

(2002) 03 DEL CK 0001
In the Delhi High Court
Case No : C.W.P. No. 7450 of 2000

Union of India (UOI) and Others

APPELLANT

Vs

K.P. Singh

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 33

Citation : (2002) 03 DEL CK 0001

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; G.K. Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—This writ petition is directed against an order dated 02.08.2000 passed by the Central Administrative Tribunal, Principal Bench (hereinafter referred to as "the Tribunal") in O.A. No. 385 of 2000 whereby and whereunder an original application filed by the respondent herein praying for the following relief.

"The Hon'ble Tribunal may be pleased to declare and order respondents - 1, 2 to produce in the Tribunal, with copy to Applicant, the fresh medical report on Applicant's "handicapped" status from Bara Hindu Rao Hospital, Delhi and to appoint the Applicant as regular Junior Engineer (Civil), with arrears and all benefits in service on duty since the date anybody lower in merit-list of July, 1997 Exam to Applicant was appointed, if the fresh report certified "a physical defect or deformity which causes an interference with normal functioning of the bones, muscles and joints" due to amputation of his right hand index finger through middle phalanx, grant any other relief with costs."

2. The basic fact of the matter is not in dispute. The petitioner is a handicapped person. He did his B.E. (Civil) from Birla Institute of Technology. He qualified at

All India Competitive Examination in the year 1997 for the post of Junior Engineer (Civil) in Central Public Works Department (in short, "CPWD") upon relaxation of his age. The petitioner relied upon a certificate issued by Bara Hindu Rao Hospital, Delhi wherein he was shown as a physically handicapped person. However, the petitioner was certified to be handicapped to the extent of 9% only by Dr. Ram Manohar Lohia Hospital, New Delhi.

3. He filed an original application before the Tribunal, which was marked as O.A. No. 201/99.

4. By an order dated 30.08.1999, it was directed:-

"2. With the agreement of both parties, this O.A. is disposed of with a direction to respondents to obtain a further opinion from the Bara Hindu Rao Hospital, Delhi in the background of the certificate issued earlier by them on 23.12.1991, as to whether, consequent to the DP&T's O.M. dated 27.02.1996 superceding the percentage system of evaluating the degree of physical handicap, and defining those as Orthopedically handicapped, who have a physical defect or deformity which causes an interference with the normal functioning of the bones, muscles and joints, applicant would qualify for appointment as Junior Engineer in C.P.W.D. on the basis of all India competitive examination in July, 1997 in the physically handicapped quota."

5. The contention of the petitioner herein is that in terms of the policy decision, reservation as contained in O.M. dated 04.08.1998, the minimum degree of disability for any benefit / concession for physically handicapped was required to be 40%. He in terms of his medical certificate submitted by him, the disability was only to the extent of 10%, which when he had been referred to Ram Manohar Lohia Hospital, came down to 9% only and thus his result was cancelled by an order dated 09.11.1998.

6. According to the respondent on the basis of fresh medical certificate the petitioner should have been directed to be appointed as Junior Engineer (Civil) with consequential benefits.

7. In the order dated 30.08.1999 passed by the Tribunal in the said O.A. No. 201 of 1999, the respondent was certified to be disabled only to the extent of 5% only.

8. The learned Tribunal, however, by reason of the impugned order held as follows:-

"In view of the certificate dated 15.10.1999 given by the Hindu Rao Hospital, Delhi, we have no doubt in our mind that the applicant suffers from a physical handicap entitling him to the benefit of age relaxation under the rules. In this view of the matter and in the facts and circumstances of the case, the O.A. is allow and the respondents are directed to consider the applicant's case for appointment as regular Junior Engineer (Civil) by giving him the benefit of physically handicapped persons with effect from the date of his Junior Engineer

in merit list of July 1997 examination was appointed. However, he shall not be accord any back-wages, but he shall be given the benefit of seniority and notional pay - fixation. These directions shall be carried out by the Respondents within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs."

9. The Parliament of India has enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996). (in short, "the Act") wherein disability has been defined in the following term:-

"2(i) "disability" means -

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;
- (vii) mental illness;"

10. The aforesaid "locomotor disability" has been defined in Section 2(o) of the Act, thus:-

"2(o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;"

11. In terms of clause (i) of Article 16 of the Constitution of India (in short, "the Constitution"), the State is entitled to make reservations for physically handicapped persons.

12. By reason of the Office Memorandum dated 27.02.1996, 1% of the posts/ services were reserved for the Orthopedically handicapped.

13. By Office Memorandum dated 04.06.1998, each category of disability had been divided into four groups in the following manner:-

- (a) Mild : less than 40%;
- (b) Moderate : 40% and above;
- (c) Severe : 75% and above; (d) Profound / total : 100%

14. The relevant clauses of the aforesaid Office Memorandum dated 04.06.1998 are as under:-

"3. According to the instructions contained in the Ministry of Welfare's

Notification No. 4/2/83HW-III dated 6.8.86, various concessions/benefits, including employment under the Central Government, are available only to those falling under the categories mentioned at (b), (c) and (d) in the preceding paragraph. The minimum degree of disability has also been prescribed as 40% in order for a person to be eligible for any concessions/benefits.

... .. 6. The matter has been examined and it has been decided that henceforth, the categories of persons with disabilities for the purpose of getting the benefit of 3% reservation in posts / services under the Central Government would be as indicated in Section 33 of the Persons with Disabilities (Casual Opportunities, Protection of Rights and Full Participation) Act, 1995. These categories of persons are as under:-

- (i) Blindness or low vision;
- (ii) Hearing impairment;
- (iii) Locomotor disability or cerebral palsy;

(All cases of Orthopedically handicapped persons would be covered under the category of locomotor disability or cerebral palsy).

... .. 8. Each category of disability as mentioned in para 6 above would continue to be divided in to four groups as mentioned in para 2 of this letter. Further ,various concessions / benefits, including employment under the Central Government, would continue to be available only to those falling under the categories given at (b), (c) and (d) of the aforesaid paragraph. The minimum degree of disability in order for a person to be eligible for any concessions/benefits would continue to be 40%."

15. In view of the fact that the respondent herein does not fulfill the aforementioned criteria, we are of the opinion that the learned Tribunal went wrong in passing the impugned judgment.

16. The learned counsel for the respondent however, would submit that having been a party to the earlier litigation as the order dated 02.08.2000 in O.A No. 201 of 1999 was passed by the learned Tribunal on compromise, the same could not have been questioned by the petitioner.

17. In that view of the matter, the learned counsel appearing on behalf of the respondent herein would contend that for the purpose of appointing the respondent the petitioner could not have been insisted upon that the disability must be to the extent of 40%.

18. A reservation for handicapped persons is made in terms of clause (1) of the Article 16 of the Constitution. The State while issuing an executive instruction in this regard may also lay down the conditions therefore. The policy decision adopted by the State must be strictly adhered to inasmuch as any deviation there from may attract the wrath of Articles 14 and 16 of the Constitution.

19. The Order dated 30.08.1999 passed in O.A. No. 201 of 1999 was not by consent. By reason of the said order, the parties merely agreed that the respondent be examined afresh for determination of his degree of disability as there had been difference of opinion between the two hospitals.

20. If in terms of the certificate granted by Bara Hindu Rao Hospital, Delhi, which was to be treated as final, the respondent could not have been considered for appointment in terms of the policy decision, the learned Tribunal in our opinion committed a grave error in issuing the aforementioned directions.

21. The requirement of a policy decision, it will bear repetition to state, must be strictly adhered to. Only because in the earlier case, the petitioner agreed for a fresh medical examination of the respondent the same would not mean that it has a right not to adhere to the policy decision. Such purported waiver is also not permissible in law as a result whereof not only a policy decision will be thrown to the wind, the right of the others may also be affected. In any event, there cannot be waiver against the Constitutional mandate. Such a waiver does not also pass the public interest test.

22. In this view of the matter, we are of the opinion that the impugned judgment cannot be sustained, which is set aside and it is declared that the respondent herein having not fulfilled the criteria, he cannot be considered for recruitment in the reserved category candidate.

23. This writ petition is accordingly allowed without any order as to costs.