
(2011) 03 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35898 of 2009

Yogesh Dutt

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 33

Citation : (2011) 4 ADJ 778 : (2011) 2 UPLBEC 1139

Hon'ble Judges : Sunil Ambwani, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Shri Ashok Khare, Senior Advocate assisted by Shri Siddharth Khare for the Petitioner. The office of the Additional Solicitor General of India accepted notice on behalf of the Union of India. The State Bank of India is represented by Shri Arun Kumar Mishra.

2. The Petitioner was selected as a Probationary Officer in the selections held in pursuance to the Advertisement No. CRPD/PO/2008-09/04 published by the State Bank of India in unreserved category. By this writ petition he has prayed for quashing the communication of Assistant General Manager (Human Resources), State Bank of India, Human Resource Department, Local Head Office, Bandra East, Mumbai dated 18.5.2009, intimating him that he is medically unfit for the appointment in the bank as Probationary Officer. In the medical examinations conducted on the person of the Petitioner, it was reported by Dr. Atul Kumar, Senior Medical Officer, State Bank of India, Varanasi vide report dated 25.4.2009 in columns 15 and 16 that he is unfit to discharge his duties in the service on account of "left eye absent".

3. The Petitioner met with an accident in his childhood. He had to be operated, in which his left eye was removed and an artificial left eye (Prosthesis) was

implanted. His right eye is normal. The disability of the loss of left eye has been measured at 30%. The Petitioner does not qualify under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (in short, PWD Act) as a person entitled to the benefit of the enabling provision u/s 33 of the PWD Act. The disability is defined u/s 2(i) of the PWD Act to mean; (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; and (vii) mental illness. The blindness and low vision are defined in Section 2(b) and (u) of the PWD Act as follows:

(b) "blindness" refers to a condition where a person suffers from any of the following conditions, namely:

(i) total absence of sight; or

(ii) visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses; or

(iii) limitation of the field of vision subtending an angle of 20 degree or worse;

(u) "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device

4. The General Manager (Human Resource), State Bank of India issued an advertisement bearing No. CRPD/PO/2008-09/04, which was published in "Employment News" dated 19-25/7/2008, inviting applications from eligible candidates for recruitment to the post of Probationary Officer in the State Bank of India. A total number of 3500 vacancies of Probationary Officer were notified. The preliminary examinations were notified in which 53 vacancies were shown as reserved for orthopedic handicapped, and 52 vacancies as reserved for visually handicapped under the reserved category including the candidates with total absence of sight. The Petitioner did not fall in the category of visually handicapped, as he is not blind and also does not fall in the category of orthopedic handicapped as his disability is 30%, with loss of one eye. He thus applied in General, unreserved category.

5. the Petitioner appeared in the preliminary written examinations on 12.10.2008 and was declared successful. He appeared in the written examination with Roll No. 6210000732 on 30.11.2008. He was declared to have qualified and was called for appearing in the interviews to be held on 6.2.2009. In the final result of the examination the Petitioner was shown to be finally selected for the post of Probationary Officer. By communication dated 22.4.2009 issued by Assistant General Manager (Human Resource), State Bank of India, Administrative Office, Varanasi before 25.4.2009 he was required to undergo medical examination.

6. The Petitioner appeared before the Senior Medical officer, State Bank of India, Administrative Office, Varanasi. He was required to take pathology and diagnostic

tests, as well as the tests before the eye specialist. The examinations so conducted also included an examination of the eyes of the Petitioner. All the medical reports were submitted before the Senior Medical Officer, State Bank of India, Administrative Office, Varanasi.

7. The Petitioner waited for appointment letter. Since no response was received, he sent an e-mail on 9.5.2009 addressed to Assistant General Manager (Human Resource), Mumbai and thereafter a representation dated 25.5.2009 through registered post. In response he has been served with the impugned communication of Assistant General Manager (Human Resource), Mumbai dated 18.5.2009 intimating him as follows:

SHRI YOGESH DUTT

1/107 MIG

AVC-3JHUSI

ALLAHABAD 211019

UTTAR PRADESH

Dear Sir,

RECRUITMENT OF PROBATIONARY OFFICERS

MEDICAL REPORT

With reference to your e-mail dated 9.5.2009, we advise that you are medically unfit for the appointment in our Bank as Probationary Officer.

Yours faithfully

Sd/-

Asstt. General Manager (HR)

8. Shri Ashok Khare, learned Counsel for Petitioner submits that there exists no justifiable reasons for declining the appointment to the Petitioner. The Respondents have erroneously treated him to be medically unfit on account of having an artificial left eye, despite the fact that the vision of the Petitioner through right eye is absolutely normal. The medical examination reports conducted on 24.4.2009 and 26.4.2009, have verified that the Petitioner has a normal vision in his right eye.

9. It is submitted that there exists no rationale justification for treating the Petitioner to be medically unfit for appointment. If a blind person or a person with low vision claiming to be physically handicapped under the PWD Act for which the State Bank of India has reserved 52 vacancies can be appointed as Probationary Officer, the Petitioner with healthy right eye with normal vision, with loss of only one eye cannot be denied appointment.

10. The Ministry of Social Justice and Empowerment, Government of India has issued a Notification dated 18.1.2007 for identification of job of different categories of physically handicapped persons in Group "A" and "B" posts. The notification includes Probationary Officer at serial No. 254 under the heading "Probationary Officer" with a physical requirements as S.SE.C.RW (Sitting, Seeing, Communication, Reading and Writing), and categories of disabled suitable for job as OA.OL.LV (One Arm, One Leg, Low Vision). The job of Probationary Officer under notification 18.1.2007 may not be offered to a totally blind person, it can be reserved for a person with low vision as it requires seeing as a physical requirement of the job. The job can be performed by a person with low vision, and in any case by a person with one healthy eye having 6x6 vision.

11. The Petitioner has also relied upon Office Memorandum of Government of India dated 8.7.2003, which provides as follows:

2. Vacancies reserved for any category need to be filled by person belonging to that category and such vacancies are not open to others. On the other hand, unreserved vacancies are open to all and reserved category candidates cannot be denied the right to compete for appointment against such vacancies, provided they are otherwise eligible. In other words, while vacancies reserved for any specific category are meant for persons of that category only, unreserved vacancies are open to all, including the reserved category candidates. It means that a person with disability can be appointed against reserved vacancy, provided the post is identified suitable for the persons with disabilities of the relevant category.

3. All Ministries/Department, etc., are requested to bring it to the notice to all offices/bodies/establishments, etc., under their control.

12. Shri Khare has relied upon socially progressive judgments of the Supreme Court, and the Punjab and Haryana High Court recognising the rights of the disabled persons to equal opportunities, protection of rights and full participation. In *Amita v. Union of India* and Anr. 2006 SCC 1507, the Supreme Court held that the only restriction on the rights of disabled person is that the nature of duties attached to the office/post should be suitable for such person. The writ Petitioner-a visually impaired (blind) had applied for the post of Probationary Officer in a Bank in general category. She met with other eligibility requirements. She was, however, denied the opportunity to write the examination due to her visual impairment. The Union of India admitted that the nature of duties of the Probationary Officer could be performed by a visual impaired candidate and some percentage of such candidates were entitled to be selected. The Supreme Court held that in the circumstances the denial of opportunity to the Petitioner was not sustainable. Directions were given to allow her to write the examination and to relax the age limit for the delay occasioned due to the proceedings. The Supreme Court relied upon *National Federation of Blind Vs. Union Public Service Commission and Others*, in which permission was given to the visually impaired persons to compete and write the civil services examination and also for being

given preferential treatment in respect of identified post.

13. In *Shikha Malhotra v. State Bank of India* and Anr. CWP No. 17024 of 2006 dated 6.12.2007 Justice Hemant Gupta and Justice Mohinder Pal of Punjab and Haryana High Court in the selections in pursuance to Advertisement No. CRPD/PO/2005/03 for 509 Probationary Officers in the State Bank of India, considering a similar case in which the Petitioner did not have vision in the right eye and was found medically unfit for appointment. They held relying upon *Amita v. Union of India* (supra) that the Petitioner did not seek any reservation as a visually handicapped person. She as a general category candidate was thus entitled to be appointed as Probationary Officer. The observations of the Supreme Court in *Amita v. Union of India*, are to the effect that when the Petitioner fulfilled all the conditions mentioned in the advertisement for the post, she could not be denied equality of opportunity guaranteed by Article 16(1). The mere fact of the disability, which was not mentioned in the advertisement and which according to the writ Petitioner was not impediment for the post, could not be a ground to hold Petitioners to write the examination.

14. Shri Arun Kumar Misra appearing for State Bank of India submits, relying upon the averments in the counter-affidavit of Shri Amool Kamlakar Shetye, Chief Manager, Industrial Relations, State Bank of India, Mumbai, that the advertisement in the "Employment News" clearly stipulated in Clause 11.K that the appointment of the selected candidates is subject to his/her being declared medically fit by the Medical Officers appointed and approved by the Bank. Clause 11 -K provided:

11K - Appointment of selected candidates is subject to his/her being declared medically fit by Medical Officer (s) appointed/approved by the Bank.

15. It is stated in the counter-affidavit that the advertisement provided in Clause-11-A that in case it is detected at any stage of recruitment that a candidate does not fulfill eligibility norms and/or that he/she has furnished any incorrect/false information or has suppressed any material facts his/her candidature will stand cancelled. Clause-11 -A is quoted:

11.A In case it is detected at any stage of recruitment that a candidate does not fulfill eligibility norms and/or that he/she has furnished any incorrect/false information or has suppressed any material facts his/her candidature will stand cancelled. If any of these shortcomings are detected even after appointment his/her service are liable to be terminated.

16. Shri Mishra submits that the Petitioner applied only against general category, though he belongs to OBC category and did not apply for any of the handicapped categories i.e. orthopedic handicapped, visually handicapped and hearing impairment. The Petitioner did not declare anywhere that due to accident in the year 1997 he had lost his left eye, and from the photo affixed by him ex facie there was no clear communication that he was not having left eye at all. The Petitioner was thus guilty of material and fraudulent submission of facts and has

not come to the Court with clean hands. He has enclosed the Standards of Medical Fitness for New Recruits/promotions dated 25.10.1983. The Circular and Memorandum of the Respondent-bank dated 17.2.2007 provides in Clause-V that one eyed candidates are unfit for appointment/promotion to supervisory cadre, which includes Probationary Officer. Clause (h) of the Circular and Memorandum dated 17.2.2007 of the bank also specifically envisages that one eyed candidates will be barred from all further recruitments in clerical and officer cadres. These circulars, according to the bank, are mandatory and are binding. So far as the provisions of PWD Act is concerned, it is stated in para-3 (F) of the counter-affidavit that the Act was passed by the Parliament to give effect to full participation and equality of the people with disability, but since the Petitioner himself has not applied in any of the category of disability, the benefit of the Act cannot be given to him. The fitness standard must be observed at the entry level in appointment vide (1992) 2 Supp SCC 481 ;JT 1996 (11) 54 and (2008) 4 SCC171. It is further stated that the question of physical fitness is a matter of policy with which the Court should not interfere.

17. In the personal statement of the candidates provided to be filled up at the time of application, Column-5 provides for the category in which a person is applying. In Clause (a), which includes SC/ST/General/OBC; the name of the caste/tribe/community, is to be given if the application is made for the reserved category to tick the appropriate box. If the person is handicapped the three boxes against sub Clause (c) provides for OH (Orthopedic Handicapped); VH (Visually Handicapped) and HI (Hearing Impaired). Sub Clause (d) required the candidates to give the details of the handicapped, if he is claiming to be a physically handicapped person. Other clauses relate to repatriate/migrant/displaced persons and ex-serviceman. The form does not provide for any other information. Since the Petitioner did not apply in the OBC category and was not physically handicapped as he did not fall in any category of physically disabled person in the PWD Act, he did not apply and was not required to make any disclosure and none was asked from a unreserved candidate, claiming any benefit of reservation. The artificial eye (Prosthesis), does not give any indication of his having only one eye in his photograph. The objections, therefore, that the Petitioner did not make any disclosure and that his photograph does not show that he has only one eye, are entirely baseless. The additional information required to be furnished alongwith the call letter for the mains examination and bio-data form for the recruitment of Probationary Officer, also did not ask him to give any information, in any column to give details of any accident or disease in which the Petitioner lost one eye.

18. We have gone through the Standard of Medical Fitness prescribed in the clarification dated 25.10.1983, and the circular dated PER/P/18 dated 18.8.1979 about the standard of medical fitness for the new recruits/promotees. The standards laid down by the bank are quoted as follows:

(i) VISUAL ACTIVITY

No limit for minimum naked eye vision. But normal eye vision should however be recorded. The standard of near and distance vision with or without glasses are as follows:

Clerical staff:

Below the age of 35 years

...

6/9

6/12

Above 35 years

...

6/9

6/18

Near Vision

...

N6

Officers:

Below the age of 35 years

...

6/6

6/9

Above 35 years

...

6/9

6/12

Near Vision

...

N5

Total amount of myopia should not exceed - 8.00 and total amount of hypermyopia should not exceed +6.00 for candidates above 20 years of age.

(ii) SQUINT

Squint should not be a bar for an appointment/promotion provided the same is

non-paralytic and it does not affect the visual acuity as per norms laid down - the vision in the other eye is as mentioned in para 1 above. Squint in both eyes should be reflected.

(iii) FUNDUL EXAMINATION

Any pathological conditions in fundi should be treated as disqualification. Onset of cataract or Glaucoma should be regarded as a bar for fresh appointments as candidates for Award Staff and Probationary Officers. However, in case of promotions to the employees who are already working in the Bank, cataract or Glaucoma should be operated before certifying for promotion. In case there is damage to the eye after operation, the employee will have to be disqualified after getting reports of two senior ophthalmic surgeons.

(iv) COLOUR VISION

Tests of colour vision to be performed at the discretion of the medical authority. Colour blindness is not a bar to the appointment except in the case of special categories of staff according to job requirements and nature of duties, viz. Drivers etc.

(v) ONE EYED CANDIDATES

The present rules regarding one eyed candidates under physically handicapped category be continued. However, these candidates must come through Physically Handicapped Board only or else the Medical Officers/Bank's Authorised Doctors should not check them medically, and should ask the cases to come through the Physically Handicapped Board. The present rules, are being appended here below duly amended for your ready reference:

One eyed candidate, provided the other eye has normal vision or is corrected to normal with glasses with maximum myopia or hypermetropia +4.00 D. OR -4.00 D. should be appointed in Clerical Cadre staff only. An undertaking should be obtained from one eyed candidate to the effect that in the event of any deterioration in the eye-sight his/her services should be terminated forthwith. One eyed candidates are unfit for appointments/promotions to Supervisory Cadre.

19. The Standards of Medical Fitness Visual Acuity: Recruitments/Promotions in the Circulars dated 25.10.1983 and 16.1.2001, were revised by having re-look at them by Circular dated 17.2.2007 of the bank. The annexure to the guidelines, including the guidelines for one eyed candidate, is quoted as follows:

Extant eligibility criteria Better eye Worse eye (with lenses) (with lenses)

Revised eligibility criteria

(a)

Refractory corrections: >35 yrs of age

6/9 or better 6/9 or better

6/12 or better 6/18 or better

Medical fitness standards for visual acuity shall be the same for both award staff and officers" cadre and for all age groups i.e., (with corrective lenses)

Officers: <35 yrs >35 yrs

6/6 or better 6/9 or better

6/9 or better 6/12 or better

(b)

Near vision:

N6 or better (for award) N5 or better (for Officers)

This will be the same at N6 or better for award and officers

(c)

Myopia:

-8.00 D or better (without lenses)

To continue with -8.00 or better without lenses. A candidate whose eyesight has been rectified within this range by refractive surgery/implantable contact lenses would also be acceptable.

(d)

Hyper metropia

+6.00 or better

To continue as +6.00 or better candidate whose eyesight has been rectified within this range by refractive surgery/implantable contact lens would also be acceptable.

(e)

Squint:

Acts as a bar, if it is paralytic and in both eyes

Recruitment of candidates with "manifest squint" is barred

(f)

Cataract/glaucoma

-Acts as a bar (unless already operated upon). - The guidelines allow recruitment after operation of cataract

To continue with the present instructions except that cases with confirmed glaucoma will not be considered as it is normally irreparable

(g)

Colour blindness

Not a bar (other than in recruitments for specialized positions e.g. Drivers, guards etc.)

Colour deficiency will not be a bar except in cases where the person is not even able to identify primary colours.

- However, colour deficient candidates in specialized positions like drivers or guards etc. will not be eligible for recruitment/promotion

(h)

One eyed candidates:

Barred in officer's cadre. (However, may be selected in clerical cadre if eye sight of better eye does not have myopia/hyper metropia of +/-4.00D and can be corrected

One-eyed candidates would be barred from all further recruitments in clerical or official's cadre.

(i)

Retinitis Pigmentosa (Macula-degneration)

If progressive degeneration is detected in recruitment.

Confirmed retinitis pigmentosa (macular degeneration) or any other progressive retinal degeneration would be a bar for recruitment/promotion.

20. Dr. Atul Kumar, Senior Medical Officer, State Bank of India, Varanasi found the Petitioner to be physically fit in all respects, except the absence of one eye for which he declared the Petitioner as unfit. In the bottom of the form he made a remark as follows:

As per Central Govt. Gl., M.F., OM No. 21 (1)/97-E II (B) dt. 3.5.2002 Anneuxre to G I, Min. of Social Justice and Empowerment, Notfn. No. 16-70/2004-D.D.III dt. 18.1.07 referred to me if applicable in S.B.I. He is medically fit.

21. Before proceeding to discuss the arguments and documents, we find it appropriate to refer to the current human right approach adopted by the Supreme Court to the visually handicapped persons. In Govt. of India through Secretary and Another Vs. Ravi Prakash Gupta and Another, the Supreme Court, considering a matter in which Shri Ravi Prakash Gupta-the Respondent is a visually handicapped person suffering with 100% blindness and selected in the civil services examinations conducted by the Union Public Service Commission in 2006 was denied appointment, it was held quoting from the National Federation of Blind Vs. Union Public Service Commission and Others, , that the PWD Act provides for integration of persons with disabilities into the social main stream

and to lay down a strategy for comprehensive opportunities for persons with disabilities and for their education, training, employment and rehabilitation amongst other responsibilities. Once it was found that the Respondent No. 1 was eligible for appointment in civil services after declared successful, and placed at serial No. 5 in the displaced category of visually impaired candidates, he could not be denied with the appointment. The failure of the Union of India to identify posts of persons falling within the ambit of Section 33 of the Disabilities Act, 1995 should not have deprived the benefit of selections on the ground that there was no available vacancy in the said categories. It was held that the reservation provided u/s 33 of the PWD Act was not dependent upon identification of posts suitable for appointment in such categories. The statutory reservation in pursuance to the enabling provisions in the PWD Act cannot be deferred indefinitely for bureaucratic action. The Supreme Court held that the identification of posts is a ministerial job and that the statutory reservations should not await the ministerial actions.

22. In *Syed Bashir-ud-din Qadri Vs. Nazir Ahmed Shah and Others*, the Supreme Court, considering a matter in which the services of the Petitioner as a teacher were terminated on account of his suffering with cerebral palsy which made him difficult to write on the black board, held the decision to be violative of Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998. It was held that accepting the fact, that the Appellant is a victim of cerebral palsy, which impairs movement of limbs and also speech, there is nothing on record to show that the Appellant had not been performing his duties efficiently and with dedication. On the other hand, his performance as a teacher was reflected in exceptionally good results that he achieved in his discipline in the classes taught by him. Mere fact, that the Appellant could not express himself properly when he personally appeared before the High Court has to be seen in the context that his speech faculty must have worsened further on account of nervousness which he might have experienced while answering questions before the High Court. Intimidating atmosphere in the High Court must have triggered a reaction which made it difficult for him to respond to questions put to him. The Committee constituted to assess his performance as a teacher notwithstanding his disability had formed a favourable impression about him.

23. The editorial note to the judgment gives example of the persons, who have in spite of a severe disability contributed to the society. Stephen William Hawking- a British theoretical physicist is a world-renowned scientific with career (sic) of over 40 years. He has a neuro-muscular dystrophy that is related to (sic) Lateral Sclerosis (ALS), a condition which has progressed over the years and has left him almost completely paralysed. He has overcome the disability, to be one of the foremost scientist in the world and his academic celebrity and Honorary Fellow of the royal Society of Arts, a lifetime member of the Pontifical Academy of Sciences and was awarded the Presidential Medal of Freedom, the highest civilian award in the United States.

24. In India we have many examples of the disabled persons excelling in music, law, science, sports. Shri Ravinder Jain a blind person is a singer and musician of great accomplishment. His total blindness has not come in his way in achieving laurels in musics. Shri Mansoor Ali Khan Pataudi, captained Indian Cricket team to victory in 14 matches and made a double century against West Indies after he lost his right eye in an accident Several Advocates, and an Advocate General of the State of West Bengal was a blind person. He is a highly respected lawyer, who overcame his disability and used brail to read and argue cases.

25. The Petitioner is a partially physically disabled person, but whether he treats himself to be disabled in life, is his personal choice. His vision has not been impaired by loss of one eye, in the accident. His right eye has normal vision. The Senior Medical Officer of the State Bank of India found his vision of right eye to be 6/5 with naked eye, without glasses. Dr. Anand Sharma examining him on behalf of State Bank of India on 25.4.2009 and found his right eye to be absolutely normal. Dr. Atul Kumar, Senior Medical Officer declared him to be medically unfit in column-15 and 16, with a note at the bottom of his report that as per Central Government Office Memorandum dated 3.5.2002 Annexure to G1, Ministry of Social Justice and Empowerment Notification dated 18.1.2007, if applicable in State Bank of India, he is medically fit.

26. The Petitioner is measured to be physically disabled to the extent of 30%, which does not give him an opportunity to claim reservation either as a person, who is blind or a person with low vision, or orthopedic handicapped. He did not want to claim vertical reservation in the category of OBC. He was confident; competed in the general category and was selected in open competition to be appointed as Probationary Officer. He does not suffer with any handicap, nor is incapable of performing the normal duties as Officer in the Bank. There was no column in the application form nor was he required to give details of the events in his life in which he may have suffered any injuries or loss of limbs or parts of body. The loss of one eye in the accident in his childhood was thus not required to be disclosed in the application form, more so, when he did not treat it as an handicap in being selected and performing the duties of his job.

27. In the present case, we are unable to appreciate the approach of the Central Government and the Bank. The State Bank of India has treated the Petitioner to be medically unfit, and placed him in the category of physically handicapped, not entitled to be appointed as an officer in the bank. He has been accused of failing to give the information of loss of one eye in the application form, and has been treated to be medically unfit for the job whereas he was not required to give any such information and his one eye is normal and healthy. There is nothing which he cannot do, which a person with two healthy eyes can do.

28. The State Bank of India has not pleaded or placed on record(sic) to justify the Circulars dated 25.10.1983, and 16.1.2001, and its rev (sic) dated 17.2.2007, providing that one eyed candidates would be barred from all further recruitment in clerical or official"s cadre. There is absolutely nothing to show that

a person with one healthy eye with normal vision cannot perform clerical or officers work in bank. There is no medical opinion supporting the decision of the bank. The decision is apparently full of prejudice to the handicapped persons. The enactment of PWD Act to provide social justice to disabled, and the shift in the approach to disabled persons by the Supreme Court negatives the argument in favour of the decision of the bank. When a totally blind person can claim to be appointed as an officer in the bank, the declaration that one eyed persons is medically unfit, is a contradiction in terms. The Circulars of the Bank denying opportunity of employment of one eyed persons as clerks and officers, is violative of Article 14 of the Constitution of India. The issue raised in the present case is more a human right issue, than a disability issue.

29. We are of the opinion that the Petitioner has been illegally and arbitrarily denied appointment as a Probationary Officer. After change of the approach to the physically handicapped persons, under PWD Act, it is no longer open for the State Bank of India to contend that that a person with one normal eye is medically unfit to the officer's job in the Bank.

30. The writ petition is allowed. The communication of the Assistant General Manager (Human Resource), Human Resource Development, Local Head Office, State Bank of India, Mumbai dated 18.5.2009 declaring the Petitioner unfit and denying him appointment is quashed. A writ of mandamus is issued to the Respondents to appoint, the Petitioner as Probationary Officer for which he was selected in pursuance to advertisement No. CRPD/PO/08-09/04 within one month and to give seniority with effect from the date when a person next junior to him, in his category was appointed.