

**CENTRAL ADMINISTRATIVE TRIBUNAL
61/35, COPERNICUS MARG, NEW DELHI-110001**

Order Sheet

Item no.: 45
O.A./1657/2022 (DELHI)
[PROMOTION]
Court No.: 2

No of Adjournment: 6

Order Dated: 07/09/2022

**RAVINDRA KUMAR GUPTA
Vs
BHARAT SANCHAR NIGAM LIMITED**

For Applicant(s) Advocate : Mr. A.K. Bhakt with Mr. Amit Anand

For Respondent(s) Advocate : Mr. Pradeep Kumar assisted by Mr. Chiranjeev Johri for R-2 (BSNL), Mr. S.K. Tripathi for Mr. Gyanendra Singh for R-1

Order of The Tribunal

The applicants seek consideration of their claim for promotion under the provision of reservation in promotion to persons with disabilities. Learned counsel for the applicants seek an interim relief by way of a stay of the operation of a communication dated 08.06.2022 vide which vigilance clearance status in respect of SDE (T) has been called for. He submits that while seeking the relevant status in respect of the SDE(T), whose list has been annexed, the respondents have ignored the provision of reservation in promotion to Persons with Benchmark Disabilities (PwBDs) which is detrimental to the bonafide claim of the applicants, who are eligible for such promotion. Learned counsel submits that in case the respondents resort to convening of the meeting of the Departmental Promotion Committee (DPC) and thereafter effecting promotion without giving effect to reservation, their interest may be jeopardized adversely, and hence, the respondents be restrained from going ahead with the proceedings initiated for promotion

unless they apply the principle of reservation for PwBDs. Learned counsel also draws attention to the Office Memorandum of DOP&T dated 17.05.2022, in which detailed guidelines and instructions for applying the principle of reservation in promotion to persons with benchmark disabilities has been given. He submits that the claim and eligibility of the applicants is squarely covered in terms of the said memorandum which in fact gives effect to the judgment rendered by the Hon'ble Apex Court in "*Siddaraju vs. State of Karnataka (Civil Appeal No. 1567/2017)*".

Learned counsel for the respondent no. 2 (BSNL) strongly contests the arguments put forth by the learned counsel for the applicants and, at the outset, submits that the present Original Application is not tenable in law. He further claims that some of the applicants do not even fulfill the basic eligibility in terms of the Recruitment Rules of year 2009 for the relevant post(s). Learned counsel argues that no doubt the reservation for persons with disabilities will be governed in terms of the DOP&T Memorandum of 17.05.2022, however, the Memorandum shall be applied with prospective effect. Clarifying further, the learned counsel submits that the present promotions are being considered for vacancies of the preceding years and the instructions of this Memorandum shall apply only to the vacancies, which accrued after 17.05.2022, which is the relevant date on which this Memorandum was issued. Drawing attention to section 34 of Rights of Persons with Disabilities Act, 2016, specifically to its proviso, learned counsel submits that it is abundantly clear that this statutory provision shall be acted upon only on receiving appropriate instructions from the relevant authority in the Govt. Since these instructions have been issued only on 17.05.2022, the same shall be applied with respect to vacancies, which arise thereafter. Closing his arguments, he submits that in terms of this Memorandum, the respondents shall consider all eligible persons in

accordance with law and instructions *albeit* only for vacancies arising after 17.05.2022.

We have heard the learned counsels for the parties and also gone through the documents on record, particularly, the ones to which the learned counsels have drawn our attention to.

There is no doubt about the fact that the Rights of Persons with Disabilities Act, 2016, contains a statutory provision for providing reservation in both recruitment and promotion to the persons with disabilities to the aforesaid extent. This has further been re-affirmed in the judgment of the Hon'ble Apex Court in '*Siddaraju* case (supra). Pursuant to this judgment, the DOP&T has issued a Memorandum dated 17.05.2022 giving detailed instructions & guidelines and each and every department and office of Govt. of India shall be obliged to follow the same. Without going into the larger question whether these guidelines shall be applicable with prospective effect or not, in our view, no prejudice is likely to be caused to the respondents, if a limited direction is given to them, specifically to respondent no. 2 (BSNL), to ensure that while conducting the DPC for promotion from the post of SDE(T) to DE(T)/AGM(T) grade for which they have already set the process in motion, they consider the eligibility of the applicants also strictly in accordance with the aforesaid DOP&T Memorandum and if the applicants are persons with disabilities to which there is no dispute, and otherwise eligible, obtain their vigilance clearance status as well and process their claim also along with the claim of others under the 4% quota of reservation of persons with disabilities. The DPC shall independently evaluate the eligibility and the merit of the applicants, however, the recommendations in the DPC with respect to the applicants shall not be given effect to till the disposal of the present Original Application.

Learned counsels for the respondents is allowed four weeks' time to file a comprehensive reply to the Original Application. Further one week's time is allowed to the applicants to file rejoinder, if they so wish.

List for final hearing on 10.11.2022.

Tarun Shridhar
Member (A)

R. N. Singh
Member (J)

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