



2025:DHC:5040-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 6 February 2025

Pronounced on : 1 July 2025

+ W.P.(C) 9994/2024 & CM APPL. 40929/2024

NAND LAL LUHAR AND ORSPetitioners

Through: Mr. S.K. Rungta, Sr. Adv. with
Mr. Prashant Singh, Adv.

versus

WESTERN RAILWAY AND ORSRespondents

Through: Ms. Monika Arora, CGSC with
Mr. Subhrodeep Saha and Ms. Radhika
Kurdukar, Advs. for UOI

+ W.P.(C) 10130/2024 & CM APPL. 41495/2024

VASU DEV AND ORS.Petitioners

Through: Mr. S.K. Rungta, Sr. Adv. with
Mr. Prashant Singh, Adv.

versus

NORTH WESTERN RAILWAY AND ORSRespondents

Through: Mr. Sandeep Tyagi, Sr. PC
with Mr. Vedansh Anand, GP with Mr.
Soumyadip Chakraborty, Adv. for UOI

+ W.P.(C) 10153/2024 & CM APPL. 41724/2024

KM BUSHRA AND ORSPetitioners

Through: Mr. S.K. Rungta, Sr. Adv. with
Mr. Prashant Singh, Adv.

versus



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NORTHERN RAILWAY AND ORSRespondents
Through: Mr. Vatsal Joshi, Sr. PC with
Mr. Ankur Yadav, GP for UOI

+ W.P.(C) 10511/2024, CM APPLs. 43205/2024 & 43206/2024

YASH SHARMA AND ORSPetitioners
Through: Mr. S.K. Rungta, Sr. Adv. with
Mr. Prashant Singh, Adv.

versus

WEST CENTRAL RAILWAY AND ORSRespondents
Through: Ms. Iram Majid, CGSC with
Mr. Mohd. Suboor and Mr. M. Seham Khan,
Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT
01.07.2025

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C. HARI SHANKAR, J.

1. The petitioners aspire for recruitment to various posts in the Western Railway. They are 100% Visually Impaired¹. They seek to be recruited against the quota reserved for VI candidates, for which purpose they participated in the selection process consequent on CEN² 01/2019 issued by the Railway Recruitment Cell³. On the ground that there are insufficient posts identified for 100% VI candidates, in

¹ "VI" hereinafter

² Central Employment Notice

³ "RRC" hereinafter



which they can be appointed, they have not been found suitable for appointment. Aggrieved thereby, the petitioners approached the Central Administrative Tribunal⁴ by way of OA 2901/2023, OA 2441/2023, OA 2902/2023 and OA 3041/2023. The OAs were dismissed by the Tribunal by a common judgment dated 16 July 2024. Challenging the said judgment, the petitioners have invoked Article 226 of the Constitution of India, and are consequently before us.

2. We have heard Mr. S.K. Rungta, learned Senior Counsel for the petitioners and Ms. Monika Arora, learned CGSC for the respondents, at length. Written submissions have also been tendered by both sides, which have been duly considered.

3. Before proceeding to the facts, we may set out the relevant statutory provisions and administrative instructions governing the field, to which learned Counsels on both sides drew our attention.

4. The Right of Persons With Disabilities Bill, 2012⁵

4.1 The Right of Persons With Disabilities Act, 2016⁶, which unquestionably is the core statute with which we are concerned, was preceded by the RPWD Bill. The Statement of Objects and Reasons preceding the RPWD Bill read:

⁴ “the Tribunal” hereinafter

⁵ “the RPWD Bill” hereinafter

⁶ “the RPWD Act” hereinafter



“The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The Act defines Persons with Disabilities as those having not less than forty per cent disability and identified seven categories of disabilities, namely, blindness, low vision, hearing impairment, locomotor disability, mental retardation, mental illness and leprosy-cured.

2. Over a period of time, the conceptual understanding of the rights of persons with disabilities has become more clear and there has been worldwide change in approach to handle the issues concerning persons with disabilities. The United Nations adopted its Convention on the Rights of Persons with Disabilities laying down the principles to be followed by the States Parties for empowerment of persons with disabilities. India signed the said Convention and subsequently ratified the same on the 1st day of October, 2007. The Convention came into effect on the 3rd day of May, 2008. Being a signatory to the Convention, India has an international obligation to comply with the provisions of the said Convention which required an entirely new legislation.

3. In 2010, an Expert Committee constituted under the chairmanship of Dr. Sudha Kaul, Vice-Chairperson, Indian Institute of Cerebral Palsy, Kolkata submitted its report in 2011, suggesting a Draft Bill relating to the Rights of Persons with Disabilities. The draft Bill was extensively debated upon at various levels involving State Governments and Union territories and various stakeholders.

4. The salient features of the Rights of Persons with Disabilities Bill, 2014, *inter alia*, are:

- (i) Nineteen specified disabilities have been defined;
- (ii) the persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity, etc., equally with others;
- (iii) duties and responsibilities of the appropriate Government have been enumerated;
- (iv) all educational institutions funded by appropriate Government shall provide inclusive education to the children with disabilities;
- (v) a National Fund is proposed to provide financial support to persons with disabilities;



- (vi) stakeholders' participation in the policy making through Central and State Advisory Boards;
- (vii) increase in reservation in posts from existing three per cent to five per cent in the vacancies for persons or class of persons with benchmark disabilities in every establishment and reservation of seats for students with benchmark disabilities in higher educational institutions;
- (viii) setting up of National Commission and State Commission to act as Grievance Redressal Mechanism, monitor implementation of the proposed legislation replacing the Chief Commissioner and State Commissioners for persons with disabilities, respectively;
- (ix) guidelines to be issued by the Central Government for issuance of certificates of specified disabilities;
- (x) penalties for offences committed against persons with disabilities; and
- (xi) Court of Session to be designated as Special Court by the State Government in every district to try offences.

5. The Bill seeks to achieve the above objects.

4.2 Mr. Rungta places reliance on Clause 39 (1)(i) of the RPWD Bill, which reads:

“39. Reservation of Posts for Persons with Benchmark Disabilities –

(1) Every appropriate government shall reserve, in every establishment under them, not less than 5% of the vacancies meant to be filled by direct recruitment, for persons or class of persons with benchmark disability, of which 1% each shall be of all posts reserved for persons with following disabilities :-

- i. blindness & low vision (with reservation of 0.5% of the vacancies for each of the two disabilities)”

5. The RPWD Act



5.1 The RPWD Act is, as per its title, “an Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto”.

5.2 The Preamble to the RPWD Act merits reproduction:

“Whereas the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006;

And whereas the aforesaid Convention lays down the following principles for empowerment of persons with disabilities,—

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

And whereas India is a signatory to the said Convention;

And whereas India ratified the said Convention on the 1st day of October, 2007;

And whereas it is considered necessary to implement the Convention aforesaid.”

5.3 The provisions in the RPWD Act which would engage us are Sections 33⁷ and 34⁸, read with Section 2(b)⁹.

⁷ 33. **Identification of posts for reservation.** – The appropriate Government shall—



6. The Right of Persons With Disabilities Rules, 2017¹⁰

Mr. Rungta also places reliance on Rule 11¹¹ of the RPWD Rules.

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- (i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of Section 34;
- (ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and
- (iii) undertake periodic review of the identified posts at an interval not exceeding three years.

⁸ **34. Reservation. –**

(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

⁹ **2. Definitions. –** In this Act, unless the context otherwise requires,—

(b) “appropriate Government” means,—

- (i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;
- (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.

¹⁰ “the RPWD Rules” hereinafter

¹¹ **11. Computation of vacancies. –**

(1) For the purposes of computation of vacancies, four per cent of the total number of vacancies including vacancies arising in the identified and non-identified posts in the cadre strength in each group of posts shall be taken into account by the appropriate Government for the persons with benchmark disabilities:



7. Executive Instructions

7.1 Various executive instructions, issued under the RPWD Act and the RPWD Rules, as well as under the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995¹², the predecessor statute to the RPWD Act, were cited, and we may note them, chronologically, thus.

7.2 Railway Board Circular dated 14 February 2014

7.2.1 The respondents, in its counter-affidavit before the Tribunal, relied on Railway Board Circular dated 14 February 2014 as representing “the latest list” of categorization of posts suitable to be filled by persons suffering from various categories of disabilities. The exact averment to this effect, as contained in the counter-affidavit, reads thus:

“In this context, it is stated that the posts suitable for PwBD¹³ have been notified by Railway Board from time to time. The latest list notified is *vide* Railway Board’s letter No. E (NG) II/2014/RC-2/I list dated 14.02.2014 (Annexed as R-1). Posts identified for

Provided that the reservation in promotion shall be in accordance with the instructions issued by the appropriate Government from time to time.

(2) Every Government establishment shall maintain a vacancy based roster for the purpose of calculation of vacancies for persons with benchmark disabilities in the cadre strength as per the instructions issued by the appropriate Government from time to time.

(3) While making advertisement to fill up vacancies, every Government establishment shall indicate the number of vacancies reserved for each class of persons with benchmark disabilities in accordance with the provisions of Section 34 of the Act.

(4) The reservation for persons with disabilities in accordance with the provisions of Section 34 of the Act shall be horizontal and the vacancies for persons with benchmark disabilities shall be maintained as a separate class.

¹² “the 1995 PWD Act” hereinafter

¹³ Persons with Benchmark Disabilities



particulars category of disability is required to be filled by the post identified and suitable for that category of disability. Hence the contention of the VI-Blind cannot be accepted.”

7.2.2 A reading of the Railway Board Circular dated 14 February 2014 reveals that it is based on a Notification dated 29 July 2013 issued by the Department of Disability Affairs¹⁴. The opening sentence in the second paragraph of the Circular reads thus:

“Department of Disability Affairs have informed this Ministry of a new list of posts published vide their Notification No. 16-15/2010-DDIII dated 29/7/2013, to give effect to reservation to the PWDs, wherein, total exemption have been granted to the Railways from reservation in certain post and partial exemption in some others.”

7.2.3 As Mr. Rungta correctly points out, however, the DDA Notification dated 29 July 2013, on which the Railway Board Circular dated 14 February 2014 was based, was itself found to be unsatisfactory by this Court in its judgment in *UOI v Tara Chauhan*¹⁵, and the Railways was directed to re-examine the aspect of identification of posts suitable for being manned by persons suffering from different categories of disabilities. As such, the respondents cannot seek to rely on the Railway Board Circular dated 14 February 2014.

7.3 Department of Empowerment of Persons with Disabilities¹⁶ Office Memorandum¹⁷ dated 4 March 2015

¹⁴ “DDA” hereinafter

¹⁵ MANU/DE/1943/2014

¹⁶ “DEPWD” hereinafter

¹⁷ “OM” hereinafter



7.3.1 This OM was issued by the DEPWD on the basis of the recommendations of an Expert Committee which was set up to look into identification of Group D posts in the Indian Railways in the context of suitability for persons with VI. The exercise was conducted in accordance with the directions issued by this Court in its judgment dated 19 August 2014 in *Tara Chauhan*, read with order dated 24 December 2014 in Rev Pet 571/2014¹⁸, by which the Union of India sought review of the judgement dated 19 August 2014. To appreciate the OM, therefore, it would be necessary first to refer to the two *Tara Chauhan* orders.

7.3.2 Judgment dated 19 August 2014 in WP (C) 5111/2014

7.3.2.1 This decision was rendered in the context of Section 33¹⁹ of the 1995 PWD Act.

7.3.2.2 By an advertisement dated 30 December 2013, the Northern Railways invited applications for 5679 vacancies in 13 cadres. The advertisement provided for reservation, in various posts, for candidates suffering from disabilities, thus:

Name of Post	Department	Categories of disabled who could apply for the jobs
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¹⁸ UOI & ors v Tara Chauhan & anr

¹⁹ 33. **Reservation of posts.** – Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from—

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.



Khalasi Helper (Ctg No. 3, 7, 11)	Civil Engg., Electrical, Mechanical, S & T Store	LV ²⁰ , OA ²¹ , BL ²² , OL ²³ , HH ²⁴
Safaiwala	Med	LV, OA, BL, OL, HH
Cook	Med	B ²⁵ , LV, BL, OL, HH

7.3.2.3 The respondents before this Court²⁶ moved the Tribunal, alleging that the notification of vacancies reserved for VI candidates, in the advertisement dated 30 December 2013, was not in accordance with Section 33 of the 1995 PWD Act. Specifically, Tara Chauhan etc. were aggrieved at the fact that blind (100% VI) candidates were eligible, as per the advertisement, only for appointment to the post of cook.

7.3.2.4 Finding merit in the grievance of Tara Chauhan, etc., the Tribunal, *vide* judgment dated 13 March 2014, allowed their OA in the following terms:

“17. Therefore, we conclude that by debarring the blind people in 2013 advertisement, the respondents have indeed done injustice to the applicants and this needs to be rectified. We, therefore, set aside the advertisement to the extent it excludes the blind from consideration for appointment to other posts except Cook and direct the respondents to consider the blind also for appointment to other posts advertised, if they are selected. In this regard, they may issue a corrigendum that blind and low vision candidates are also eligible to apply, within 15 days from today and definitely well before the examination commences.”

²⁰ Low Vision

²¹ One Arm

²² Both Legs

²³ One Leg

²⁴ Hearing Handicapped

²⁵ Blind

²⁶ “Tara Chauhan etc.” hereinafter



7.3.2.5 Aggrieved thereby, the UOI approached this Court, contending that the Tribunal erred in interfering with a conscious policy decision taken on the basis of an exercise undertaken by the Ministry of Social Justice and Empowerment²⁷ in terms of Section 33 of the 1995 PWD Act. An Expert Committee, in terms of the said provision, had been constituted on 29 July 2013, and, in accordance with the recommendations of the Expert Committee, the posts identified as suitable for being occupied by persons with various categories of disabilities were identified and the advertisement issued accordingly.

7.3.2.6 This Court held thus:

“10. It is evident from the above discussion that there is no debate or controversy with respect to the manner in which the 3% vacancies directed by the provisions of the Disabilities Act have to be worked out. A series of judgments of the Supreme Court - the latest being in *National Federation of the Blind*²⁸ have concluded the issue; all establishments are bound to work out or calculate the 3% reservations on the basis of the total vacancies irrespective of the identification of posts. Such being the case, the next level of scrutiny required is whether the exclusion of a particular post or group of posts or cadre from the purview of the Disabilities Act - in respect of all kinds of disabilities or some of them, is backed by any rationale. The above discussion would show that *unlike the 2010 instance, where apparently no exercise has been resorted to, the current advertisement had the benefit of the notification of the committee dated 29.07.2013, which identified the various posts across the establishment of Union of India, its department and agencies.*

11. It is evident that this notification nowhere extends the reservation to low vision or blind category of candidates with 100% visually impaired, to posts such as Gateman, Lineman and

²⁷ “the MOSJE” hereinafter

²⁸ *UOI v National Federation of the Blind*, (2013) 10 SCC 772



Trackman. Such being the case, this Court is of the opinion that the Tribunal could not have given the wide-ranging directions that it did. In the circumstances, the order of the Tribunal calls for modification on this aspect.

12. *So far as the question whether the description of Khalasi Helper, Carriage Cleaner, Safaiwala etc. correspond to any of the posts identified within the notification is concerned, this Court is of the opinion that this aspect would be best left to the determination by the appropriate authorities in order to avoid any controversy or confusion. Accordingly, we direct the concerned authority constituted by the law i.e. the Chief Commissioner of Disabilities to determine as to which of the posts advertised by the Northern Railways on 30.12.2013, save and except that of Gateman, Lineman, Trackman and Cook (which have already been identified in the notification dated 29.07.2013) correspond to the identified posts vide notification dated 29.07.2013. The Chief Commissioner shall be assisted by the concerned officials of the Indian Railways. It is open to the Chief Commissioner to consider the views of any other interested parties who may wish to address the issue.*

13. In the light of the above discussion, the following directions are hereby issued:

- i) The Tribunal's order to the extent which directs appointment of the applicants to the categories of Gateman, Lineman and Trackman pursuant to the advertisements in question in the present case is hereby set aside;
- ii) The Chief Commissioner of Disabilities shall, after taking into account the notification dated 29.07.2013 and consulting the Northern Railways and considering the views of the other interested parties, furnish his report as to the equivalence of the posts which are the subject matter of the present case, and whether they are covered by the notification dated 29.07.2013 in respect of low vision and 100% blind category candidates. This report shall be furnished within eight weeks from today.
- iii) The Northern Railways shall keep 1% of the entire vacancies notified pursuant to the advertisement dated 30.12.2013 unfilled till the aforesaid process is completed.
- iv) The process of filling up the 1% reserved posts shall be completed pursuant to the report, after which the



results in respect of those category of candidates would be declared and appropriate consequential orders of appointment etc. shall be undertaken. This direction will apply in W.P.(C.) Nos.5146/2014 and 5162/2014.

v) So far as the applicants in W.P.(C.) No. 5111/2014 are concerned, since the recruitment process of the common test etc. have not yet been undertaken, the petitioner/Northern Railways is hereby directed to accept the applications of 100% blind category candidates and allow them to participate in the recruitment test. Their results, as well as those of the low vision category candidates, shall not be declared in the 1% reserved category under the Disabilities Act, and shall be subject to the final determination by the Chief Commissioner as directed by this Court.

vi) In case of candidates of low vision and blind category applying for and participating in any selection process and finding a place in the merit list (i.e. other than under reserved categories under the Disabilities Act or any other kind of reservation), their results will be announced and the appointment process be undertaken in accordance with the prevailing regulations and office memorandum.

vii) Subject to the above directions, result of candidates in respect of all other vacancies (except of the categories mentioned above) shall be declared.”

7.3.3 Order dated 24 December 2014 in Rev Pet 571/2014

7.3.3.1 The UOI filed Rev Pet 571/2014, seeking review of the above judgement dated 19 August 2014. The Review Petition was predicated on Section 32²⁹ of the 1995 PWD Act. The contention of the UOI was that, by virtue of Section 32, the task of identifying the posts to be earmarked for being filled by persons suffering from

²⁹ **32. Identification of posts which can be reserved for persons with disabilities.** – Appropriate Governments shall—

- (a) identify posts, in the establishments, which can be reserved for the persons with disability;
- (b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.



different categories of disability was cast on the Government and that, in exercise of this task, an Expert Committee had been constituted, its report given to the MOSJE and, on that basis, OM dated 3 December 2014 issued by the Central Government. This Court, therefore, in the submission of the UOI, erred in further designating the task of identification of posts to the Chief Commissioner for Persons With Disabilities³⁰, in its order dated 19 August 2014.

7.3.3.2 This Court held that the directions contained in the judgment dated 19 August 2014 had been necessitated because there were gaps in the OM dated 3 December 2014, as also lack of clarity and some contradictions. The Court observed that the report prepared by the CCPWD was also of relevance, even if the identification of posts, under Section 32 of the 1995 PWD Act, was assigned to the Government. Nonetheless, keeping in view the submissions advanced by the UOI, the directions issued in the order dated 19 August 2014 were modified thus:

“Considering the mandate of Section 32, therefore, this Court is of the opinion that the said judgment of 19.08.2014 has to be modified to the extent that the Central Government shall forthwith and not later than two weeks, reconvene the Committee which had been earlier tasked with the preparation of the report (by notification of 31.03.2011 and pursuant to which the notification was issued on 29.07.2013) to complete the task mentioned in the said judgment dated 19.08.2014. The Committee shall give due weight and consideration to the determination of the Chief Commissioner for Persons with Disabilities and the report furnished to the Central Government, Ministry of Social Justice and Empowerment; the said Expert Committee shall also take note of the Office Memorandum issued pursuant to the exercise carried

³⁰ “the CCPWD” hereinafter



out by the Chief Commissioner for Persons with Disabilities dated 03.12.2014. The Committee shall consider and prepare its report with all expedient despatch and, in any event, within eight weeks from today. The review petitions and the accompanying applications are disposed of. This order is passed in the light of the UOI's applications and with consent of learned counsel for the parties."

7.3.4 The OM dated 4 March 2015 was issued by the DEPWD by way of compliance with the directions contained in the above order dated 24 December 2014 of this Court in Rev Pet 572/2014. The OM was issued consequent to a meeting of the re-convened Expert Committee, which took place on 9 February 2015. The following tabular statement is contained in the OM, reflecting the identification of posts in the Indian Railways for persons with VI, i.e. blindness or low vision:

S.No.	Name of the Post	Department	Recommendations
1	Khalasi Helper	Mechanical (W), S & T (W), Engg (W)	The post is suitable for persons with blindness and low vision.
2	Safaiwala	Medical	The post is suitable for persons with blindness and low vision.
3	Khalasi Helper	Stores	The post is suitable for persons with blindness and low vision.
4	Hospital Attendant (Male)	Medical	The post is suitable for persons with blindness and low vision.



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5	Hospital Attendant (Female)	Medical	The post is suitable for persons with blindness and low vision.
6	Khalasi Helper	Civil Engg., Electrical, Mechanical, Signal and Telecom	Cannot be identified suitable for persons with Visual Impairment since the posts involved line operations and train operations
7	DSL Khalasi	Mechanical	Cannot be identified suitable for persons with Visual Impairment since the posts involved line operations and train operations
8	Khalasi Helper	Engg.	Cannot be identified suitable for persons with Visual Impairment since the posts involved line operations and train operations
9	Carriage Cleaner and DSL cleaner	Mechanical	Cannot be identified suitable for persons with Visual Impairment since the posts involved line operations and train operations

7.4 DEPWD Notification dated 4 January 2021 and DEPWD OM dated 8 November 2024



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7.4.1 Mr. Rungta stressed on these instructions, too, to buttress his case. The DEPWD OM dated 8 November 2024 was issued pursuant to directions issued by this Court in its judgment dated 1 November 2023 in *Court on Its Own Motion v Kendriya Vidyalaya Sangathan*³¹ and was an effective successor to DEPWD Notification dated 4 January 2021, which itself was issued in supersession of DDA Notification dated 29 July 2013 *supra*. Pursuant to the enactment of the RPWD Act in 2016, various Sub-Committees, for locomotor disability, hearing impaired and visual impairment, re-examined the matter of identification of posts in Central Government services under Section 33 of the RPWD Act and submitted their recommendations to an Expert Committee which considered the reports in its meeting held on 19 November 2015. The recommendations of the Expert Committee, after finalization, were forwarded to the Central Government, which notified the gist of the report of the Expert Committee, under Section 33 of the RPWD Act, *vide* DEPWD Notification dated 4 January 2021. The Annexure to the Notification contains a tabular statement headed “Post Identified to be Reserved for Persons with Benchmark Disabilities in Group D”.

7.4.2 To our mind, the DEPWD Notification dated 4 January 2021 and the DEPWD OM dated 8 November 2024 can have no application to the present case, as they were issued much after the CEN dated 23 July 2019 with which we are concerned. Mr. Rungta has not even sought to advance a submission that these instructions would have

³¹ MANU/DE/7373/2023



retrospective application, or would apply to recruitments against advertisements issued in the past. It is a settled principle that selection, consequent to an advertisement, would abide by the Rules and executive instructions then in existence. It is equally well settled that statutory Rules and executive instructions operate prospectively. This principle stands thus enunciated in *N.T. Devin Katti v Karnataka Public Service Commission*³²:

“11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. *Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter.* If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, *but if he is eligible and is otherwise qualified in*

³² (1990) 3 SCC 157



accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection is accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.

12. In ***B.N. Nagarajan v State of Mysore***³³, the dispute related to the validity of appointment of Assistant Engineers. The Public Service Commission invited applications by issuing notifications for appointment to the post of Assistant Engineers in October 1958, May 1959 and April 1960. The Commission made selection, interviewed the candidates and sent the select list to the government in October/November 1960. But before the appointments could be made the Mysore Public Works, Engineering Department Services (Recruitment) Rules, 1960 came into force which prescribed different provisions than those prescribed in the earlier notifications in pursuance whereof the Public Service Commission had made the selections. The validity of the appointment made by the government on the basis of the selection made by the Commission was challenged. The High Court quashed the selection and appointments made in pursuance thereof. On appeal before this Court, validity of the appointments were assailed on the ground that since the appointments had been made after the amendment of the Rules the appointments should have been made in accordance with the amended Rules. A Constitution Bench of this Court rejected the contention holding that since the whole procedure of issuing advertisement, holding interviews and recommending the names having been followed in accordance with the then existing Rules prior to the enforcement of the amended Rules the appointments made on the basis of the recommendation made by the Public Service Commission could not be rendered invalid.

13. ... It is a well accepted principle of construction that a statutory rule or government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. *Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and government orders and any amendment of the rules or the government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended Rules or the amended government orders, issued in exercise of its statutory*

³³ AIR 1966 SC 1942



*power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections. See **P. Mahendran v State of Karnataka**³⁴.*

As we would point out hereinafter, the CEN dated 23 July 2019 itself identified the various categories of posts which were suitable for persons suffering from different types of disabilities. The exercise of identification – which Mr. Rungta would call “bifurcation” – having taken place prior to the issuance of the CEN dated 23 July 2019, Notifications and OM’s issued thereafter would be of no application.

Facts

8. We may now proceed to the facts.

9. Vide CEN 01/2019, dated 23 February 2019, applications were invited for recruitment to various posts in the Indian Railways in Level 1 of the 7th Central Pay Commission³⁵ Pay Matrix. We are concerned with the Western Railway, in which 10734 vacancies were notified. In accordance with Section 33 of the RPWD Act, which required 1% of the vacancies to be reserved for VI candidates, 171, out of the advertised 10734 vacancies, were reserved for VI candidates in the Western Railway. Though 171 does not work out to 1% of 10734, all parties are *ad idem* that 171 vacancies were reserved for VI candidates.

³⁴ (1990) 1 SCC 411

³⁵ 7th CPC



10. Candidates, in order to be eligible for consideration and recruitment against the posts advertised by the aforementioned CEN 01/2019, were required to have passed Class X or to possess ITI qualification from recognised institute. They were also required to be between 18 and 33 years of age. There is no dispute that the petitioners qualified the age and educational requirements stipulated in the advertisement.

11. 171 posts were intended to be filled by the aforementioned CEN. Annexure A to the CEN set out, *inter alia*, the suitability of persons suffering from benchmark disabilities for recruitment and appointment against each of these posts. To the relevant extent, the said Annexure may be reproduced thus:

Cat No.	Designation	Dept	Medical Standard	Suitability for persons with benchmark disability			
				VI	HI ³⁶	LD ³⁷	MD ³⁸
1	Assistant (Workshop)	Mech.	C1	B, LV	D ³⁹ , HH ⁴⁰	OL, LC ⁴¹ , DW ⁴² , AAV ⁴³	Yes
2	Assistant Bridge	Eng.	B1	No	No	No	No
3	Assistant C&W	Mech.	B1	No	D, HH	OL, LC, DW, AAV	Yes
4	Assistant Depot (stores)	Stores	C1	LV	D, HH	OL, OA	Yes
5	Assistant Loco Shed	Mech	B1	LV	D, HH	OL, LC, DW,	Yes

³⁶ Hearing Impaired

³⁷ Locomotor Disability

³⁸ Multiple Disability

³⁹ Deaf

⁴⁰ Hard of Hearing

⁴¹ Leprosy Cured

⁴² Dwarfism

⁴³ Acid Attack Victim



	(diesel)					AVV	
6	Assistant Loco Shed (Elect.)	Elect.	B1	LV	D, HH	OL, LC, DW, AAV	Yes
7	Assistant Operations (Electrical)	Elect.	B2	LV	D, HH	OL, LC, DW, AAV	Yes
8	Assistant Pointsman	Traffic	A2	No	No	No	No
9	Assistant Signal & Telecom	S and T	B1	LV	D, HH	OL, LC, DW, AAV	Yes
10	Assistant Track Machine	Eng.	B1	No	D, HH	OL, LC, DW, AAV	Yes
11	Assistant TL & AC	Elect.	B1	LV	D, HH	OL, LC, DW, AAV	Yes
12	Assistant TL & AC (Workshop)	Elect	C1	B, LV	D, HH	OL, LC, DW, AAV	Yes
13	Assistant TRD	Elect	B1	No	D, HH	OL, LC, DW, AAV	Yes
14	Assistant Works	Eng.	B1	B, LV	D, HH	OL, LC, DW, AAV	Yes
15	Assistant Works (Workshop)	Eng.	C1	B, LV	D, HH	OL, LC, DW, AAV	Yes
16	Hospital Assistant	Med.	C1	B, LV	D, HH	OL, LC, DW, AAV	Yes
17	Track Maintainer Grade IV	Eng.	B1	No	No	No	No

12. Thus, VI candidates, who were aspiring for recruitment consequent to the aforementioned CEN 01/2019 were made aware, at the very outset, that certain posts were suitable only for persons with low vision (LV) and certain other posts were suitable for persons who were suffering from LV as well as those who were blind (B). To be specific,

- (i) the posts of Assistant (Workshop), Assistant TL & AC (Workshop), Assistant Works, Assistant Works (Workshop) and



Hospital Assistant were suitable for candidates who were blind as well as those suffering from low vision,

(ii) the posts of Assistant Depot (stores), Assistant Loco Shed (diesel), Assistant Loco Shed (Elect.) Assistant Operations Electrical, Assistant Signal & Telecom and Assistant TL & AC were suitable only for candidates with low vision but were not suitable for candidates who were blind, and

(iii) the remaining posts of Assistant Bridge, Assistant C&W, Assistant Pointsman, Assistant Track Machine, Assistant TRD and Track Maintainer Grade IV were not suitable for candidates suffering from visual impairment at all.

13. It cannot be disputed that all candidates who applied consequent to CEN 01/2019 and participated in the selection thereafter did so in the full awareness of the manner in which posts have been identified in, Annexure A to the CEN, as suitable for candidates suffering from particular categories of disabilities.

14. There is no challenge to CEN 01/2019 or to Annexure A thereto.

15. On 18 January 2023, the first select list of candidates, who had cleared the earlier round of selection was released by the Western Railway, for further document verification and medical examination. The cut-off marks for VI candidates, as per the first select list, were 57.27633. The petitioners scored above the said cut-off and were,



therefore, called for document verification and medical examination. Their medical examination took place between 1 and 10 February 2023.

16. Consequent to document verification and medical examination, three Provisional Panels of candidates, who had been selected were released by the Western Railway on 23 March 2023, 27 April 2023 and 5 June 2023. The grievance of the petitioners, who are wholly blind, is that their names did not figure in any of the three panels. They claimed to be aggrieved by the fact that, against the posts which were identified as suitable for being filled by candidates who suffered from LV but were not blind, candidates who were lower to them in merit, but who suffered from LV and were not blind, were selected. There is, however, no dispute that, against the posts which were identified in Annexure A to the CEN as suitable for candidates who were blind or who suffered from LV, no candidate inferior to the petitioners on merit was selected.

17. In other words,

(i) against the posts which were identified, in Annexure A to the CEN, as suitable for candidates who were blind or were suffering from LV, the respondents did appoint both categories of candidates, and it is nobody's case that any candidate who was inferior in merit to any of the petitioners was appointed to these posts, and



(ii) against the posts which were identified as suitable only for candidates suffering from LV, no blind candidate was appointed, and some of the candidates, who were suffering from LV, selected against these posts, were lower in merit to the petitioners.

The grievance of the petitioners is, therefore, essentially only with respect to the selection of the candidates, in the aforementioned Provisional Panels, for appointment to the posts which were identified in Annexure A to the CEN as suitable only for persons suffering from LV but not for the blind.

18. Aggrieved by the aforesaid act, the petitioners moved the Tribunal by way of OA 2901/2023, OA 2441/2023, OA 2902/2023 and OA 3041/2023, which stand dismissed by the judgment under challenge.

The impugned judgment

19. Contentions of the petitioners before the Tribunal

19.1 Before the Tribunal, the petitioners contended that, in subdividing the posts which were identified for persons suffering from visual impairment into two categories, with some posts found suitable for candidates who were blind as well as candidates suffering from LV, and certain other posts suitable only for candidates suffering from LV, the respondents had bifurcated the posts reserved for visually



impaired candidates in the CEN. This, according to the petitioners, was impermissible. Section 34 of the RPWD Act does not permit further bifurcation or sub division of vacancies to be reserved for candidates suffering from blindness or LV. Candidates suffering from blindness and LV constitute one category under Section 34(1)(a), and 1% of vacancies were required to be reserved for such candidates. Thereafter, a further post-wise sub-division of such vacancies between candidates who were blind and candidates who were suffering from LV is impermissible in law. The respondents have effectively earmarked 85 vacancies out of the 171 vacancies reserved for the candidates who were either blind or suffering from LV, and 86 vacancies only for candidates suffering from LV. Blind candidates have completely been excluded from these latter 86 vacancies. Sections 33 and 34 of the PWD Act, it was contended, did not permit any such bifurcation or sub-division.

19.2 The petitioners further contended, relying on the judgment of the Supreme Court in *UOI v National Federation of the Blind*⁴⁴ and of this Court in *National Federation of the Blind v Kendriya Vidyalaya Sangathan*⁴⁵, that reservation under the RPWD Act was vacancy based not post based. In the present case, after having reserved 171 vacancies for VI candidates, post based bifurcation of the said 171 vacancies into 85 vacancies for the blind / LV candidates, and 86 vacancies only for LV candidates, had taken place. Such a post based bifurcation cannot allowed, as held in the afore-noted

⁴⁴ (2013) 10 SCC 772

⁴⁵ MANU/DE/7042/2023; hereinafter “NFB v KVS”



judgments. Under Section 34 of the RPWD Act, candidates who are blind and candidates suffering from LV constitute one category. Bisection of the said homogenous category into two contravenes the statute.

19.3 Predicated on these submissions, the petitioners prayed that Notifications dated 23 March 2023, 27 April 2023 and 5 June 2023 whereby the Provisional Panels had been notified, be quashed and set aside and the petitioners be considered for appointment on the basis of their individual merit as VI candidates.

20. Contentions of the respondents before the Tribunal

20.1 In response, the Western Railway contended, before the Tribunal, that there had been no infraction by them of any provision of the RPWD Act. Out of a total of 10734 vacancies, notified for the Western Railway, it was pointed out that 171 vacancies had been reserved for VI candidates, which was entirely in accordance with Section 34(1)(a) of the RPWD Act. The respondents were not precluded from identifying, out of the vacancies reserved for any particular category of disability, posts which would be suitable candidates suffering from particular categories of disabilities. Reservation and identification constitute two distinct exercises, both of which are envisaged by the RPWD Act. In specifying that 86 of the posts reserved for VI candidates were suitable only for candidates suffering from LV, whereas 85 posts were suitable for candidates who



were either blind or suffering from LV, the respondents had merely undertaken an exercise of identification and not of sub-division or bifurcation as the petitioners sought to contend. Identification of particular posts as suitable for candidates suffering from particular categories of disabilities was entirely within the province of the respondent and permissible under the provisions of the RPWD Act. As such the respondents contended that the grievance of the petitioners was without substance.

20.2 Three preliminary objections were also advanced by the respondents, contesting the maintainability of the OAs and *locus standi* of the petitioners. These were that

- (i) having not chosen to challenge the CEN, there was no substance in the case of the petitioners,
- (ii) after participating in the selection following the CEN in full knowledge of the manner in which posts were identified as suitable for various categories of disabilities in Annexure A thereto, the petitioners could not seek to raise a grievance at a later stage, and
- (iii) if the reliefs in the OAs were to be granted, candidates suffering from LV and who had been selected under the impugned Provisional Panels, would be affected and they had not been impleaded as parties.

21. Observations and findings of the Tribunal



22. Having noted the rival contentions before it, the Tribunal has, by the impugned order dated 16 July 2024, proceeded to dismiss the petitioners' OAs, reasoning thus:

(i) Annexure A to the CEN clearly sets out the manner in which specific posts were identified as suitable only for candidates suffering from LV whereas certain other posts were identified as suitable for candidates who were either blind or suffering from LV. The petitioners, therefore, were aware of this identification at the time when they elected to participate in the selection.

(ii) More than 1% of the total vacancies of 10734, to be filled in the Western Railway under the CEN, had been reserved for VI candidates. As such, the mandate of Section 34(1)(a) of the RPWD Act stood fulfilled.

(iii) Section 33 of the RPWD Act permitted identification of posts as suitable for being filled by candidates suffering from particular categories of disabilities. This identification of posts, which was reflected in Annexure A to the CEN was, therefore, in accordance with Section 33 of the RPWD Act. As the respondents had pointed out, the posts which were identified as not suitable for blind candidates were those which involved handling of machinery and other such activities. Appointment of blind candidates against such posts would be hazardous and



prejudicial to the interests not only of the candidates themselves but also of the general public, as the recruited staff would be manning railway lines, railway tracks and the like.

(iv) It had been held by the Supreme Court in *Bedanga Talukdar v Saifudaullah Khan*⁴⁶ and *State of Tamil Nadu v G. Hemalathaa*⁴⁷ that the Court could not relax the prescribed eligibility or qualifications. It was not permissible for the Court, therefore, to direct that blind candidates be appointed against posts which were identified as not suitable for blind.

(v) Besides, without the LV candidates being impleaded, the challenge could not sustain. Impleadment of candidates who were likely to be affected by the outcome of the petition was indispensable, as held by the Supreme Court in *Ranjan Kumar v State of Bihar*⁴⁸.

(vi) Having participated in the selection process in full awareness of the manner in which posts had been identified in Annexure A to the CEN as suitable for candidates suffering from particular categories of visual impairment, the petitioners were estopped from raising any grievance on this score. This position in law was also noted in the judgment in *Ranjan Kumar*.

⁴⁶ (2011) 12 SCC 85

⁴⁷ (2020) 19 SCC 430

⁴⁸ (2014) 16 SCC 187



23. Aggrieved thereby, the petitioners have approached this Court under Article 226 of the Constitution of India.

Rival Submissions before this Court

24. Submissions of Mr. Rungta

24.1 Arguing for the petitioners, Mr. Rungta reiterates, at the very outset, that the main plank of the petitioners' challenge before the Tribunal in the OA, which is that sub-division of vacancies reserved for PWD candidates in terms of Sections 33 and 34 of the RPWD Act is impermissible in law. Apart from the judgment of the Supreme Court in *UOI v National Federation of the Blind* and of this Court in *NFB v KVS*, Mr. Rungta also cites *Government of India v Ravi Prakash Gupta*⁴⁹.

24.2 Apropos the DDA Notification dated 14 February 2014, on which the respondents had placed reliance in their counter affidavit before the Tribunal, Mr. Rungta submits that there was nothing to indicate that the identification of posts as suitable for candidates suffering from particular categories of disabilities, in the said Notification, had been preceded by the requisite exercise envisaged by Section 33 of the 1995 PWD Act. He further points out that, in the list of posts annexed to the said Notification, which contains department-wise bifurcation, there is no mention of the post of Assistant.

⁴⁹ (2010) 7 SCC 626



24.3 In any event, submits Mr. Rungta, the Notification dated 14 February 2014 could not be of any avail to the respondents as the identification of posts was reviewed by the respondents by an Expert Committee of the DEPWD following the directions issued by the Division Bench of this Court in *Tara Chauhan*. That exercise resulted in the issuance of the DEPWD OM dated 4 March 2015. The last exercise of identification of posts in the Railways as suitable for being manned by persons suffering from disabilities prior to the issuance of CEN 01/2019 was, in fact, by the DWPWD OM dated 4 March 2015. That OM does not identify any post as suitable only for persons suffering from LV. Certain posts are identified as suitable for persons suffering from LV or blindness and other posts have been identified as not suitable for persons suffering from VI altogether. There was, therefore, no justification for the respondents identifying certain posts in Annexure A to the CEN, as suitable for being filled only by persons who suffered from LV. Besides, any such identification, from the posts reserved under Section 34(1)(a) of the RPWD Act, into certain posts as suitable for being filled by persons suffering from distinct visual impairments, had to be preceded by the requisite exercise under Section 33 of the RPWD Act.

24.4 Advancing further submissions on the DEPWD OM dated 4 March 2015, Mr. Rungta points out that the said OM was issued in compliance with the directions contained in the order dated 24 December 2014 passed by the Division Bench of this Court in Review



Petition 571/2014. The controversy there, he points out, was similar to that which has arisen in the present case. In that case, too, the Division Bench of this Court directed the Expert Committee to again consider the issue of identification of posts, albeit under the 1995 PWD Act, as suitable for being filled in by blind candidates. Pursuant to the directions issued by this Court, the Expert Committee convened on 9 February 2015. It did not identify any post as suitable only for candidates suffering from LV. The respondents' contention that certain posts were only for being filled by persons suffering from LV but not by persons who were completely blind is, therefore, contrary to the DEPWD OM dated 4 March 2015. He, further, points out that in fact, the posts of Assistant Locoshed (Diesel) (Mechanical), Assistant Locoshed (Electrical), Assistant Operations (Electrical) and Assistant TL and AC (Electrical), which had been notified in Annexure A to the CEN as being suitable for candidates suffering from LV but not for the candidates who are completely blind, had been identified in the OM dated 4 March 2015 as suitable for any category of visual impairment. Similarly, while the OM dated 4 March 2015 identified the posts of Assistant Depot (Stores) as suitable posts for blind and LV candidates, Annexure A to the CEN identified it only as suitable for LV candidates. Thus, there was no basis for the identification of posts as undertaken in Annexure A to the CEN.

24.5 Besides, submits Mr. Rungta, there is nothing to indicate that, prior to the issuance of Annexure A to the CEN, the requisite identification exercise under Section 33 was carried out, resulting in



certain posts as being identified as suitable only for LV candidates. If this sub-division had taken place without the requisite exercise envisaged by Sections 33 and 34 being undertaken, it was *ex facie* unsustainable in law. Mr. Rungta submits, in this context, that identification of posts under Section 33 of the RPWD Act has to be by “the appropriate Government” as defined in Section 2(b).

24.6 Mr. Rungta also places reliance on Clause 39(1)(i) of the RPWD Bill, to point out that the purpose of identification of posts as envisaged by Section 33 is not to exclude but to include posts. In this context, he has also pointed out that Rule 11 of the RPWD Rules refers to 4% of the total number of vacancies in identifying and not identifying posts. He has cited, in support of his submissions, the judgment of a Division Bench of this Court in *Aditya Suresh Rao Kaware v Western Railway Recruitment Cell*⁵⁰.

24.7 Mr. Rungta further submits that the issue in controversy is squarely covered by the judgment of the Supreme Court of this Court in *Tara Chauhan* as well as the order passed by the Division Bench in the review petition preferred thereagainst.

24.8 Apropos the preliminary submissions raised by the respondents, Mr. Rungta submits that he was not required to challenge the CEN or Annexure A thereto, as the respondents could not, by executive fiat, restrict the scope of the RPWD Act, particularly of Sections 33 and 34

⁵⁰ 2024 SCC OnLine Del 5165



thereof. Sections 33 and 34 of the RPWD Act, he submits, entitle *all* VI candidates to 1% reservation of the total number of the advertised posts, without further sub-division or bifurcation. Any further sub-division or bifurcation could, therefore, be challenged and no principle of estoppel would apply in that case. Mr. Rungta relies, for the purpose, on

- (i) paras 16, 17 and 22 of *Dr. (Major) Meeta Sahai v State of Bihar*⁵¹,
- (ii) *Salam Samarjeet Singh v High Court of Manipur*⁵² and
- (iii) paras 15 and 16 of judgment of the Constitution Bench in *Sivanandan CT v High Court of Kerala*⁵³.

24.9 Besides submits Mr. Rungta, it was only from the averments contained in the counter affidavit filed by the respondents before the Tribunal that the petitioners came to know that the respondents were placing reliance on the DDA OM dated 14 February 2014. They could not, therefore, have contested the correctness of Annexure A to the CEN till the counter-affidavit was filed.

24.10 On the aspect of failure, of the petitioners, to implead affected parties, Mr. Rungta submits that the identity of the affected parties has not been disclosed by the respondents. No panel of candidates suffering from LV was prepared. Besides, the Tribunal had, at the interim stage, directed that 86 posts be kept vacant as an interim

⁵¹ (2019) 20 SCC 17

⁵² 2024 SCC Online SC 2316

⁵³ (2024) 3 SCC 799



measure. As such, it could not be said that the OAs were bad for non-joinder of necessary parties.

25. Submissions of Ms. Arora

Responding to Mr. Rungta's submissions, Ms. Arora appearing for the UOI, has basically reiterated the submissions advanced before the Tribunal.

Analysis

26. On merits

26.1 No challenge to the CEN or to Annexure A thereof

26.1.1 We are not inclined to enter, in any great detail, into the aspect of whether the manner in which Annexure A to the CEN identified the vacancies reserved for candidates suffering from disabilities post-wise, or identified certain posts as suitable for the blind as well as persons with LV, and others as suitable only for persons with LV. We have no reason to believe that the decision is anything other than wholly objective.

26.1.2 Besides, the CEN is not under challenge. Clause 11.1 of the CEN clearly stated thus:

“The suitability or otherwise, of a post for PWBD has been indicated against each post, under the column ‘suitability for



persons with benchmark disability' with details of sub disability in post parameters table".

In other words, candidates were put on notice well in advance, that certain posts, covered by the CEN, were suitable for being manned only by candidates with certain categories of disabilities.

26.1.3 Nonetheless, given the fact that the fate of candidates who suffer from VI hangs in the balance, we have considered Mr Rungta's submission that Annexure A to the CEN is illegal, on merits.

26.1.4 Having done so, and for the reasons which follow, we find no merit in the contention.

26.2 Element of public interest

We cannot be unmindful of the fact that we are dealing with the Railways, and that the posts to which the petitioners aspire are not desk jobs. As the Tribunal has correctly observed, the posts which, according to Annexure A to the CEN, were not suitable for being manned by blind candidates, are posts which involved handling of machinery or other such activities which a person who is completely blind would be unable to perform. Even otherwise, this Court cannot sit in appeal over the decision of the respondents in that regard. While it is our avowed constitutional goal to make every effort at promoting inclusivity of persons who are differently abled, we have also to bear in mind the element of public interest that pervades every such



consideration. The appointment of a person who, owing to one reason or the other, is physically unable to manage the post, in the Railways, can result in untold public harm and may possibly also endanger the life and limb of the public who use the Railways. There is an overwhelming element of public interest involved, which has to be balanced against the rights of the petitioners to inclusion in the mainstream.

26.3 Re. DEPWD OM dated 4 March 2015

Apropos the DEPWD OM dated 4 March 2015, Ms. Arora points out that the said OM itself clarifies that the posts of Khalasi Helper in the Electrical, Mechanical and Engineering, Signal and Telecom Departments of the Railways were not suitable for blind candidates, suffering from 100% visual impairment. We find, on a reading of the OM dated 4 March 2015, that this is correct. It does not, therefore, even appear, on facts, that the decision to exclude certain posts from the reach of candidates who are completely blind, in Annexure A to the CEN, was vitiated by any arbitrariness or illegality. It is a decision which was taken on the basis of the DEPWD OM dated 4 March 2015, which was preceded by the constitution of an Expert Committee, following the directions issued by the Division Bench of this Court in *Tara Chauhan*. By no standards, therefore, can it be said that the decision was arbitrary.

26.4 Reservation and identification – Sections 34 and 33 of the RPWD Act



26.4.1 The distinction between identification and bifurcation, to which Mr. Rungta sought to repeatedly draw our attention appears, to us to be a distinction more of form than of substance. Section 33(i) of the RPWD Act specifically empowers the appropriate government to “identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of Section 34”. Section 33, therefore, in a sense follows Section 34. Expressed otherwise, the exercise of identification in Section 33 is the second step, after the first step of reservation in Section 34.

26.4.2 Section 34 obligates the government to reserve 1% of the total number of vacancies to be filled for candidates with blindness and LV. As Ms. Arora correctly points out, as 171 vacancies, out of 10734, were reserved for VI candidates, the mandate of Section 34(1)(a) stood satisfied.

26.4.3 Thereafter, under Section 33(i), the appropriate government is vested with the power of identifying posts in the establishment which can be held by persons having specific benchmark disabilities, *in respect of the vacancies reserved in accordance with Section 34*. In other words, *out of 1% vacancies reserved under Section 34(1)(a) for persons suffering from blindness or LV*, Section 33(i) empowers the appropriate government to identify posts which can be held by specific categories of persons with benchmark disabilities. The



exercise of identification under Section 33(i), therefore, succeeds the exercise of reservation under Section 34(1)(a).

26.4.4 Identification is, statutorily, of posts, not of vacancies. It is this fundamental distinction that the submissions of Mr. Rungta tend to obfuscate. Reservation under Section 34 is of vacancies; identification under Section 33 is of posts. From among the vacancies reserved under Section 34(1), for the various categories of disabilities, post-wise identification of categories of persons suffering from specific physical disabilities suitable to the post, can be carried out by the appropriate government under Section 34(1). This identification is, therefore, strictly on a post-wise basis. It is *this* exercise which stands manifested in Annexure A to the CEN.

26.4.5 Such post-wise identification, from among the reserved vacancies, is, therefore, statutorily permissible. It does not convert the exercise of *reservation* for persons with disabilities from a vacancy-based to a post-based exercise, as Mr Rungta would seek to contend. The exercise of *reservation* continues to remain a vacancy based exercise; it is only the exercise of *identification* from the reserved vacancies, of posts which are suitable, or not suitable, for persons suffering from particular types of disabilities, which is post-based. Both these exercises are statutorily envisaged and permissible, under Section 34(1) and Section 33 of the RPWD Act respectively.



26.4.6 That being so, Mr. Rungta's contention that Annexure A to the CEN infracts Sections 33 and 34 of the RPWD Act, as they convert the exercise of reservation for PWDs from a vacancy-based to a post-based exercise, is devoid of substance.

26.4.7 The decisions in *Ravi Prakash Gupta* and *National Federation of the Blind*, in fact, permit such post based identification of reserved vacancies. Para 29 of *Ravi Prakash Gupta* sets out the principle that applies, thus:

“29. While it cannot be denied that unless posts are identified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words, reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vacancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, does not arise.”

(Emphasis supplied)

This passage eloquently chalks out the distinction between reservation and identification. Identification is of *posts*. It *follows* reservation, which is of *vacancies*. *Before making appointments, identification of posts is necessary*. The concluding part of the paragraph, which



recognizes the possibility of carrying forward unfilled reserved vacancies, acknowledges the fact that reservation does not by itself create a right to appointment, and that it is only if, *after post-based identification*, suitable posts are available, that the reserved candidate has a right even to consideration for appointment against such identified post. If, despite reservation, identified posts are not available, the unfilled posts may have to be carried forward.

26.4.8 *National Federation of the Blind* involved an issue, as set out in para 30 of the report, of “whether the reservation provided for the disabled persons under Section 33 of the Act⁵⁴ is dependent upon the identification of posts as stipulated by Section 32”. After referring to ***Ravi Prakash Gupta***, the Supreme Court held, in para 31 of the report, thus:

“31. In the light of the above pronouncement, it is clear that the *scope of identification comes into picture only at the time of appointment of a person in the post identified for disabled persons* and is not necessarily relevant at the time of computing 3% reservation under Section 33 of the Act. In succinct, it was held in ***Ravi Prakash Gupta*** that Section 32 of the Act is not a precondition for computation of reservation of 3% under Section 33 of the Act rather Section 32 is the following effect of Section 33.”

(Emphasis supplied)

Further, in para 33.2, it is observed that “out of minimum 3% of vacancies of posts in the establishments 1% each has to be given to each of the 3 categories of disability viz. blind and low vision, hearing impaired and locomotor disabled or cerebral palsy separately *and the*

⁵⁴ the 1995 PWD Act



number of appointments equivalent to the 1% for each disability out of total 3% has to be made against the vacancies in the identified posts". If no vacancy in identified posts is available, ergo, there can be no appointment.

26.4.9 Para 38 of the report in *National Federation of the Blind* exemplifies this, illustratively, thus:

“38. To illustrate, if there are 100 vacancies of 100 posts in an establishment, the establishment concerned will have to reserve a minimum of 3% for persons with disabilities out of which at least 1% has to be reserved separately for each of the following disabilities: persons suffering from blindness or low vision, persons suffering from hearing impairment and the persons suffering from locomotor disability or cerebral palsy. *Appointment of 1 blind person against 1 vacancy reserved for him/her will be made against a vacancy in an identified post for instance, the post of peon, which is identified for him in Group D. Similarly, one hearing impaired will be appointed against one reserved vacancy for that category in the post of Store Attendant in Group D post. Likewise, one person suffering from locomotor disability or cerebral palsy will be appointed against the post of “Farash”, Group D post identified for that category of disability.* It was argued on behalf of the Union of India with reference to the post of driver that since the said post is not suitable to be manned by a person suffering from blindness, the above interpretation of the section would be against the administrative exigencies. Such an argument is wholly misconceived. A given post may not be identified as suitable for one category of disability, the same could be identified as suitable for another category or categories of disability entitled to the benefit of reservation. In fact, the second part of the section has clarified this situation by providing that the number of vacancies equivalent to 1% for each of the aforementioned three categories will be filled up by the respective category by using vacancies in identified posts for each of them for the purposes of appointment.”

(Emphasis supplied)



26.4.10 Identification is, therefore, indispensable, before appointment can take place. In fact, the above decisions specifically require that the exercise of reservation must precede the exercise of identification. That is precisely what has happened in the present case. By way of reservation, 171 vacancies out of 10734 vacancies were reserved for VI candidates. Out of the vacancies so reserved, post wise identification under Section 34(1)(a), of the posts which were suitable for candidates who were blind or suffering from LV, and the posts which were suitable for candidates who were suffering from LV but were not blind, has been undertaken. Annexure A is the outcome thereof.

26.5 There is, therefore, no illegality in Annexure A to the CEN, as Mr. Rungta would seek to contend.

27. No one less meritorious to the petitioners has been appointed against the posts identified as suitable for the blind – ergo no infraction of the petitioners’ legal rights

27.1 The petitioners do not seek to submit that, against the posts which were suitable for being filled by persons who were suffering from LV as well as those who were blind, any candidate lower to them in merit was selected.

27.2 The petitioners cannot lay a claim to the posts which, as per Annexure A to the CEN, were suitable only for the candidates who suffered from LV, and were not suitable for blind candidates.



27.3 Inasmuch as, against the posts which were suitable for them as per Annexure A to the CEN, no one less meritorious than the petitioners has been appointed, the petitioners cannot legitimately complain of any violation of their legal rights.

27.4 In that view of the matter, the Tribunal has, in our considered opinion, correctly held that the petitioners' prayers could not be granted.

28. Estoppel

28.1 It is well settled that candidates cannot, on failing to secure appointment, challenge the elements of the selection process of which they were aware before applying for recruitment. One need refer, in this context, only to the following paragraphs, from *Tajvir Singh Sodhi v State of J & K*⁵⁵:

“38. The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the advertisement notice dated 5-5-2008 was recast vide a corrigendum dated 12-6-2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:

38.1. In *Manish Kumar Shahi v State of Bihar*⁵⁶, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.

⁵⁵ (2023) 17 SCC 147

⁵⁶ (2010) 12 SCC 576



38.2. In *Ramesh Chandra Shah v Anil Joshi*⁵⁷, an advertisement was issued inviting applications for appointment for the post of Physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the reason that the same would not be maintainable after participation in the selection process. The pertinent observations of this Court are as under:

“24. In view of the propositions laid down in the abovenoted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

38.3. Similarly, in *Ashok Kumar v State of Bihar*⁵⁸, a process was initiated for promotion to Class III posts from amongst Class IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twenty-seven) candidates who appeared in the written examination, 14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared a list. The High Court declined to approve the select list on the ground that the ratio of full marks for the written examination and the interview ought to have been 90 : 10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks — 90 and qualifying marks — 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial select list. The primary ground was

⁵⁷ (2013) 11 SCC 309

⁵⁸ (2017) 4 SCC 357



that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the interview 15 marks. This Court dismissed the appeals on the grounds that the appellants were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

“13. The law on the subject has been crystallised in several decisions of this Court. In *Chandra Prakash Tiwari v Shakuntala Shukla*⁵⁹, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v S. Vinodh Kumar*⁶⁰, this Court held that:)

‘18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (see also *Munindra Kumar v Rajiv Govil*⁶¹ and *Rashmi Mishra v M.P. Public Service Commission*⁶²)’ ”

39. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection

⁵⁹ (2002) 6 SCC 127

⁶⁰ (2007) 8 SCC 100

⁶¹ (1991) 3 SCC 368

⁶² (2006) 12 SCC 724



process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.

40. This Court in *Sadananda Halo v Momtaz Ali Sheikh*⁶³, has noted that the only exception to the rule of waiver is the existence of mala fides on the part of the Selection Board. In the present case, we are unable to find any mala fides or arbitrariness in the selection process and therefore the said exception cannot be invoked.

28.2 Mr Rungta's submission that executive fiat cannot dilute the right available under the RPWD Act cannot, in the circumstances, sustain.

28.3 In the first place, there is, in fact, no dilution of the right available under the RPWD Act.

28.4 Secondly, nothing prevented the petitioners from raising the plea that Annexure A to the CEN resulted in an illegal "bifurcation" or "sub-division" of reserved vacancies; the plea that Mr Rungta repeatedly emphasized before us.

28.5 Thirdly, once the candidates were put on notice, *vide* Annexure A to the CEN, regarding the posts against which they would be eligible to compete, and participated without demur, they cannot challenge the legality of Annexure A, having failed to make the cut.

⁶³ (2008) 4 SCC 619



28.6 The issue is not merely one of estoppel. It is more empirical. The petitioners consciously participated only for being considered for recruitment *against the posts specified as suitable for them, vide Annexure A to the CEN*. Having thus participated only for certain specified posts, the petitioners cannot, even on first principles, now stake their claim to other posts, against which they never even participated.

28.7 Before parting with this point, we may acknowledge that, in *Meeta Sahai*, the Supreme Court has, in addition to the exception, from the above principle of estoppel in the case of *mala fides*, noted in *Tajvir Singh Sodhi*, that the principle would not apply where the procedure stipulated in the advertisement is *ex facie* illegal.

28.8 We must note, however, that *Meeta Sahai* involved a situation in which the allegation, of the appellant Meeta Sahai, was that the stipulations in the advertisement were contrary to statutory rules. *Sivanandan* and *Salam Samarjeet Singh*, too, involve a situation in which the issue before the Court was whether the stipulation in the advertisement/notification was contrary to the applicable Rules. In such a situation, the principle that an advertisement cannot be contrary to the prevalent and applicable rules governing recruitment, would apply. There can be no cavil with the proposition that the Rules would predominate.



28.9 Though Mr. Rungta has sought to pigeonhole his case into this limited bracket by contending that Annexure A to the CEN was contrary to Sections 33 and 34 of the RPWD Act, we, for the reasons already stated *supra*, have found this not to be so.

29. Re. Rule 11 of the RPWD Rules

29.1 Rule 11 of the RPWD Rules, on which, too, Mr Rungta placed reliance, does not really advance his case, as it deals with reservation, and post-reservation identification of posts, which is what we are essentially concerned with, in this case. Suffice it, therefore, to state that Rule 11 does not in any way act as an embargo to post-based identification, under Section 33, of the vacancies which stand reserved under Section 34.

29.2 The decision in *Aditya Suresh Rao Kaware*, cited by Mr. Rungta, involved an issue of whether posts which were identified, in the DEPWD OM dated 4 March 2015, as suitable for persons with blindness or LV, could be regarded as not so suitable prior thereto. We are not concerned, here, with any such situation. In fact, we have found that, even as per the OM dated 4 March 2015, the petitioners were not suitable for the posts against which they now seek appointment.

30. Re. Railway Board Circular dated 16 December 2024



30.1 Mr. Rungta also drew our attention to a circular/communication dated 16 December 2024 issued by the Ministry of Railways, which also pertains to CEN 01/2019. According to Mr. Rungta, this Circular permits diversion of unfilled vacancies. We do not propose to pronounce on this aspect on merits, as the judgment of the Supreme Court in *L. Chandrakumar v. UOI*⁶⁴, from which alone we derive jurisdiction, prohibits this Court from acting as a Court of first instance in respect of any issue which falls within the jurisdiction of the Tribunal under Section 19 of the Administrative Tribunals Act, 1985. The impugned judgment having been rendered on 16 July 2024, the Tribunal had no occasion to deal with the Circular dated 16 December 2024.

30.2 However, keeping in mind the fact that the interests of VI candidates are involved, we do not desire to foreclose the petitioners from raising this issue. We reserve liberty with the petitioners, therefore, to address a representation to the respondents, seeking the benefit of the Circular dated 16 December 2024. In the event that, by extending the benefit of the said Circular, any of the petitioners could secure appointment, this judgment, accordingly, shall not act as an impediment in that regard.

Conclusion

⁶⁴ (1997) 3 SCC 261



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31. We, find no reason to interfere with the impugned judgment of the Tribunal dismissing the petitioners' OAs.

32. Subject to the limited caveat in para 30.2 *supra*, the impugned judgment is, therefore, upheld in its entirety.

33. The present writ petitions are also, therefore, dismissed with no order as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JULY 1, 2025

Aky/yg

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