

Vinay Kumar and Others Vs. General Manager, Northern Railway and Others

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Court : Central Administrative Tribunal Principal Bench New Delhi

Decided On : May-08-2014

Judge : The Honourable Mr. G. George Paracken, Member (J) & the Honourable Mr. P.K. Basu, Member (a)

Appeal No. : O.A. 382 of 2014 & M.A. 315 of 2014 & 1091 of 2014 With O.A. 824 of 2014 & M.A. 1235 of 2014

Appellant : Vinay Kumar and Others

Respondent : General Manager, Northern Railway and Others

Judgement :

P.K. Basu, Member (A)

By this common order, we propose to dispose of OA 382/2014 and OA 824/2014 together as facts and issues involved in both the OAs are identical. Facts have, however, been extracted from OA 382/2014.

2. The respondents had issued an advertisement vide notification dated 30.08.2012 inviting applications from eligible candidates for recruitment to 7368 posts in various Divisions/ Workshops/ Units under the respondents organization. The applicants appeared in the recruitment test held during November-December, 2013 but have been issued rejection letters on the ground of being 100% blind. It is the contention of the applicants that they are eligible and entitled to be considered both on their general merit as also against the reservation for visually

handicapped persons against 1% quota for them. The applicants have also filed MA 1091/2014 in which it has been stated that OA 467/2014 was also filed involving the same controversy with regard to exclusion of 100% blind from consideration and appointment to the same posts advertised by the subsequent advertisement dated 30.12.2013 which has been allowed by this Tribunal vide judgment dated 13.03.2014 by setting aside/ quashing the advertisement to the extent it excluded 100% blind from consideration and appointment, if selected to the posts.

3. It is argued that the matter in issue is covered by the aforesaid judgment of the Tribunal in OA No.467/2014 and, therefore, it is in the interest of justice that the present OA is allowed in terms of the same judgment by directing the respondents to file complete result including the result of 100% blind candidates along with the applicants in the OA so that the merit position of the applicants and other 100% blind candidates may be ascertained and the respondents may be directed to consider appointing the applicants and other 100% blind candidates on the basis of either their general merit or on the basis of benefit of reservation to the extent of 1% for the blind and low vision. It was further pointed out by the learned senior counsel Shri S.K. Rungta that the Honble Supreme Court in the case of Union of India and another Versus National Federation of the Blind and others, Civil Appeal No.9096/2013 has clearly observed in Para-51 of the judgment that computing 3% reservation should be on total number of vacancies in the cadre, which is the intention of the legislature. In Para-39 also of the judgment, it has been clearly elaborated. Moreover, in Department of Personnel and Trainings OM dated 29.12.2005, on reservation for the persons with disability, the following has been provided in Para-6:

œ6. APPOINTMENT AGAINST UNRESERVED VACANCIES: In the posts which are identified suitable for persons with disabilities, a person with disability cannot be denied the right to compete for appointment against an unreserved vacancy. Thus, a person with disability can be appointed against an unreserved vacancy, provided the post is identified suitable for persons with disability of the relevant category.?

4. The respondents, first of all, argued that they have filed a Review Application challenging the order of this Tribunal in OA No.467/2014 and that should be decided first before deciding this OA. However, we find that the Review Application filed by the respondents has been dismissed in circulation vide order dated 28.04.2014 and, therefore, the present matter can be disposed of.

5. The respondents pointed out that from the list of identified posts circulated vide Ministry of Railways letter dated 27.08.2009, it would appear that candidates who are 100% blind are not eligible for any of the posts advertised. The learned counsel for the respondents further went on to insist that the Railway Board vide letter dated 14.02.2014 has communicated to the General Managers of all Zonal Railways that the Department of Disability Affairs have informed that a new list of posts has been published vide notification dated 29.07.2013 to give effect to reservation to the PWDs, wherein total exemption has been granted to the Railways from reservation in certain posts and partial exemption in some others. Letter dated 07.03.2014 from the Railway Board has been produced before us addressed to the Convenor, Indian Joint Organization of the blind wherein it is stated that the posts of Khalasi Helper (Civil Engineering, Mechanical, SandT), Safaiwala (Medical), Khalasi Helper (Stores) and Hospital Attendant (Male and Female) are not included in the category of 100% blind persons. It was also stated that out of the total posts, 73 posts would be reserved for Visually Handicapped but this will be both for low vision as well as blind and they will be appointed on the posts meant for this category. It was argued that in 2013 list, at serial no.86, against the post Khalasi, the following had been mentioned:

œNot identified for Railways personnel who are involved in operation of trains, maintenance of rail tracks and movement of engines and compartments in yards, telecommunication and signaling works etc.?

6. It is argued, therefore, that 100% blind cannot be posted against these vacancies.

7. We have heard the learned counsel for the parties and gone through the record.

8. We find that this matter is fully covered by our order dated 13.03.2014 in OA No.467/2014. In fact, in that case in the advertisement itself, blind people had been debarred. In this case, blind candidates were allowed to appear in the examination but later on their results were withheld on the ground that they were blind. There is no new argument advanced by the respondents which was not advanced during the hearing of OA No.467/2014, which have been considered in detail in our order except producing some letters issued by the Ministry of Railways, which have not been authenticated by the Ministry of Social Justice and Empowerment. Therefore, these are not relevant. We see no reason why the order in OA No.467/2014 should not cover this matter.

9. The OAs are, therefore, allowed. The respondents are directed to publish the complete result including the result of 100% blind candidates indicating their merit position either on their own general merit (in accordance with OM dated 29.12.2005) or against the vacancies reserved for visually handicapped in the notification. This exercise shall be completed within a period of two months from the receipt of a copy of this order. No costs.

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