

National Federation Of Blind vs Union Public Service Commission And ... on 23 March, 1993

Equivalent citations: 1993 AIR 1916, 1993 SCR (2) 556, AIR 1993 SUPREME COURT 1916, 1993 (2) SCC 411, 1993 AIR SCW 2130, (1993) 3 SERVLJ 16, (1993) 2 JT 541 (SC), 1993 (1) UJ (SC) 792, (1993) 2 SCR 556 (SC), 1993 UJ(SC) 1 792, 1993 (3) UPLBEC 1653, 1993 (2) JT 541, 1993 SCC (L&S) 505, (1993) 2 LABLJ 452, (1993) 2 MAD LJ 105, (1993) 2 SCT 740, (1993) 2 SCJ 435, (1993) 2 SERVLR 329, (1993) 3 UPLBEC 1653, (1993) 24 ATC 227, (1993) 1 CURLR 833

Author: Kuldip Singh

Bench: Kuldip Singh, N.M. Kasliwal

PETITIONER:

NATIONAL FEDERATION OF BLIND

Vs.

RESPONDENT:

UNION PUBLIC SERVICE COMMISSION AND OTHERS

DATE OF JUDGMENT 23/03/1993

BENCH:

KULDIP SINGH (J)

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KASLIWAL, N.M. (J)

CITATION:

1993 AIR 1916

1993 SCR (2) 556

1993 SCC (2) 411

JT 1993 (2) 541

1993 SCALE (2) 181

ACT:

Visually Handicapped-Right to compete for civil services-Writ of mandamus u/Art 32 of the Constitution-Justification for writing civil service Examination in Braille-Script or with the help of a scribe-Whether visual handicap hinders equal efficiency.

Entitlement to claim promotion to higher posts-And right to claim a particular post in the hierarchy of promotional posts in respect of which the Government has found that the visually handicapped persons shall not be suitable.

HEADNOTE:

The visually handicapped constitute a significant section of our society. As it is necessary to encourage their participation in every walk of life. The Central Ministry of Welfare has been undertaking various measures to utilise their potentialities. The Governments have launched schemes to educate, train and provide them with useful employment. The Central Government has provided 3% reservation in Group C and D posts for physically handicapped including blind and partially blind, while demand is growing for reservations in Group A and B posts.

The Standing Committee of the Ministry of Welfare undertook identification of jobs in these categories and submitted its report on October 31, 1986. Para 8 thereof related to the blind. It took note of reading and writing deficiency and suggested the provision of allowance. And found that the specified 416 posts in Group A and B are suitable for blind and partially blind. So, the Ministry of Personnel issued office memorandum dated November 25, 1986 accepting the report and took policy decision regarding identification of jobs for the physically handicapped persons in Group A and B posts filled to be by direct recruitment in Central Government Services and Public Sector Undertakings.

This court examined the memorandum and found that the Government had taken cognizance of the identified jobs; that the Government had

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decided about the recruitment of handicapped persons to these posts; that the departments would supplement the list further; that the Ministries/Departments would inform the UPSC about preferential treatment to handicapped candidates; that the UPSC had agreed in principle to give preference; and that the Department of Personnel and Training would be issuing general instructions for the purpose.

However, the decisions were not implemented for seven years. So the petitioner approached this Court seeking a writ in the nature of mandamus directing the Union of India and the UPSC to permit the blind candidates to compete for the I.A.S. and Allied Services and to provide them facility of writing the civil services examination either in Braille Script or with the help of a scribe.

On hearing the counsel for the petitioner, himself visually handicapped, this Court,

HELD: The performance of the counsel for the petitioner before us has amply proved the point that the visually handicapped persons can perform the jobs entrusted to them with equal efficiency. However the question of giving preference to the handicapped in the matter of recruitment to the identified posts is a matter for the Government of India to decide. The Government of India is commended to

decide the question of providing preference/reservation to the handicapped in Group A and B Posts.

[564 C-D-E]

This Court further held that there are number of post which are required to be filled through the civil services examinations and other competitive examinations conducted by the Commission, so the observations of the UPSC that the posts identified as suitable to be held by the physically handicapped persons, particularly those identified for the blind were not required to be filled on the basis of competitive examination conducted by the Commission, appeared to be incorrect. [565 D]

Group A and B posts in the category of Administrative Officers are necessarily to be filled as a result of civil services examination held by the UPSC. If some of the identified posts in the Indian Administrative Service and other Allied Services can be filled from amongst the visually handicapped persons, there was no reason why they should not be permitted to sit and write the civil services examination. [565 E]

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JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (C) No. 655 of 1991. (Under Article 32 of the Constitution of India). Santosh Kumar Rungta and R.P. Gupta for the Petitioner. V.C. Mahajan, Ms. Niranjana Singh and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by KULDIP SINGH, J. National Federation of Blind a representative body of visually handicapped persons in India has filed this petition under Article 32 of the Constitution of India seeking a writ in the nature of mandamus directing the Union of India and the Union Public Service Commission to permit the blind candidates to compete for the Indian Administrative Service and the Allied Services and further to provide them the facility of writing and civil services examination either in Braille-script or with the help of a Scribe. Braille is a system of writing for the blind in which the characters consist of raised dots to be read by the fingers. Further relief sought in the petition is that Group A and B posts in Government and public sector undertakings which have already been identified for the visually handicapped persons be offered to them on preferential basis.

The visually handicapped constitute a significant section of our society and as such it is necessary to encourage their participation in every walk of life. The Ministry of Welfare, Government of India has been undertaking various measures to utilise the potentialities of the visually handicapped persons. The Central as well as the State Governments have launched several schemes to educate, train and provide useful employment to the handicapped. The Central Government has provided reservations to the extent of 3% vacancies in Group C and D posts for the physically handicapped including blind and partially blind. There has been a growing demand from the visually handicapped persons to

provide reservations for them in Group A and B posts under the Central Government. The Ministry of Welfare, Government of India has a standing Committee or identification of jobs in various Ministries/Departments and public sector undertakings for the physically hand-

icapped. By an order dated December 30, 1985 the Government of India directed the Standing Committee to undertake the identification of jobs for the handicapped in Group A and B Services under the Government and public sector undertakings.

The Committee submitted its report which was published on October 31, 1986. Copy of the report has been placed on the record of this petition. In the introduction to the report given by Mr. M.C. Narsimhan, Joint Secretary to Government of India and Chairman, Standing committee on identification of jobs for handicapped, it has been stated as under:-

"A Sub Committee, which was set up to assist the Standing Committee visited a large number of Public Sector Undertakings and observed people actually working in a variety of jobs and the working conditions in which these jobs are performed. The Sub Committee had detailed discussions with the Chiefs and Senior Officers of the Public Sector Undertakings as also with officers of the Central Government Departments. A list of the public sector undertakings and the list of the officers of the Undertakings with whom the Sub Committee had discussions is annexed to the report. The Committee after detailed discussions and on- the-spot study has prepared a comprehensive list of 416 categories in Group A and B posts in Government Offices and Public Sector Undertakings, with their jobs descriptions, the physical requirement of each group of job and matched them with various categories of disabilities."

The Committee devoted special attention to the visually handicapped. Para 8 of the report which relates to the blind is as under:-

"However, in the case of the blind the position is somewhat different. Seeing, reading, writing and movement are essential ingredients of most Government jobs. Therefore, a similar approach in respect of blind persons may be difficult. It would not be possible to generalise that blind person can do most jobs as we have found for those with locomotor and hearing disabilities. The Committee found that in higher posts in Government the help of a personal assistant or a stenographer is generally available. But this facility is not available even in higher posts in public sector undertakings. Wherever this facility is available a blind person may not find it difficult, in certain groups of posts, to handle the job. It is also possible, in relation to other posts where stenographic assistance is not available that some other facilities can be provided to a blind employee. To compensate 'reading deficiency, readers' allowance can be provided to blind employees to enable them to engage a reader. Similarly, to compensate for "writing deficiency", the blind employee should be required to know typing. Adequate knowledge of typing should be prescribed as an essential qualification for blind employees for public employment. Where mobility may also be

one of the main ingredients of a job it is difficult to compensate blind employees for this "deficiency. The Committee would also emphasise that the blind employee should be fully responsible for the duties assigned to them, despite the provision of reader's allowance and typing skill. The Committee would also suggest that the maximum reader's allowance should be limited to Rs.200 p.m. to blind employees recruited to Group A and B post.' The Committee has identified about 416 categories of Group A and B posts which are suitable for the handicapped. The Committee has further specified that the visually handicapped (blind and partially blind) are suitable for appointment to the following categories of Group A and B post:-

No. in the List Annexed to the Report	Category of Post	Group

178 to 187	Hindi officers	A & B
191 to 192	Job Analyst	A & B
193 to 199	Labour Welfare Officers	A & B
200 to 209	Law Officers	A & B
237 to 242	Personal Assistants	B
243 to 256	Personnel Officers	A & B
279 to 291	Public Relations Officers	A & B
295 to 317	Research Officers	A & B
354 to 363	Training Officers	A & B
364 to 376	Administrative Officer (Non Secretarial)	A
377 to 384	Administrative Officers (Secretarial-Sr.)	A
385 to 401	Administrative Officers (Secretarial-Junior)	A & B
409	Asstt. Admin. Officer	

We have only quoted the list of categories from the report to illustrate the point that the Committee appointed by the Government has in its report identified certain categories of posts to which the blind and the partially-blind can be appointed.

Government of India Through Ministry of Personnel issued office memorandum dated November 25, 1986 wherein it accepted the report of the Committee and took a policy decision that in respect of the posts identified by the Committee the handicapped persons shall be given preference in the matter of recruitment to those posts. The office memorandum is re-produced hereunder:

"No.F.36034/4/86-Estt.(SCT) Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training

New Delhi, the 25th November, 1986 OFFICE MEMORANDUM Subject:- Identification of jobs for the physically handicapped persons in Groups 'A' and 'B' posts filled by direct recruitment in the Central Government services and Public Sector Undertakings.

The undersigned is directed to say that with a view to effecting optimum utilisation of potentialities of physically handicapped which constitutes a significant section of the population in the country, the Ministry of Welfare constituted a Standing Committee for identification of jobs for the physically handicapped in the Central Government services and Public Sector Undertakings. The Standing Committee on identification of jobs set up a sub-Committee for on-the-spot identification of jobs for the physically handicapped persons in Group 'A' and 'B' posts after making an in depth study of Undertakings as well as in consultation with the concerned authorities. This subCommittee in its Report (submitted to the parent Committee) identified 420 jobs in Group 'A' and Group posts/services alongwith the physical requirements and functional classifications of disabilities indicating what jobs can be held by each category of disabled people and with what disability. It has been decided that in respect of identified posts which can be held by physically handicapped persons preferences to physically handicapped persons will be ,given in the matter of recruitment to those posts. A copy of the report of the Committee referred to in para-1 is enclosed for information guidance and necessary action. The list of jobs identified by the Committee on suitable for being held by physically handicapped persons is not exhaustive. The Ministries/Departments can further supplement the list based on their knowledge for jobs requirements, essential qualifications etc. The Ministries/Departments after identifying all the posts which can be held by physically handicapped persons may inform the UPSC at the time of sending their requisitions for filling vacancies in respect of those posts, that preference is to be given to physically handicapped persons in the matter of recruitment. The UPSC have agreed in principle to give preference to physically handicapped persons in filling the identified posts. The Depart-

ment of Personnel and Training will be issuing general instructions to enable preference being given to the physically handicapped persons in such cases.

The Ministry of Finance etc. are requested to bring these instructions to the notice of all concerned.

Sd/-

(BATA K, DEY) DIRECTOR (JCA)' From the office memorandum quoted above it is obvious that the Government of India has taken the following policy decisions to implement the Committee report:-

1. The Government of India has taken cognizance of the fact that the Standing Committee on identification of jobs through its Sub-Committee has identified 420 jobs in Group A and Group B posts/services along with the physical requirements and functional Classifications of disabilities indicating what jobs can be held by each category of disabled people and with what disability.
2. The decision has been taken that in respect of identified posts which can be held by physically handicapped persons preference to physically handicapped persons will be given in the matter of recruitment to those posts.
3. The list of jobs identified by the Committee is not exhaustive, the Ministries/Departments can further supplement the list based on their knowledge of job requirements, essential qualifications etc.
4. The Ministries/Departments after identifying all the posts which can be held by physically handicapped persons may inform the Union Public Service Commission at the time of sending their requisitions for filling vacancies in respect of those posts, that preference is to be given to physically handicapped persons in the matter of recruitment.
5. The Union Public Service Commission has agreed in principle to give preference to physically handicapped persons in filling identified posts.
6. The Department of Personnel and Training will be issuing general instructions to enable preference being given to the physically handicapped persons in such cases. Mr. S.K Rungta, learned counsel for the petitioner has contended that the memorandum dated November 25, 1986 was issued more than seven years back but so far the decisions taken therein have not been implemented. Mr. Rungta (himself visually handicapped) has argued his case with utmost clarity. Mr. Rungta was fully conversant with all the relevant annexures to the petition. He referred to the relevant pages in the bulky paper book with perfect ease. We did not feel even for a moment that the case was being argued by a visually handicapped lawyer. Mr. Rungta's performance before us amply. proves the point that the visually handicapped persons can perform the jobs entrusted to them with equal efficiency.

The question of giving preference to the handicapped in the matter of recruitment to the identified posts is a matter for the Government of India to decide. The matter is pending for decision with the Government of India for the last several years. While appreciating various measures undertaken by the Government to provide useful employment to the handicapped persons we commend the Government of India to decide the question of providing preference/reservation to the handicapped in Group A and B posts as expeditiously as possible.

So far as the claim of visually handicapped for writing the civil services examinations, in Braille-script or with the help of Scribe, is concerned, we are of the view that their demand is legally justified.

The list of category A and B posts, identified as suitable for the visually handicapped by the Committee, includes number of posts which are filled as a result of the civil services examinations. When there are posts to which blind and partially-blind can be appointed, we see no ground to deprive them of their right to compete for those posts along with other candidates belonging to general category. Mr. V.K. Cherian, Under Secretary to Government of India, Ministry of Personnel in his affidavit dated March 10, 1992 filed before this Court has stated as under:-

"If there were Group 'A' and 'B' jobs, which could be filled up by the blind, the same should also be identified. Once the jobs were identified, they could be filled up from among the blind and also other handicapped persons such as deaf and orthopaedically handicapped..... Going by the Report of the Committee and the posts identified by it, the Union Public Service Commission made the observation that the posts identified as suitable to be held by the physically handicapped persons, particularly those identified for the blind are not such which are required to be filled on the basis of competitive examination conducted by the Commission'.

The observations of the Union Public Service Commission as projected by Mr. V.K. Cherian in his above quoted affidavit do not seem to be correct. After going through the list of the posts identified as suitable for visually handicapped (blind and partially-blind) it is obvious that there are number of posts which are required to be filled through the civil services examination and other competitive examinations conducted by the Commission. Group A and B posts in the category of Administrative Officers (Secretarial-Senior) and Administrative Officer (Secretarial-Junior) are necessarily to be filled as a result of civil services examination by the Union Public Service Commission. If some of the posts in the Indian Administrative Service and other Allied Services, as identified by the Committee, can be filled from amongst the visually handicapped persons then we see no reason why they should not be permitted to sit and write the civil services examination. We make it clear that once recruited to the lowest level of the service the visually handicapped persons shall not be entitled to claim promotion to the higher posts in the service irrespective of the physical requirements of the jobs. If in the hierarchy of promotional-posts it is found by the Government that a particular post is not suitable for the visually handicapped person he shall not have any right to claim the said post.

In the light of the above discussion we partly allow the writ petition and direct the Government of India and the Union Public Service Commission to permit the visually handicapped (blind and partially-blind) eligible candidates to compete and write the civil services examination which is ordinarily held yearly by the Union Public Service Commission.

We further direct that they shall be permitted to write the examination in Braille-script or with the help of a Scribe. There shall be no orders as to costs.

S.P.S.

Petition allowed partly.