

ITEM NO.101

Court 13 (Video Conferencing)

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 3303/2015

UNION OF INDIA

Appellant

VERSUS

PANKAJ KUMAR SRIVASTAVA & ANR.

Respondent(s)

([For further hearing, Top of the board as a first item])

WITH

Diary No(s). 30321/2019 (XIV)

(FOR CONDONATION OF DELAY IN FILING ON IA 140605/2019, FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 140606/2019)

Diary No(s). 21917/2019 (XIV)

(FOR CONDONATION OF DELAY IN FILING ON IA 103371/2019, FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 103373/2019, FOR impleading party ON IA D.No.147263/2021)

SLP(C) No. 4461/2020 (XIV)

(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 135360/2019)

Date : 01-02-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE ABHAY S. OKA

For Appellant(s)

Ms. Madhvi Divan, ASG
Mr. Praveen Swarup, Adv.
Mr. Parthiv Goswami, Adv.
Mr. Apoorv Kurup, Adv.
Ms. Seema Bengani, Adv.
Mr. Arvind Kumar Sharma, AOR

For Respondent(s)

Mr. Rameshwar Prasad Goyal, AOR

Mr. S.K.Rungta, Sr.Adv.
Mr. Anuj Chauhan, Adv.
Mr. Prashant Singh, Adv.
Mr. Mohit Kumar Gupta, Adv.
Mr. M. Yogesh Kanna, AOR
Mr. Raja Rajeshwaran S., Adv.

Mr. R. J. Alva, Adv.
Mr. Rajnish K. Jha, Adv.
Mr. Joby P. Varghese, AOR

Mr. Sanjay R.Hegde, Sr.Adv.
Mr. Rabin Majumder, AOR
Ms. Mousumi Roy, Adv.
Mr. V. G. Rao Achary, Adv.
Mr. Joydeep Mukherjee, Adv.
Ms. Akansha Srivastava, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned in D.Nos.30321/2019 and 21917/2019.

I.A. D.No. 147263/2021 in D.No.21917/2019 is allowed.

The instant batch of appeal(s)/matters are filed by the Union of India assailing the judgment of the Division Bench of the High Court of Delhi affirming order passed by the Central Administrative Tribunal(the Tribunal). The respondents before us are differently abled persons who have participated in the selection process held by CSE either in the years 2006, 2007 or 2008 respectively.

The question raised for our consideration is whether the differently abled persons who have qualified at their own merit without availing benefit of relaxation are entitled to occupy the open category vacancy and additional numbers of vacancies are to be filled for differently abled persons in the physically disability category reserved for them in terms of the provisions of the 1995 Act keeping in view the mandate of Section 33 of the Act. Circular(s)/O.Ms. have been issued by the Government of India dated 29.12.2005 followed with dated 29.04.2006 and later dated 15.01.2018. In substance, such of the candidates who find place in open merit without availing any relaxation are to be adjusted

against open category vacancy and additional numbers of vacancies will be made available to such of the differently abled persons who have availed relaxation while participating in the selection process taking advantage of reservation for physically challenged persons.

This Court in 2013(10) SCC 772, Union of India & Anr. Vs. National Federation of the Blind & Ors., in paragraph 37 in regard to Section 33 of Act 1996 observed as follows:

"37) Admittedly, the Act is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfill its objective. Besides, it is a settled rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the said statutory provision. In the present case, the plain and unambiguous meaning of Section 33 is that every appropriate Government has to appoint a minimum of 3% vacancies in an establishment out of which 1% each shall be reserved for persons suffering from blindness and low vision, persons suffering from hearing impairment and persons suffering from locomotor or cerebral palsy."

It has been directed by this Court that the Government of India is under an obligation to identify and determine the backlog vacancies for differently abled persons after the 1996 Act came into force since for the last good number of years no appointments were made against the vacancies reserved for physically challenged category.

Pankaj Kumar Srivastava had participated in the CSE 2008 as physically challenged person but did not find place in order of merit because of the error being committed, as alleged, by the authority in computing the numbers of vacancies reserved for physically challenged candidates, he approached the Tribunal and

after hearing the parties the Ld.Tribunal passed the following order:

3. The Tribunal has disregarded the contention of the writ petitioner that allowing the facility of scribe and extra time to attempt the exam was a relaxation and has held that in its view the said fact does not amount to availing a relaxed standard. The Original Application has been allowed directing as under:-

"The OA is allowed. The respondent No.1, UPSC, is directed to undertake the exercise in order to decide that in the CSE 2008 and other examinations how many candidates on the basis of their ranking deserve to be selected on their own merits, and they must be adjusted against unreserved vacancies on their own merits as provided in the Office Memorandum dated 29.12.2005, and thereafter rest of the candidates belonging to visually impaired category must be selected against reserved category, and if the applicants are to be selected against reserved category, then they must be given appointment. The respondents shall undertake this exercise within a period of three months from today. There shall be no order as to costs."

It may also be noticed that in IA (D) No.147263 of 2021 in SLP (C) Diary No.21917 of 2019, the applicant, Ajit Kumar, has also approached this Court pointing out that he had participated in the CSE 2006 and is an orthopaedically handicapped candidate, suffering from disability and is classifiable as "Locomotor Disability" and the High Court of Delhi in WP (C) No.1292 of 2014, titled Ajit Kumar v. UPSC & Anr. decided the writ petition preferred by him on 13.10.2014 placing reliance on the judgment passed in the case of Pankaj Kumar Srivastava and observed that he is entitled for appointment against the vacancies reserved for physically challenged category on the basis of his participation in the selection process in CSE 2006. Although the orders passed by the High Court of Delhi are under challenge in appeal before us in the

cognate appeals preferred at the instance of Union of India.

After we have heard Ld. counsel for the parties and before we proceed to conclude the matters, we consider it appropriate to direct the Union of India/Appellant(s) to file an affidavit regarding compliance to be made in terms of the operative part of the Tribunal's order as referred to above. While doing so, it may be kept in mind the view expressed by this Court regarding determination of backlog vacancies for physically challenged persons in paragraph 37 of the judgment reported in 2013(10) SCC 772 within four weeks from today and advance copies to be served to the respective counsel for the parties who are appearing in the connected matters.

Let the matters be listed for further arguments on 08.03.2022.

(NIRMALA NEGI)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER (NSH)