

IN THE HIGH COURT OF DELHI AT New Delhi

SUBJECT: PERSONS WITH DISABILITY ACT 1995

WP(C) No. 18273/2004

Date of Decision 3rd August, 2005

ALL INDIA CONFEDERATION OF THE BLIND
.....Petitioner

Vashishth,

Through: Mr S.C.

Advocate

Vs

GOVT. OF NCT OF DELHI &
ORSRespondents

Through: Ms Latika Chaudhary for Ms.Avnish Ahlawat,

Advocate

S.RAVINDRA BHAT, J. (Oral)

1. The claim in these proceedings is for appropriate directions to the respondents to ensure compliance with provisions of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (hereafter referred to as "the Act"). The grievance projected is in respect of a recruitment process for filling up 90 posts of Principal by the first respondent-Government of NCT of Delhi. The Govt. of NCT had not earmarked 3% quota in accordance with Section 33 of the Act.

2. The petition was heard on 29th April 2005, when a direction was issued to the respondents not to make any appointments to the post of Principal on the basis of the advertisements in question. When the petition was taken up for hearing on 15th July 2005, it was noticed that the respondents had issued a corrigendum between 8-14 January 2005 inviting applications from all categories of disabled persons in respect of 3 posts. The last date for submission of applications was 27th January 2005 which was extended to 3rd February 2005 for candidates living in remote/rural areas.

3. Having regard to the above admitted facts, the interim order of 29th April 2005 was varied and the respondents were permitted to proceed with the recruitment process and make appointments to the post of Principal in respect of the

87 vacancies. The interim order was continued in respect of 3 posts.

4. Learned counsel for the petitioner had, on 15th July 2005, articulated a grievance that the Circular of DOPT, Government of India dated 01.02.99, enabling relaxation in age for certain categories of persons with disabilities/impairments had been issued and that in its terms persons entitled for consideration under the Act also ought to be given its benefit. The proceedings were accordingly adjourned to enable the Government of NCT to file affidavit and come out with its response.

5. Learned counsel for the respondents has filed an affidavit which states that the circular dated 01.02.99 has no application to the facts since it deals with appointments to the post of Grade-A, which is through open competitive examination. It is submitted that post of Principal is a Grade-A post; no open competitive examination is involved in the recruitment processes with which these proceedings are concerned. The relevant extracts of the circular have been annexed. They are reproduced below :-

“Subject :- Age concession to the SC/ST/OBC physically handicapped persons for appointment.

The undersigned is directed to refer to Ministry of Home Affairs (now Department of Personnel and Administrative Reforms) O.M. No.4/3/68-Estt.(D), dated 15.4.1969 on the subject mentioned above and to say that a doubt has arisen as to whether a Scheduled Caste/Scheduled Tribe candidate who is physically handicapped would be eligible for a further age relaxation of five years over and above the age relaxation of five years admissible to them as Scheduled Castes/Scheduled Tribes candidates.

Upper age-limit relaxation for appointment to Groups 'A' & 'B' posts - The question whether similar age relaxation should be granted to the physically handicapped persons for appointment to Group 'A' and Group 'B' posts has been considered in consultation with the UPSC and C & AG. It has now been decided to allow age relaxation of 5 years (10 years for SC/ST and 8 years for OBC) to blind, deaf-mute and orthopaedically handicapped persons for appointment to Group 'A' and Group 'B' posts/service except where recruitment is made through open competitive examination.

Relaxation also for appointment through Open Competitive Examinations - The question whether relaxation in the upper age-limit should be granted to physically handicapped persons for appointment to various posts/services under the Central Government filled through Open Competitive Examination has been considered in consultation with the Union Public Service Commission and the Controller and

Auditor-General of India. It has now been decided to allow relaxation of ten years (15 years for ST/ST and 13 years for OBC) in the upper age-limit to blind, deaf-mute and orthopaedically handicapped persons for appointment to all civil posts/services under the Central Government filled through Open Competitive Examination.â€

6. It was submitted by learned counsel for the petitioner that the description of open competitive examination ought to be given an enlarged construction and should not be confined to written examination. He further submitted that in respect of the recruitment process in the present case, the applications were invited on an All India Basis.

7 .The last grievance raised is with regard to the practice or action of the respondents in seeking to appoint merited candidates who apply on the basis of their disability, against the 3% quota under the Act even though they might otherwise be entitled to appointment in the general category on the basis of their performance on merit. It is submitted that such a practice should be stopped and the respondents ought to treat them as general candidates, leaving appropriate slots or posts to be filled by other candidates eligible in the quota earmarked under the Act.

8. This claim is articulated in Para 12 of the petition and has been denied by the respondents who blandly submit that in such an eventuality, the candidate who applies under the 3% quota, but secures sufficient merit to be included in the list of general candidates, would be nevertheless treated as against that quota under Section 33 of the Act.

9. On the first issue raised, namely applicability of the circular in respect of age-relaxation, I am of the considered opinion that the interpretation canvassed cannot be accepted. Undoubtedly the objective sought to be achieved by the Act is to eliminate discrimination against persons with disabilities, and provide limited affirmative action in their favour. Nevertheless, the provision of age relaxation for such categories is clear in its terms; if the process involves open competitive examination to Group 'A' posts; the relaxation is 10 years; in other cases, it is 5 years. In the absence of a challenge to this position, it would not be possible to hold that a process that involves screening/ interview would nevertheless be an open competitive examination. Doing so would be to result in going against the plain words of the circular.

10. On the second issue, I am of the opinion that there is no merit for the view taken by the respondents. If the provisions of the Act were made to alleviate the condition of those labouring under disabilities; the intention was never to limit

their opportunities in the manner as is sought to be done. The interpretation placed by the respondents in fact subverts the objective of the enactment. If, in a given recruitment out of 100, 10 candidates applying as disabled candidates perform sufficiently well to be placed in the merit quota, nevertheless only 3 would be appointed, against the 3% quota under the Act. This illustrates the untenability of the interpretation advanced by the respondents.

11. A debate on this issue is not required, since the matter has been settled by a Constitution Bench of the Supreme Court in the judgment reported as R.K. Sabharwal and Ors. Vs. State of Punjab and Ors., JT 1995 (2) S.C.351. Supreme Court held in that context, on this very issue as follows :-

“the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition. We, therefore,

see no force in the first contention raised by the learned counsel and reject the same.â€

12. As is evident, the observations were made in the context of reservations under Article 16(4) of the Constitution. However, having regard to the common objective, viz affirmative discrimination by the State, to ensure representation of specified categories in public services, I am of the opinion that the law laid down also applies to other categories of reservations such as under the Act. To that extent the Act is only a means, for furthering the classification made in favour of persons with disabilities; it would be under Articles 14, and 16(1) of the Constitution of India.

13. The view taken in this judgment also conforms with to the primary objective of the Act, which is a benevolent legislation. It has been repeatedly held that benevolent enactments ought to be given liberal and expansive interpretation, and not narrow or restrictive construction (see Madan Singh Shekhawat Vs. Union of India; 1996(6) SCC 459; Deepal Girishbhai Soni Vs. United India Insurance Co. Ltd. 2004(5) SCC 385; Babu Parasakaikadi Vs. Babu 2004(1) SCC 681).

14. If the principles indicated above are kept in mind, it would be apparent that the acceptance of the interpretation (or "practice") of "adjusting" otherwise merited, - but disabled " candidates in the 3% quota is highly anomalous. Besides being unduly restrictive it would result in a situation where such candidates would have been better off without a quota (since there would have then been no ceiling or limit for their representation). Therefore, such a practice is opposed to the object of the Act.

15. In view of the above, I am of the view that the respondents cannot adjust a candidate, (who is otherwise high up in the merit list and would be entitled to appointment in the general category) against the 3% quota earmarked for persons with disabilities under the Act.

16. In view of the foregoing discussion, a direction is issued to the respondents to ensure that while preparing the select list, such persons claiming the benefit of the 3% quota reservation under the Act, who are even otherwise are entitled to be appointed, on the basis of their own merit, shall be treated as general category candidates and shall not be adjusted in the 3% quota, thus leaving the quota under the Act for other persons eligible to claim under it. The petition is partly allowed in the light of the above directions. No Costs.

Dasti.

A BHAT, J.
AUGUST 03, 2

Sd./-
S.RAVINDR