

Delhi High Court

Union Of India & Ors. vs Tara Chauhan & Anr. on 19 August, 2014

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Date of Decision: 19.08.2014

% W.P.(C) 5111/2014 & C.M. Nos.10185-87/2014

UNION OF INDIA & ORS.

..... Petitioner
Through: Mr. V.S.R. Krishna with Mr. J.K.
Singh, Advocates

versus

TARA CHAUHAN & ANR.

..... Respondent

Through: Mr. S.K. Rungta, Sr. Adv. with Mr. Prashant Singh, Ms. Heena Dua and Ms. Pratiti Rungta, Advocates W.P.(C) 5146/2014 GENERAL MANAGER NORTHERN RAILWAY AND ORS
..... Petitioner Through: Mr. V.S.R. Krishna with Mr. J.K.

Singh, Advocates versus VIRENDER Respondent Through: Mr. S.K. Rungta, Sr. Adv. with Mr. Prashant Singh, Ms. Heena Dua and Ms. Pratiti Rungta, Advocates + W.P.(C) 5162/2014 GENERAL MANAGER NORTHERN RAILWAY & ORS.

..... Petitioner Through: Mr. V.S.R. Krishna with Mr. J.K.

Singh, Advocates versus VINAY KUKAR & ORS.

..... Respondent Through: Mr. S.K. Rungta, Sr. Adv. with Mr. Prashant Singh, Ms. Heena Dua and Ms. Pratiti Rungta, Advocates CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI S.
RAVINDRA BHAT, J. (OPEN COURT)

1. Issue notice. Mr. Prashant Singh accepts notice. With the consent of counsel, these petitions have been heard finally.

2. The Union of India and the Northern Railways are aggrieved by the order of the Central Administrative Tribunal (CAT/ Tribunal) dated 13.03.2014 in O.A. No.467/2014 (hereafter referred to as the "main order"). In the other two petitions, the grievance is in respect of two orders of the Tribunal, which have followed the main order.

3. These orders had, in effect, directed the Northern Railways to earmark 1% quota for blind and low-vision candidates in compliance with Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation), Act 1995 (hereafter referred to as the Disabilities Act). A further direction enjoining the Northern Railways to forbear from excluding 100% visually impaired candidates from selection and appointment was also issued.

4. The respondent/applicants approached the Tribunal complaining that the advertisement issued on 30.12.2013, calling for applications for a total of 5679 vacancies in 13 cadres in the Northern Railways, was contrary to the provisions of the Disabilities Act. It was contended that within the 3% quota earmarked for such candidates (further sub-divided into 1% for the visually handicapped, hearing impaired and orthopedically handicapped each), categories are not being notified appropriately. The specific grievance articulated was with respect to the identification of 100% visually handicapped candidates as ineligible from applying for posts, except that of cook. The relevant provision in the advertisement stated as follows:

"4. Persons with Disabilities (PWD) PWD candidates will be valid only if the disability form is issued on Annexure-4.

Definitions of Disabilities in details has been uploaded on website. Concerned candidates are requested to please go through it before filling up their application form. Posts reserved for PWD.

Name of Post	Department	Categories of disabled who could apply for
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Khalasi Helper (Ctg No.3,7,11)	Civil Engg., Electrical, Mechanical, S&T Store	the jobs LV, OA, BL, OL, HH
Safaiwala	Med	LV, OA, BL, OL, HH
Cook	Med	B, LV, BL, OL, HH

Abbreviations used : OH - Orthopedically Handicapped, OL- One Leg, OA - One Arm, BL - Both leg, HH - Hearing Handicapped, VH - Visually Handicapped, LV - Lower Vision B-Blind".

5. The Tribunal upon an analysis of previous orders in O.A. No.3493/2011 (which stood affirmed by

this Court in Pankaj Kumar Srivastava v. UPSC & Anr.), concluded that the notified vacancies in various categories had, in fact, been a subject matter of exercise of identification and that the exclusion of 100% blind candidates from posts, except the post of Cook would, therefore, be contrary to law. The Tribunal also took note of a previous advertisement of the Northern Railways of 2010, whereby these posts were included and made available for 100% blind candidates too, and directed as follows:

"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".

6. It is contended on behalf of the Railways that the impugned order is untenable and requires to be set aside. It is argued, firstly, that the Tribunal could not have relied upon the 2010 advertisement, because the circumstances had clearly changed. In this context, it was submitted that the Ministry of Social Justice and Empowerment had conducted an elaborate exercise of identifying various posts within the Central Government in terms of Section 33 of the Disabilities Act. Learned counsel relied upon the notification dated 29.07.2013 constituting the committee and the terms thereof, which are a part of the record. He points out that the report of the committee was taken into consideration by the Northern Railways while framing the advertisement, and identifying the distinct posts for which appropriate category or categories of candidates with disabilities could apply.

7. It was pointed out with reference to the list of posts identified by the report itself that since a conscious policy choice or decision had been taken by the Northern Railways, the Tribunal ought not to have relied upon the so-called past instance - which was bereft of any reasons, and in that instance, the recruiting agency did not have the benefit of such input. It was also urged that even on a bare look at the report itself, it would indicate that at least three posts - Gateman, Lineman and Trackman were not identified in the list prepared by the committee as being available to 100% visually handicapped persons. The non application of mind by the Tribunal is, therefore, writ large on the face of the record and the impugned order requires to be set aside.

8. Mr. S.K. Rungta, learned senior counsel appearing on behalf of the respondent/applicant-caveators, argued that the impugned order should not be interfered with. He submitted that the Tribunal applied its mind and concluded contrary to the assertions of the petitioner as is evident from the discussion made in para 5 of the impugned order in the main case. It was argued that even an independent examination of the report of the committee would establish that most of the posts - save the appointments to gateman, lineman and trackman, were duly considered by the committee and notified as capable of being manned by blind and low vision candidates. Learned counsel also highlighted that the proviso to Section 33 of the Disabilities Act - in addition to the other conditions, empowered the establishment - an expression that includes

Government Department and agencies - to seek exemption in respect of one or the other category of posts. Learned counsel submitted that such power of exemption has not been invoked in this case.

9. Referring to the Supreme Court judgment in Union of India & Anr. v. National Federation of the Blind & Ors., (2013) 10 SCC 772, it was argued that the reservation under the Disabilities Act has to be in respect of the total or aggregate number of vacancies, and that a further demarcation of 1% for each category has to be fulfilled. The question of accommodating the concerned candidates in one or other posts would thereafter arise.

10. It is evident from the above discussion that there is no debate or controversy with respect to the manner in which the 3% vacancies directed by the provisions of the Disabilities Act have to be worked out. A series of judgments of the Supreme Court - the latest being in National Federation of the Blind (supra) have concluded the issue; all establishments are bound to work out or calculate the 3% reservations on the basis of the total vacancies irrespective of the identification of posts. Such being the case, the next level of scrutiny required is whether the exclusion of a particular post or group of posts or cadre from the purview of the Disabilities Act - in respect of all kinds of disabilities or some of them, is backed by any rationale. The above discussion would show that unlike the 2010 instance, where apparently no exercise has been resorted to, the current advertisement had the benefit of the notification of the committee dated 29.07.2013, which identified the various posts across the establishment of Union of India, its department and agencies.

11. It is evident that this notification nowhere extends the reservation to low vision or blind category of candidates with 100% visually impaired, to posts such as Gateman, Lineman and Trackman. Such being the case, this Court is of the opinion that the Tribunal could not have given the wide-ranging directions that it did. In the circumstances, the order of the Tribunal calls for modification on this aspect.

12. So far as the question whether the description of Khalasi Helper, Carriage Cleaner, Safaiwala etc. correspond to any of the posts identified within the notification is concerned, this Court is of the opinion that this aspect would be best left to the determination by the appropriate authorities in order to avoid any controversy or confusion. Accordingly, we direct the concerned authority constituted by the law i.e. the Chief Commissioner of Disabilities to determine as to which of the posts advertised by the Northern Railways on 30.12.2013, save and except that of Gateman, Lineman, Trackman and Cook (which have already been identified in the notification dated 29.07.2013) correspond to the identified posts vide notification dated 29.07.2013. The Chief Commissioner shall be assisted by the concerned officials of the Indian Railways. It is open to the Chief Commissioner to consider the views of any other interested parties who may wish to address the issue.

13. In the light of the above discussion, the following directions are hereby issued:

i) The Tribunal's order to the extent which directs appointment of the applicants to the categories of Gateman, Lineman and Trackman pursuant to the advertisements in question in the present case is hereby set aside;

- ii) The Chief Commissioner of Disabilities shall, after taking into account the notification dated 29.07.2013 and consulting the Northern Railways and considering the views of the other interested parties, furnish his report as to the equivalence of the posts which are the subject matter of the present case, and whether they are covered by the notification dated 29.07.2013 in respect of low vision and 100% blind category candidates. This report shall be furnished within eight weeks from today.
- iii) The Northern Railways shall keep 1% of the entire vacancies notified pursuant to the advertisement dated 30.12.2013 unfilled till the aforesaid process is completed.
- iv) The process of filling up the 1% reserved posts shall be completed pursuant to the report, after which the results in respect of those category of candidates would be declared and appropriate consequential orders of appointment etc. shall be undertaken. This direction will apply in W.P.(C.) Nos.5146/2014 and 5162/2014.
- v) So far as the applicants in W.P.(C.) No.5111/2014 are concerned, since the recruitment process of the common test etc. have not yet been undertaken, the petitioner/Northern Railways is hereby directed to accept the applications of 100% blind category candidates and allow them to participate in the recruitment test. Their results, as well as those of the low vision category candidates, shall not be declared in the 1% reserved category under the Disabilities Act, and shall be subject to the final determination by the Chief Commissioner as directed by this Court.
- vi) In case of candidates of low vision and blind category applying for and participating in any selection process and finding a place in the merit list (i.e. other than under reserved categories under the Disabilities Act or any other kind of reservation), their results will be announced and the appointment process be undertaken in accordance with the prevailing regulations and office memorandum.
- vii) Subject to the above directions, result of candidates in respect of all other vacancies (except of the categories mentioned above) shall be declared.

14. The entire process of completion of selection and recruitment shall be undertaken within three months from today.

15. The writ petitions are disposed of in the aforesaid terms.

16. Order dasti to the parties.

S. RAVINDRA BHAT, J VIPIN SANGHI, J AUGUST 19, 2014 sr