

(2002) 12 DEL CK 0092
In the Delhi High Court
Case No : CW 5898 of 2002

Union of India (UOI)

APPELLANT

Vs

Sanjay Kumar Jain

RESPONDENT

Date of Decision : 04-12-2002

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47(2)

Citation : (2003) 1 SLJ 183(2)

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; Meenu Mainu, for the Respondent

Judgement

Anil Dev Singh, J.—By this writ petition the petitioner challenges the order of the Central Administrative Tribunal, Principal Bench dated 15th April, 2002 in OA 439/2001.

2. The respondent is working against the post of ASO II, a group "C" post. The petitioner in order to fill up the Group "B" posts of the ACOS in Store Department by promotion of eligible Group "C" staff from amongst persons working against group "C" posts held a written test, in which the respondent participated. It appears that seven persons qualified in the written test including the respondent whose name appeared at Serial No. 5 in the list of successful candidates. The petitioner however did not call the respondent for interview on the ground that the respondent was suffering from Rita It is Pimentos and specifically excluded him from participating in the interview vide order dated 20th September, 2000. The stand of the petitioner was based upon a circular of the Railway Board dated 31st October, 1991. While denying the opportunity to the respondent the petitioner overlooked the provisions of Section 27(2) of the Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "the Act"). Section 47(2) provides as under:

"No promotion shall be denied to a person merely on the ground of his disability."

3. The provision is mandatory and ought to have been followed by the petitioner. The petitioner, Therefore, is required to rectify the mistake it committed in ignoring the provisions of Section 27(2) of the Act. We also note that vide circular dated 24th April, 1998, which is at page 59(A) of the appeal paper book, directions have been issued to the concerned authorities of the Railway administration to apply the provisions of the aforesaid Act even in case of staff who acquire disability during service.

4. The appellant not only lost sight of the mandatory provisions of Section 27(2) of the Act, but also over-looked the objects and reasons of the statute and the history behind it. On 1st to 5th December, 1992, a meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 was convened by the Economic and Social Commission for Asian and Pacific Region. The meeting was held at Beijing. The meeting adopted a proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and the Pacific region India being a signatory to the said proclamation, it was necessary to enact a legislation to provide for the following matters:-

"(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against person with disabilities in the sharing of development benefits, vis-a-vis, non-disabled persons;

(iv) to counter act any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategies for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special provisions for the integration of persons with disabilities into the social mainstream."

5. The Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 (Act No. 1 of 1996) to give effect to the proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and the Pacific region.

6. The action of the appellant whereby the respondent was not invited to participate in the interview on the ground of his disability is clearly against the object and purpose of the Act. The circular of the Railway Board dated 31.10.1991 creates a barrier for promotion of a person with disabilities. It defeats the mandate of the Act, namely, to remove any discrimination against persons with disabilities.

7. In the circumstances, Therefore, the Central Administrative Tribunal was entirely right in quashing the order dated September 20, 2000 to the extent the

respondent was denied and excluded participation in the viva voce test for selection to group "B" post. The Central Administrative Tribunal was also right in directing the petitioner to allow the respondent to appear in the viva voce test. In this view of the matter while confirming the order of Tribunal, we direct that the petitioner shall interview the respondent and in case he secures more marks than the selected candidates, he shall be appointed to the post of ACOS or any suitable equivalent post.

8. With the aforesaid directions, the writ petition is disposed of. Since the writ petition is disposed of, all pending applications shall also stand disposed of.

9. dusty.