memorandum dated 25.11.1986. The said Office Memorandum dated 25.11.1986 has been quoted in full in the judgment of Hon'ble Apex Court in the case of National Federation of Blind v. U.P.S.C. . The Office Memorandum is reproduced hereunder:

"No. F. 36034/4/86-Estt. (SCT) Government of India Ministry of Personnel, Public Grievance & Pensions Department of Personnel & Training ...

New Delhi, the 25th November, 1986 Office Memorandum Subject: Identification of jobs for the physically handicapped persons in Groups 'A' and 'B' posts filled by direct recruitment in the Central Government Services and public Sector undertakings.

The undersigned is directed to say that with a view to effecting optimum utilisation of potentialities of physically handicapped which constitutes a significant section of the population in the country, the Ministry of Welfare constituted a Standing Committee for identification of jobs for physically handicapped in the Central Government Services and public Sector undertakings. The standing committee on identification of jobs set up a sub-committee for on-the-spot identification of jobs for the physically handicapped persons in Group 'A' and 'B' posts after making an in-depth study of undertakings as well as in consultation with the concerned authorities. This sub-committee in its report (submitted to the parent committee) identified 420 jobs in Group 'A' and 'B' posts/services

along with the physical requirements and functional classifications of disabilities indicating what jobs can be held by each category of disabled people and with what disability.

It has been decided that in respect of identified posts which can be held by physically handicapped persons preferences to physically handicapped persons will be given in the matter of recruitment to those posts. A copy of the report of the committee referred to in para 1 is enclosed for information guidance and necessary action. The list of jobs identified by the committee as suitable for being held by physically handicapped persons is not exhaustive. The Ministry/Department can further supplement the list based on their knowledge for jobs requirements, essential qualifications etc. The Ministries/Departments after identifying all the posts which can be held by physically handicapped persons may inform the UPSC at the time of sending their requisitions for filling vacancies in respect of those posts, that preference is to be given to physically handicapped persons in the matter of recruitment. The UPSC have agreed in principle to give preference to physically handicapped persons in filling the identified posts. The Department of Personnel & Training will be issuing general instructions to enable preference being given to the physically handicapped persons in such cases.

The Ministry of Finance etc. are requested to bring these instructions to the notice of all concerned.

Sd/-

(Bata K. Dey) Director (JCA)

19. Annexure R.A-2 is comprehensive list along with covering letter dated 25.11.1986. Opening of letter dated 25.11.1986 starts with subject: Identification of jobs for the physically handicapped persons in Groups 'A' and 'B' posts filled by direct recruitment in the Central Government Services and PSUs. Consequently, Office Memorandum dated 25.11.1986 will not come to the rescue of petitioner.

20. After having come to the conclusion that there is no existing policy for promotion against Group 'A' and 'B' posts for physically handicapped persons, can the respondents be permitted to bypass the provisions of 1995 Act. Section 32 of 1995 Act obligates Appropriate Government in positive term to identify post in the establishment, which can be reserved for persons with disability and thereafter at periodical intervals, not exceeding three years, review the list of posts identified and update the list taking into consideration the developments of Technology. Section 33 mandates appointment 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 post identified for each disability. Appropriate Government has been vested with the authority to grant exemption also, having regard to the nature of work carried out in the establishment. These provisions have been promulgated with the object of giving full participation and equality to the people with disabilities. Same is social welfare measure, and enacted to give effect to the proclamation signed by India in the meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002, convened by the Economic and Social Commission for Asia and Pacific held at

Bejing on 1st to 5th December, 1992. Act is comprehensive legislation for providing equality to disabled persons. Reference to entries in the 7th Schedule, reflects legislative competence of Parliament of enacting Act, Entry 9 (Relief of Disabled and unemployed); Entry 13 (Participation in International conference Associations and other Bodies and Implementing of decisions made thereat) Entry 70 Union Public Service, All India Service, UPSC and Entry 23 of List III (Social Security and Social Insurance, employment and unemployment). It is statutory responsibility of the Appropriate Government to identify the post in the establishment, and thereafter extend the benefit of reservation for Physically handicapped Persons. Identification of posts in the first exercise to be carried out in the establishment, for extending the benefit of reservation for Physically Disabled Persons. Said reservation cannot be permitted to be by-passed. Respondents fall within the definition of 'establishment' as defined under Section 2(k) of 1995 Act and till date no exemption has been accorded to respondents in terms of the proviso to Section 33 of 1995 Act, as such provisions of 1995 Act would apply with full force. Constitutional obligation of social welfare providing reservation for physically handicapped persons has to be given full meaning, and laxity in implementation of same cannot be taken lightly, and the said duty has to be performed honestly and sincerely so that its true content and spirit is brought to its logical end, and the prescribed goal is achieved.

21. Appropriate Government qua respondents is Central Government. Dominance of Central Government qua respondents is fully reflected in the provisions of General Insurance Business (Nationalization) Act, 1972 Section 4 deals with automatic transfer of shares in the capital of every Insurance Company in favour of Central Government. Section 5 deals with automatic transfer and vesting of undertaking of every existing insurer who is not an Indian Insurance Company in the Central Government on the appointed day. Sections 7 and 8 deal with the role of Central Government in the matter of transfer of existing employees and funds and in all these matters, the last word is of Central Government. Under Section 9 Central Government has to form company known as General Insurance Corporation of India, for purposes of superintending, controlling and carrying on the business of general insurance. Section 10 deals with transfer to Corporation of shares vested in Central Government. Section 10A deals with transfer to Central Government of shares vested in Corporation. Section 11 deals with payment to be made by Central Government for amounts to be paid for transfer and vesting of shares or undertakings. Section 12 deals with amount paid under Section 11 as additional contribution, stands allotted and vested in Central Government. Section 16 authorises Central Government for more efficient carrying on general insurance business, by way of Notification, frame one or more schemes. The matters have also been provided for. Section 17 authorises Central Government to frame conditions of service of officers and employees. Section 18 deals with function of Corporation. Proviso to this section mentions that all functions of Corporation, specified in this Section, on the commencement of General Insurance Business (Nationalisation) Amendment Act, 2002 shall be performed by Central Government. Section 21(2) authorises Central Government to appoint custodian for management of Indian Insurance Companies. Section 22 authorises Central Government to transfer employees and as per Section 23, the Corporation and every acquiring company, in discharge of their functions are to be guided by such directions in regard to matters of policy involving public interest. All these provisions speak of deep pervasive control of the Central Government.

22. After enforcement of 1995 Act, three per cent of vacancies, identified in the establishment, has to be mandatorily reserved and appointment against the same has to be made from amongst physically handicapped candidates, as provided for. It may be true that there may be no provision for promotion for physically handicapped candidates against Group 'A' and Group 'B' posts, but in the matter of direct recruitment/appointment against Group 'A' and Group 'B' posts, 3% reservation for physically handicapped category candidates is a must. As already mentioned above, identification of posts in establishment is a sine-qua-non for extending the benefit of reservation for physically disabled persons. In paragraph 6 of the rejoinder affidavit categorical statement of fact has been mentioned qua identified posts, in terms of the office memorandum dated 25.11.1986. After filing the said rejoinder affidavit, supplementary counter affidavit has been filed, but at no point of time, any issue of identification of posts have been raised. Letter of Central Government, which finds mention at page 12 of the Rejoinder Affidavit, in reference to paragraph 4, speaks, that the existing identification done in the year 1986 shall remain valid till the same is modified by the Government on the recommendations of the Expert Committee. Nothing has come on record to suggest that such list has been modified. On the basis of material which is available on record, inevitable conclusion is that there are identified posts in Group 'A' and 'B', and while making appointment by way of direct recruitment, as posts have been identified for direct recruitment only against Group 'A' and 'B' posts, in the establishment, three per cent of vacancies has to be offered to physically handicapped persons, as per 1995 Act.

23. Sri P.K. Singh, Advocate has placed reliance on the judgment of this Court, in the case of Vinod Kumar Rai v. Public Service Commission 2002 (2) AWC 1300, for extending similar benefit. The judgment cited, has not been approved by Full Bench of this Court in the case of Sarika v. State of U.P. 2005 (3) UPLBEC 2217, paragraph 41, as such no benefit of said judgment could be extended.

24. Prayer has been made for quashing the entire selection None of the selected candidates, has been impleaded and arrayed as respondent in the present case. Hon'ble Apex Court in the case of All India SC/ST Employees Association v. Arthur Jeen has taken the view that in the absence of impleadment of selected/successful candidates, it would be totally wrong to take adverse view against selected candidate and to quash the selection. Consequently, in the absence of representation of successful candidate, before this Court, the selection made cannot be quashed.

25. Now coming to the last question as to whether candidature of petitioner for being promoted as AAO (A) under paragraphs 30 and 3(sic) has been dealt with fairly or petitioner has been meted with arbitrary treatment. The cadre of Assistant Administrative Officer (AAO) is to be treated as 'entry-cum-promotional grade' and vacancies are to be filled up partly by direct recruitment and partly by promotions effected under the promotion policy for supervisory clerical and subordinate staff and promotion policy for Development Officers. Of the promotional vacancies in AAO declared, two-thirds have to be filled from employees eligible under paragraph 30 Departmental category and one-third to be filled up from employees eligible under paragraph 31 (Competitive Category). Employees eligible for promotion as AAO in one group but not promoted on account of limitation of proportions has to be promoted against vacancies unfilled in the other group. At this juncture, eligibility criteria prescribed for promotion to the cadre of Assistant Administrative Officer is being looked into. Paragraphs 30 and 31 are being quoted below:

PARA 30: (DEPARTMENTAL CATEGORY) A) All superintendents; or B) Senior Assistants and Stenographers who are at the ceiling of the scale; or C) Senior Assistants who have put in 7 years service in the cadre of stenographers who have put in 12 years service in the cadre; or D) Senior Assistants and Stenographers who have passed F.I.I.I. for F.C.I.I. or AGA or ACWA or Graduates in Engineering (civil, Mechanical or electrical); or Master of Business Administration (MBA) qualification from a recognized University or Post Graduation diploma in Business Administration/Management (PGDBM) equivalent of MBA from a recognized University/Institute affiliated to recognized University such as Jamnalal Bajaj Institute of Management Studies/XLRI/IIM which are recognized Institutes of All India Standing or Master in Computer Applications of recognized University or Chartered Financial Analyst (CFA) qualification from the Institute of Chartered Financial Analyst of India or Associate of Institute of Company Secretary (ACS) qualification from the institute of Company Secretaries of India; or E) Senior Assistants and Stenographers who have put in at least 3 years service in the cadre and are qualified as A.I.I.I. or A.C.I.I. or F) Senior Assistants and Stenographers who have put in at least 5 years service in the cadre and have passed the Licentiate Examination of the I.I.I. or Post Graduate Diploma (minimum one year duration) in the computer Application or recognized University or All India Institutes of repute namely accredited to DOEACC or Diploma in Computer Software/Hardware (minimum one year duration) from recognized All India Institutions viz. APTECH, NUT, NIC, NCST.

PARA 31: (COMPETITIVE CATEGORY) Graduate and Post-Graduate employees with at least 50% marks in any Degree Examination (40% in case of SC/ST Employees) and employees holding FIII or FCII Diploma (AIII or ACII in case of SC./ST employees), or employees who are ACA or ACWA or employees who have acquired Master of Business Administration (MBA) qualification from a recognized University or Post Graduation Diploma in Business Administration/Management (PGDBM) equivalent of MBA from a recognized University/Institute affiliated to recognized University such as Jamnalal Bajaj Institute of Management Studies/XLRI/IIM which are recognized Institutes of All India Standing or Master in Computer Applications of recognized University or Chartered Financial Analyst (CFA) qualification from the Institute of Chartered Financial Analyst of India or Associate of Institute of Company Secretary (ACS) qualification from the institute of Company Secretaries of India; shall be allowed to appear for not more than 3 occasions in the entire period of service for the Competitive Examination for Departmental Staff and those securing at least 60 % marks (50% marks in case of SC/ST) employees) shall be considered for promotion to the cadre of Assistant Administrative officers. Selection shall be made on the basis of Seniority, Qualifications, Work Record and Interview, as also the marks obtained in the Competitive Examination, the marks for the four criteria of Seniority, Qualifications, Work Record and Interview shall be according to the scheme of weightage given in para 35 and to the total of marks so obtained shall be added the marks (reduced to base 100) for the Competitive Examination. The employees who have secured at least 120 marks (100 marks in case of SC/ST employees) shall be drawn in ranking list arranged in descending order of marks. A successful attempt by an employee but who does not earn selection in the ranking list shall not count for computing the 3 attempts permitted to an employee. The instructions in this regard will be issued in due course of time.

26. Now on the touchstone of the aforementioned eligibility criteria, claim of petitioner is being adverted to. For promotional exercise of any particular year, the cut off date on which eligibility is to

be reckoned is 31st December of the previous year. Promotional vacancies for the year has to be worked out and determined in the month of January as per norms prescribed, and the promotional process has to be completed as far as possible by 30th June of the year. Petitioner had applied for consideration of his candidature, both for Departmental Category (paragraph 30) and for Competitive Category (paragraph 31). Petitioner's candidature under Paragraph 30 has been rejected, by mentioning that as per information of Regional Office, as no Court judgment has been enclosed, as such petitioner is being treated ineligible for promotion. Petitioner was promoted as Senior Assistant w.e.f. 23.10.2002. He could not have been promoted with retrospective effect, as has already been discussed, while dismissing first writ petition of petitioner. In promotional exercise 2002, eligibility criteria was different as is apparent from notice dated 14.10.2002, and on the said date petitioner even had not been promoted as Senior Assistant. Said eligibility will not come to the rescue of petitioner, as eligibility criteria had been changed in Promotional

27. Exercise 2003. Eligibility has to be seen in the context of the year for which promotion exercise is to be undertaken and said proceeding has to be continued in accordance with law as it stood at the commencement of such proceeding. See A.C. Calton v. Director . Petitioner does not fulfill the requisite eligibility criteria provided for in Paragraph 30 at the commencement of Promotional Exercise-2003 as none of the prescribed qualifications mentioned in sub-paragraphs (A) to (F), are fulfilled by the petitioner and petitioner was conscious of this fact, as such in his application moved for considering his candidature for promotion, page 38 of writ petition, in column 8 (a) petitioner mentioned present cadre as Senior Assistant and in column 8 (b) while giving details of entry in said cadre mentioned June 96 (as per Court case). This was incorrect information on the face of it, as there was no court order in this respect. Consequently, candidature of petitioner was rightly rejected, treating him ineligible under Paragraph 30. Now claim of petitioner is being adverted to in context of Paragraph 31. Undisputed position is that petitioner is neither Graduate or Post Graduate with at least 50% marks in degree examination, nor does the petitioner possess any one of the alternative qualifications provided for. Contention of petitioner is that for SC/ST candidates, such qualification of at least 50% marks in degree examination is 40%, and similar concession has been extended to Physically Handicapped Candidates, also in terms of Office Memorandum dated 04.09.1985, as such petitioner ought to have been treated as eligible. Office Memorandum dated 04.09.1985 itself mentions relaxed standard of selection of physically handicapped persons against reserved vacancies. As already discussed in earlier part of judgment, there are no reserved vacancies for physically handicapped against Group A and Group B posts, consequently, no relaxation is permissible. Petitioner has rightly been treated ineligible under Paragraph 31 also.

28. Consequently, present writ petition is also dismissed subject to observations made above.

29. No order as to costs.