

(2014) 05 DEL CK 0315

In the Delhi High Court

Case No : Writ Petition (C) No. 1819/2014

Amrendra Kumar

APPELLANT

Vs

Registrar General, Delhi High Court and Others

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 32, 33

Citation : (2014) 05 DEL CK 0315

Hon'ble Judges : Sanjiv Khanna, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Lalit Kumar Jha, Advocate for the Appellant; Rajshekhar Rao, Ms. Zehra Khan, Advocates for Respondent No. 1 and Mr. A.P. Singh, Advocate for Respondent No. 3, UOI, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Sanjiv Khanna, J.—On 18th February, 2014, an advertisement/recruitment notification was issued for conducting Delhi Judicial Service Examination, 2014 in respect of 80 vacancies [General-55, SC-08 (1 backlog) and ST-17 (15 backlog)]. A note to the said recruitment notification reads:-

Note: Out of the aforesaid 80 vacancies, 02 vacancies (backlog) are reserved for Physically Handicapped (Blind/Low Vision) (mobility not to be restricted) candidates.

2. On or about 18th March, 2014, the petitioner-Amrendra Kumar filed the present writ petition praying for two specific directions; (i) the respondents should grant age relaxation to persons with disability in terms of O.M. dated 29th December, 2005; (ii) respondents should provide 3% reservation to persons with disability against fresh vacancies for which selection process had been initiated, apart from the backlog vacancies.

3. By order dated 21st March, 2014, notice was issued to the respondents to file

counter affidavit on the aforesaid two aspects and reference was made to the decision of the Supreme Court in Union of India (UOI) and Another Vs. National Federation of the Blind and Others, .

4. In the counter affidavit filed on behalf of the respondent No. 1, Registrar General, High Court of Delhi, it is stated that Corrigendum to the notice dated 18th February, 2014 has been issued, clearly specifying that benefit of O.M. dated 29th December, 2005 issued by the Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, Government of India would be applicable. In other words, general category disabled candidates would be entitled to age relaxation of up to 10 years and Schedule Caste and Scheduled Tribe category disabled candidates would be entitled to age relaxation of up to 15 years.

5. In view of the aforesaid steps taken by issue of corrigendum advertisement dated 28th March, 2014, the first grievance raised by the petitioner has been addressed. Learned counsel for the petitioner is satisfied and, thus, no further orders or directions are required on the first prayer.

6. The second aspect relates to 3% reservation for persons with disability in the Delhi Judicial Service Examination, 2014. In order to appreciate the controversy, the following facts may be noticed:-

(a) The total cadre strength of Delhi Judicial Service prior to 1st January, 2013 was 382 posts and post 1st January, 2013, the cadre strength stands enhanced to 482 posts. Presently, 250 Judicial Officers are working in the Delhi Judicial Service cadre and recommendation for appointment of 02 selectees is pending consideration with the Government. 8 Judicial Officers in Delhi Judicial Service, out of the above figure of 250 have been selected on the basis of reservation u/s 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act, for short). Recommendation for appointment of one selectee under the 3% reservation quota is pending consideration with the Government.

(b) In the counter affidavit, respondent No. 1 has referred to the judgment and order dated 23rd August, 2006 passed in W.P. (C) 9804/2006 titled Somdatt Sharma Vs. Registrar General, Delhi High Court that benefit of reservation under 3% quota should be granted to persons with orthopedic disability or Cerebral Palsy having one arm, one leg, both legs affected as well as to visually challenged and low vision candidates (mobility not to be restricted) in view of the corrigendum dated 25th July, 2006 issued by the Government of India, Ministry of Social Justice and Empowerment. Consequent thereto, a five Judges' Committee of High Court vide decision dated 9th March, 2007 on the administrative side recommended implementation of the notification dated 31st May, 2001 read with corrigendum dated 25th July, 2006 in the Delhi Judicial Service Examinations to be held in future. The said decision has been implemented. Accordingly, 07 vacancies out of 37 vacancies advertised for Delhi

Judicial Service Examination, 2007 were reserved for persons with disability (4 for Locomotor/Cerebral Palsy and 3 for blind/low vision). The said reservation under 3% quota was on the basis of then existing cadre strength of Delhi Judicial Service of 220 posts. In October, 2008, 160 new posts and in March, 2009, 2 more posts were sanctioned taking the cadre strength to 382 posts, which effectively means that 11/12 posts were required to be reserved for candidates with disability to fulfill the mandate of Section 33 of the Act.

(c) In Delhi Judicial Service Examination, 2011, which was the last examination conducted prior to the examination of 2014, 6 vacancies were reserved for persons with disability. This included 5 backlog vacancies for blind/low vision candidates and one fresh vacancy for locomotor/cerebral palsy. Against these vacancies, 3 candidates were appointed (2 candidates of blind/low vision and 1 candidate with locomotor disability), leaving backlog of 3 vacancies for blind/low vision candidates. Recommendation for filling up 1 vacancy in the said category is pending consideration of the Government leaving two backlog vacancies for visually challenged/low vision candidates. Accordingly, the note in the advertisement for the Delhi Judicial Service Examination, 2014 quoted above states that 02 backlog vacancies are reserved for Physically Handicapped (Blind/Low Vision) (mobility not to be restricted) candidates.

(d) In the 80 vacancies now advertised, 16 vacancies are backlog reserved vacancies. (01 vacancy for Scheduled Caste and 15 for Scheduled Tribe). Thus, the Delhi Judicial Service Examination, 2014 is for recruitment of 62 vacant posts after we exclude the backlog. 16 backlog vacancies cannot be taken into consideration for computing 3% quota under the Act as the backlog relates to the examination for which 3% quota has already been applied.

7. The short question is; whether a specific direction should be issued to the Delhi High Court to earmark and select candidates by applying 3% quota u/s 33 of the Act in the Delhi Judicial Service Examination, 2014? The respondent No. 1 in the counter affidavit has stated that they are following 200 point roster and are at present in the second cycle, at point 182. Out of the 62 fresh vacancies, 39 have arisen due to promotion/resignation or dismissal of incumbents, who were not appointed to the post reserved for persons with disability. Out of 23 remaining vacancies, in ordinary course as per the roster and the O.M. dated 29th December, 2005, 1 post is required to be identified for persons with disability (blind/low vision). The reserved post would fall in the third block from point No. 67 to point No. 100. In terms of the O.M. dated 29th December, 2005, there is no mandate that point No. 67 must be filled by a person with disability. One vacancy in the block of point No. 67 to point No. 100 can be filled up by a person with disability, later on and this would ensure full representation/reservation as per the mandate of the Act. Learned counsel for the respondent No. 1 has drawn our attention to the O.M. dated 3rd December, 2013 issued by the Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training and paragraph 15 of the O.M. dated 29th

December, 2005 (supra) in support of his submission.

8. There appears to be a contradiction in the stand of respondent No. 1, as it is stated that they are at point 182 and at the same time reference is made to third block from point No. 67 to 100. However, this aspect need not be examined further in view of the legal ratio applicable and discussion below.

9. The relevant portion of paragraph 15 of the O.M. dated 29th December, 2005 reads as under:-

15. EFFECTING RESERVATION-MAINTENANCE OF ROSTERS:

(a) All establishments shall maintain separate 100 point reservation roster registers in the format given in Annexure II for determining/effecting reservation for the disabled-one each for Group "A" posts filled by direct recruitment, Group "B" posts filled by direct recruitment, Group "C" posts filled by direct recruitment, Group "C" posts filled by promotion, Group "D" posts filled by direct recruitment and Group "D" posts filled by promotion.

(b) Each register shall have cycles of 100 points and each cycle of 100 points shall be divided into three blocks, comprising the following points:

1st Block-point No. 1 to point No. 33

2nd Block-point No. 34 to point No. 66

3rd Block-point No. 67 to point No. 100

(c) Points 1, 34 and 67 of the roster shall be earmarked reserved for persons with disabilities-one point for each of the three categories of disabilities. The head of the establishment shall decide the categories of disabilities for which the points 1, 34 and 67 will be reserved keeping in view all relevant facts.

(d) All the vacancies in Group C posts falling in direct recruitment quota arising in the establishment shall be entered in the relevant roster register. If the post falling at point no. 1 is not identified for the disabled or the head of the establishment considers it desirable not to fill it up by a disabled person or it is not possible to fill up that post by the disabled for any other reason, one of the vacancies falling at any of the points from 2 to 33 shall be treated as reserved for the disabled and filled as such. Likewise a vacancy falling at any of the points from 34 to 66 or from 67 to 100 shall be filled by the disabled. The purpose of keeping points 1, 34 and 67 as reserved is to fill up the first available suitable vacancy from 1 to 33, first available suitable vacancy from 34 to 66 and first available suitable vacancy from 67 to 100 by persons with disabilities.

(e) There is a possibility that none of the vacancies from 1 to 33 is suitable for any category of the disabled. In that case two vacancies from 34 to 66 shall be filled as reserved for persons with disabilities. If the vacancies from 34 to 66 are also not suitable for any category, three vacancies shall be filled as reserved from the third block containing points from 67 to 100. This means that if no vacancy

can be reserved in a particular block, it shall be carried into the next block.

10. We have referred to sub-clause (a) to paragraph 15 of the aforesaid memorandum as the position on the said aspect has been elucidated and clarified in the O.M. dated 3rd December, 2013 and that is not an issue before us. In any case, the said aspect is completely covered by the decision of the Supreme Court in National Federation of the Blind (supra) (see paragraph 12 below). No distinction can be made in the manner of computation of reservation between Group A and B posts or Group C and D posts. One provision/rule cannot be interpreted and applied differently for the same subject matter.

11. We do not agree with the counsel for the respondent No. 1 that they are entitled to push and postpone and not fill up the post at point No. 67. The O.M. dated 29th December, 2005 does not permit shifting at point No. 1, 34 and 67 in the 100 point roster except for germane and good reasons which are mentioned in sub-para (d) to paragraph 15. The said reasons are not satisfied in the present case.

12. Moreover, the issue in question is squarely covered by the decision of the Supreme Court in National Federation of the Blind (supra). In the said judgment, the Supreme Court has in categorical terms held that 3% reservation for persons with disability as per the Section 33 of the Act has to be computed on the basis of the total vacancies in the cadre strength and not on the basis of the vacancies available in the identified posts. Reference was made to the earlier decision in Govt. of India through Secretary and Another Vs. Ravi Prakash Gupta and Another, in which interdependence of Sections 32 and 33 of the Act was explained observing that Section 33 was not dependent on identification of posts as was argued by the Union of India. 3% reservation u/s 33 of the Act would apply and has to be computed on the basis of vacancies in the strength of the cadre and not just vacancies available in the identified posts.

13. In National Federation of the Blind (supra), an illustration has been given how vacancies have to be filled. In an examination where there are 100 vacancies of 100 posts in an establishment, 3% posts have to be reserved for persons with disability i.e. 1% vacancies should be reserved for each of the three categories. [see paragraph 37 of the decision in National Federation of the Blind (supra)].

14. Contention of the Union of India that 3% reservation under the Act would defeat and violate the 50% ceiling for reservation laid by the Supreme Court in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., was rejected after quoting paragraph 95 in Indra Sawhney's case wherein it has been observed that reservation under Article 16(4) etc. are vertical reservations, whereas reservations for the handicapped under Article 16(1) are horizontal reservations which cut across the vertical reservations-what is called inter-locking reservations.

15. In National Federation of the Blind (supra) reference was made to R.K.

Sabharwal and others Vs. State of Punjab and others, to draw distinction between the expressions "posts" and "vacancies". The latter means unoccupied post or office, whereas the former refers to appointment, job, office or employment. The cadre strength is always measured by number of posts comprising the category and consequently the percentage of reservation has to be worked out in relation to number of posts, which form the cadre strength. The concept of "vacancy" has no relevance in operating the percentage of reservation. However, in respect of persons with disability as reservation in their case is horizontal and not vertical, it was observed:-

49. However, the decision in R.K. Sabharwal and others Vs. State of Punjab and others, is not applicable to the reservation for the persons with disabilities because in the abovesaid case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST and OBC, which is vertical reservation whereas reservation in favour of persons with disabilities is horizontal. We harmonise with the stand taken by the Union of India, the appellant herein in this regard. Besides, the judgment in R.K. Sabharwal and others Vs. State of Punjab and others, was pronounced before the date on which the Act came into force, as a consequence, the intent of the Act must be given priority over the decision in the abovesaid judgment. Thus, in unequivocal terms, the reservation policy stipulated in the Act is vacancy-based reservation."

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54. We also reiterate that the decision in R.K. Sabharwal and others Vs. State of Punjab and others, is not applicable to the reservation for the persons with disabilities because in the abovesaid case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST and OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal.

16. It was accordingly held as under:-

52. Thus, after thoughtful consideration, 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) consistent with the decision rendered by this Court.

17. When we apply the aforesaid principles to the Delhi Judicial Service Examination, 2014 which is to fill up 62 vacancies, it would mean that there should be 3% reservation for persons with disability for the vacant posts advertised as per the applicable statute i.e. Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In other words, two posts have to be reserved u/s 33 of the Act in Delhi

Judicial Service Examination, 2014 in addition to backlog vacancies for visually challenged/low vision candidates.

18. In view of the aforesaid discussion, we partly allow the writ petition and direction is issued to earmark and specify two posts to be filled up from the persons with disability as per Section 33 of the Act. The said exercise will be undertaken and posts will be earmarked including the category (i.e. blind/low vision, locomotor or Cerebral Palsy) within 10 days from the date of pronouncement of this judgment. It will be preferable, if the said exercise is completed before the first examination (objective type) results are declared.

19. The writ petition is accordingly disposed of. There will be no order as to costs.