

Central Administrative Tribunal - Delhi
Tara Chauhan vs General Manager on 13 March, 2014

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.467/2014

New Delhi, this the 13th day of March, 2014

HON BLE SHRI G. GEORGE PARACKEN, MEMBER (J)
HON BLE SHRI P.K. BASU, MEMBER (A)

1. Tara Chauhan
D/o Kunj Bihari Chauhan
Aged 31 years
R/o Khasra No.350/2, Top Floor
Gali No.4, Block-B, Upkar Colony,
Sant Nagar, Burari,
Delhi-84
2. Veebha
D/o Kunj Bihari Chauhan
Aged 29 years
R/o Khasra No.350/2, Top Floor
Gali No.4, Block-B, Upkar Colony,
Sant Nagar, Burari,
Delhi-84

....Applicants

(Through Shri S.K. Rungta, senior counsel with Shri Prashant Singh, Counsel)

Versus

1. General Manager
Northern Railway having its office at Baroda House
New Delhi
2. Northern Railway,
Railway Recruitment Cell
Through its Chairman
Having its office at Lajpat Nagar,
New Delhi-110024
3. Railway Board,
Through its Chairman,
Having its Office at Rail Bhawan,
New Delhi

.Respondents

(Through Sh. VSR Krishna and Shri Shailendra Tiwari, Advocates)

ORDER

Shri P.K. Basu, Member (A):

This OA has been filed with a prayer to set aside and quash advertisement No.220-E/open mkt/RRC/2013 dated 30.12.2013 to the extent it excludes the blind from consideration from appointment to other posts except Cook and consequently declare that blinds are eligible for consideration and appointment if selected to the posts advertised and are also entitled to be appointed if selected against the posts identified for them in terms of notification No.16-15/2010-DD-III dated 29.07.2013 issued by the Ministry of Social Justice and Empowerment (MOSJ&E) under Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (in short `the Act) and consequently direct the respondents to accept the application forms of the applicants and other similarly situated blind persons and allow them to participate in the said process with further direction to the respondents to issue a corrigendum notifying that both blind and low vision candidates are eligible to apply for the posts advertised and for consideration for appointment along with the benefit of reservation of 1% of the total posts advertised. In short, the case of the applicants is that as per terms of the advertisement and as per provisions of the Act and the judgment of the Hon ble Supreme Court in Civil Appeal No.9096/2013 (arising out of SLP (Civil) No.7541/2009), Union of India & anr. Vs. National Federation of the Blind & ors., they are eligible to be considered for appointment against all the posts advertised and, therefore, their applications should be accepted.

2. The respondents contend that there has been no violation of Rules by the respondents and they have excluded the blinds only from those posts which are not identified.

3. Heard both the parties.

4. The case of the applicants is that the above Supreme Court case was against the final judgment dated 19.12.2008 passed by the High Court of Delhi in Writ Petition) No.15828 of 2006 wherein the High Court interpreted Section 33 of the Act and issued various directions to be complied with by the appellants herein. After detailed hearing, the findings of the Hon ble Supreme Court were as follows:

1 In this light, the contention of the Union of India that reservation in terms of Section 33 has to be computed against identified posts only is not tenable by any method of interpretation of this part of the Section.

xxxx xxxx xxxx 32 .This can only mean that out of minimum 3% of vacancies of posts in the establishments 1% each has to be given to each of the 3 categories of disability viz., blind and low

vision, hearing impaired and locomotor disabled or cerepral palsy separately and the number of appointments equivalent to the 1% for each disability out of total 3% has to be made against the vacancies in the identified posts. The attempt to read identified posts in the first part itself and also to read the same to have any relation with the computation of reservation is completely misconceived. The Apex Court further held that judgments in Indra Sawhney Vs. Union of India and others, AIR 1993 SC 477 and R.K. Sabharwal and others Vs. State of Punjab and others, (1995) 2 SCC 745 are not applicable with respect to disabled persons.

5. The applicants also rely on the order dated 30.05.2012 of this Tribunal in OA No.3493/2011 with connected matters, Pankaj Kumar Srivastava Vs. UPSC and anr., wherein this Tribunal dealt with a similar issue with regard to Civil Service Rules and issued directions to implement the Scheme of reservation in accordance with the provisions of the Act and not on the basis of existing rules. The said order was also affirmed by the Hon ble High Court of Delhi vide its order dated 11.10.2013 in WP) 4902/2013. In summary, the applicants have explained the post wise position as follows:

) Khalasi Helper (Civil Eng/Mech/Elect): It is submitted that Khalasi at S.No.86 of the MOSJ&E List of 2013 relates to Khalasi at Dockyard while discharging duties relating to ship maintenance which is evident form the job description. The post advertised in the impugned advertisement is not Khalasi simplicitor in Railway but Khalasi Helper which relates to the job of helper which is identified for the blind at S.No.2,6,9,80,96, 104,124,125,134,144,145,149, 173.

5) Carriage Cleaner (Mech): It is submitted that cleaner has already been identified for the blind which include 100% blind at Sl.No.3,5,31,34,36

6) DSL Khalasi (Mech): The posts of DSL Khalasi has also been identified in terms of submissions made hereinabove for the post of Khalasi helper at S.No.3

7) Khalasi Helper (Eng.): The posts of Khalasi helper has also been identified in terms of submissions made hereinabove at S.No.3

8) Khalasi Helper (Mech): The posts of Khalasi helper has also been identified in terms of submissions made hereinabove at S.No.3

9) Safaiwala (Med.): This post has also been identified for the blind at Sl.No.98.

10) Cook Mate (Med.): this post admittedly has been identified for blind even from the own showing of the respondent.

11) Khalasi Helper (Stores): The posts of Khalasi helper has also been identified in terms of submissions made hereinabove at S.No.3. In addition, since this post is for the Khalasi Helper in the Store, it exclusively stands identified in the list of identified posts at S.No.59 and 154 of the identified posts.

12) Hospital Attendant (Male): This post has also been identified for the blind at Sl.No.2,99,104,109

13) Hospital Attendant (Female): This post has also been identified for the blind at Sl.No. 2, 99, 104, 109.

6. The applicants argued that in 2010, a similar advertisement had been brought out in which the posts advertised were Khalasi Helper in Civil Engg. (TMC & Const.), Electrical, Mechanical, Signal & Telecom and Stores (Printing Press), Khalasi Helper in Elect. (W), Mech. (W) and S&T (W), Khalasi Helper in Stores, Safaiwala in Medical & Mechanical, Safaiwala (Female) in Medical, Carriage Cleaner in Mechanical and DSL Cleaner in Mechanical and there was no restriction on blind and low vision candidates from applying. In fact, the applicants have enclosed the appointment letter of one Shri Rakesh Kumar who has a disability of 100% blindness and who was appointed C&W cleaner on 5.06.2013.

7. The applicants along with their rejoinder have also filed notices dated 10.07.2012 showing that Shri Sanjay Ram, Shri Chandra Pal Maurya, Shri Rakesh Kumar, Shri Md. Nadeem Ahmed and Shri Nathu Prasad were first appointed as C&W (Cleaner)/ DSL Cleaner. However, through these notices, they were later appointed as Peon/ Khalasi in Delhi Division. It was stated that Shri Nadeem Ahmed had 90% blindness and Shri Sanjay Ram was 100% blind.

8. It was brought to our notice by Mr. Rungta, learned senior counsel for the applicants that vide notification dated 29.07.2013, the MOSJ&E has identified posts for candidates with disability in different departments and at serial number 59, Store Attendant post has been identified for the blind. The job involved is to perform low skilled, manual tasks according to the need of the particular department. Similarly, at serial number 80, Carpenter/ Helper has been identified also for the blind though in remarks column, it does state as follows:

Not identified for Railways personnel who are involved in operation of trains, maintenance of tracks, movement of engine and compartment in yards, telecommunication and signaling etc. Likewise, at serial number 86, the post of Khalasi has not been identified for the blind because it is meant for shipping line as stated earlier.

9. Our attention was further drawn to Notes No.2, 3 and 4 of the Gazette Notification dated 29.07.2013 which read as follows:

Note 2: The list of posts being notified is not an exhaustive list. The Ministries, Departments, Public Sector Undertakings and the autonomous bodies may further supplement the list.

Note 3: If a post is already held by a person with disability, it shall be deemed to have been identified.

Note 4: If a post is identified in the feeder grade, the post in the promotional grade should also stand identified.

10. It was specifically argued that since there were no restrictions on the posts of Khalasi/ Safaiwala etc. earlier and as stated above, appointments had been made by the department as per note no.3,

they will be deemed to have been identified. It was reiterated that the Hon ble Supreme Court in National Federation of the Blind (supra) has clearly given a finding that identification has nothing to do with providing 3% reservation and, therefore, identification should be after selection. The applicants further stated that in their defence, the respondents have referred to Ministry of Railway letter dated 27.08.2009 in which the list of posts had been circulated and it had been mentioned that the Rail Ministry has approached MOSJ&E for requisite exemption of certain categories/posts from the purview of identified categories as the Hon ble Supreme Court had taken note of the provisions of Section 33 of the Act providing for exemption but as has been clarified above, in the 2013 list of MOSJ&E, the post of Khalasi appears in four different departments of the railways. The respondents state that notice No.561-E/506/Misc/P-4 dated 10.07.2012 has been wrongly referred to by the applicants in their defence as this letter rectifies the error committed by the respondents in appointment of Sanjay Ram etc. as C&W Cleaner since they could not be accommodated in this category. Through this notice, as a humanitarian measure, they were adjusted against the posts of Peon/ Khalasi because of restrictions put forth by the letter dated 27.08.2009. Through this letter, posts of Khalasi/ Safaiwala etc. were taken out of the `blind` list.

11. The respondents further argued that the `deeming` provision of Note 3 of the advertisement of 2013 does not apply to C&W (Cleaner) as they all were wrongly appointed as such and later on adjusted as Peon. It was submitted that in the case of Carpenter/ Helper at sl. No.80 of 2013 list of MOSJ&E, it has been clearly mentioned that these posts are not identified for railways. Therefore, they cannot be offered to the blind.

12. We have heard both the counsels at length and perused the records/ judgments cited very carefully.

13. At the outset, in order to place the matter in its proper perspective, it is pertinent to quote para 20 of the judgment of the Hon ble Supreme Court in National Federation of the Blind (supra), which is as follows:

o) India as a welfare State is committed to promote overall development of its citizens including those who are differently abled in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalization of opportunities to the differently abled citizens in our country could be traced in Part III and Part IV of the Constitution. For the persons with disabilities, the changing world offers more new opportunities owing to technological advancement, however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the need of the hour.

14. Needless to say, such matters should be handled by the respondents with utmost sensitivity, in true spirit of the legislation and not get bogged down by archaic rules and procedures. In the National Federation of the Blind case (supra), the Union of India had taken the stand that 3% reservation should be in the vacancies identified for the disabled persons and not in the total cadre strength but the Hon ble Supreme Court clearly held in para 31 of its judgment that the contention of the Union of India that reservation in terms of Section 33 has to be computed against identified

posts only is not tenable by any method of interpretation of this part of the Section. The Hon ble Supreme Court in its conclusion finally held as follows:

1 we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., computing 3% reservation on total number of vacancies in the cadre strength which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29.12.2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new Office Memorandum (s) in consistent with the decision rendered by this Court.

52) Further the reservation for persons with disabilities has nothing to do with the ceiling of 50% and hence, Indra Sawhney (supra) is not applicable with respect to the disabled persons.

53) We also reiterate that the decision in R.K. Sabharwal (supra) is not applicable to the reservation for the persons with disabilities because in the above said case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST & OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal ... Therefore, we are of the view that what the respondents did in 2010 permitting the blind people for these posts was the right thing to do.

15. We have also seen the notification of 2013 by MOSJ&E and the posts Store Attendant/ Carpenter-Helper/ Safaiwala/ Sweeper have been clearly identified for the blind as argued by Mr. Rungta. We also agree with the arguments of the applicants that Khalasi at serial number 86 is for a completely different job and meant for seamen and sea cargo etc. and does not apply in the present case. Moreover, the post of Helper also is not identified for railway personnel who are involved in operation of trains, maintenance of tracks, movement of engine and compartment in yards i.e. only a certain category of railway men. In fact, as has been seen in notice dated 10.07.2012, the railway indeed had appointed Sanjay Ram and others initially as C&W Cleaner but later due to restrictions of 2009 letter, they appointed them as Peon/ Khalasi. However, the respondents failed to note that the joint list of the earlier notification 2009 has been superseded by the 2013 Notification issued by MOSJ&E in which the posts of Safaiwala/ Sweeper/ Store Attendant/ Carpenter-Helper have been identified for blind people. In fact, vide respondents letter dated 10.07.2012, Shri Sanjay Ram etc. have been reappointed as Office Peon/ Khalasi.

16. From the judgment of the Hon ble Supreme Court in National Federation of the Blind (supra), what comes out is that 3% reservation will be against the vacancies in the cadre and it will be vacancy based and not post based appointment. Moreover, we have seen from the list of identified posts of 2013, as has been ably demonstrated by learned senior counsel Shri S.K. Rungta, that the nature of the job of the posts advertised fell within the list of posts identified in 2013. Moreover, in the case of Khalasi, the department themselves have appointed earlier selected candidates as Khalasi as is clear from the notice dated 10.07.2012. In fact, for the same posts, prior to 2013, the advertisement of 2010 had no such restrictions on the blind. Taking into view the totality of facts placed before us, we are not in a position to accept the contention of the respondents that they will go by the 2009 list and not by 2013 list as they are seeking exemption. The argument regarding

Khalasi not being included as identified post is also incorrect as the learned counsel for the applicants has clearly demonstrated that the post of Khalasi at serial no.86 is for the dock yard whereas the other posts of Khalasi and Helper have been identified.

17. Therefore, we conclude that by debarring the blind people in 2013 advertisement, the respondents have indeed done injustice to the applicants and this needs to be rectified. We, therefore, set aside the advertisement to the extent it excludes the blind from consideration for appointment to other posts except Cook and direct the respondents to consider the blind also for appointment to other posts advertised, if they are selected. In this regard, they may issue a corrigendum that blind and low vision candidates are also eligible to apply, within 15 days from today and definitely well before the examination commences.

18. Before we part, we would like to bring on record our deep appreciation for Shri S.K. Rungta, learned senior counsel for his extensive and invaluable assistance to the Tribunal in disposing off this matter. No costs.

(P.K. Basu)
Member (A)

(G. George Paracken)
Member (J)

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