

Item No. 50 (C-4)

M.A. No. 2962/2023  
In  
O.A. No. 4191/2017

**Central Administrative Tribunal  
Principal Bench, New Delhi**

M.A. No. 2962/2023  
In  
O.A. No. 4191/2017  
M.A. No. 15/2023

This the 17<sup>th</sup> day of January, 2024

**Hon'ble Mr. Tarun Shridhar, Member (A)**  
**Hon'ble Mr. Manish Garg, Member (J)**

Seema  
Aged about 32 years,  
D-Teacher  
G-B  
D/o Sh. Manohar Lal Arora,  
R/o A-194, H. No. 399,  
Near Amar Lal Mandir,  
Ram Gang Mohalla,  
Bhiwani, Haryana.

.....Applicant

(Advocates: Mr. Anuj Aggarwal with Mr. Nikhil Pawar  
& Mr. Shakib Malik)

Versus

1. Delhi Service Selection Board,  
Through its Secretary,  
FC-18, Institutional Service Selection Board,  
New Delhi- 110092

..... Respondent No. 1

2. Government of NCT, Delhi  
Through Chief Secretary,  
Delhi Secretariat, IP Estate,  
Delhi- 110002.

....Respondent No. 2

(Advocates: Mr. Pratap Shanker with Ms. Shifa)

Item No. 50 (C-4)

M.A. No. 2962/2023  
In  
O.A. No. 4191/2017**ORDER (ORAL)****Hon'ble Mr. Tarun Shridhar, Member (A)**

This OA has been listed under the head directions. However, taking due note of the issue as also the facts and circumstances in future, we had recorded certain extensive observations on the last dates of hearings and also called for a status report from the respondents.

2. Accordingly, we have considered it fit to hear substantive arguments and deciding the OA. Learned counsel for the parties have agreed to this.

3. The applicant participated in the selection process for the Post of PGT (Hindi) in the Directorate of Education, Government of NCT of Delhi in response to an advertisement issued on 02.02.2012. The applicant had sought reservation under the category of persons with benchmark disabilities and the further sub-category visually handicapped. The applicant is stated to have been successful in terms of her position in the merit in the said selection examination. However, she was not given appointment as she was not considered as a candidate belonging to the category visually handicapped. The said averment is made in para 10 of the heading 'brief facts of

Item No. 50 (C-4)

M.A. No. 2962/2023

In

O.A. No. 4191/2017



the case' in the counter reply filed by the respondents.

Ventilating her grievance, she seeks the following reliefs:-

*“a) Pass direction to the Respondents to appoint the Applicant to the post of PGT (Hindi), female with the post code 137/12 & 170/14 under the PH(VH) with retrospective effect with all consequential benefits such as seniority, Pay and Allowances effective from the dates when the other selected candidates were appointed;*

*b) Pass an order/direction calling for the records relating to the appointments regarding PGT (Hindi) female, post code 137/12 & 170/14 from Respondents herein;*

*c) Pass a direction to the Respondents to award the cost of litigation to the Applicant;*

*d) Pass any order or direction as the court may deem fit and proper in the facts of the case.”*

4. Learned counsel for the applicant, drawing support from the averments made in the OA, has submitted that in terms of the provisions of the Rights of Persons with Disabilities Act, the respondents were obliged to identify an appropriate position for reservation to such persons and further identify the various sub-categories as outlined in the said Act. In any case, since the vacancy notification was common to a number of teaching posts, any of the posts could be utilized under the category of persons with disabilities and a further sub-category of visually handicapped.

Item No. 50 (C-4)

M.A. No. 2962/2023  
In  
O.A. No. 4191/2017

5. The reason given in the counter reply is very cryptic and does not further explain as to why she has not been considered as a visually handicapped candidate whereas her status as such is not disputed. We have carefully gone through the counter reply filed by the respondents and find that they have stated that applicant belongs to Unreserved category and hence she cannot claim benefit of reservation under the visually handicapped category.

6. We would like to explain here that the scheme of reservation for persons with disabilities is distinct from the Constitutional provision for reservation of Scheduled Castes and Scheduled Tribes. Three per cent of the positions have to be earmarked for visually handicapped category which is further sub-categorized on the basis of the different disabilities. These positions are not to be adjusted under the normal scheme of reservation, hence, we are not able to accept this contention of the respondents that the applicant was to be considered only as unreserved because even if the applicant is considered as unreserved, the benefit of a position as a visually handicapped candidate cannot be denied and the same could have been in the visually handicapped category. The persons with

Item No. 50 (C-4)

M.A. No. 2962/2023  
In  
O.A. No. 4191/2017

benchmark disabilities are to be adjusted within their respective categories.

7. During the course of hearing, it was informed that one of the reasons which the respondents have adduced for not giving appointment to the applicant is her failure to upload the e-dossier within time prescribed for the same. They have further submitted that a reasonable opportunity was also afforded to the applicant, not once but on two occasions to upload the e-dossier. However, even when this indulgence was shown, the applicant omitted to upload the e-dossier. This situation has been explained by the respondents through a communication dated 15.03.2023 and submitted to us, by way of an affidavit vide which on our directions, the respondents had given a status report. The said communication states that in terms of the instructions issued by the respondents, the applicant was obliged to upload her e-dossier, for which, time between 20.11.2018 to 27.11.2018 was afforded. Thereafter, one more opportunity was given to her to upload the e-dossier on 14.01.2019 and it is on account of her failure to upload the same which has resulted in rejection of her candidature.

Item No. 50 (C-4)

M.A. No. 2962/2023  
In  
O.A. No. 4191/2017

8. Learned counsel for the applicant has argued before us that the applicant had made serious and sincere attempts to upload the e-dossier, but she encountered some serious glitches in the system and, hence, could not upload the same. Therefore, by way of abundant caution, she submitted her dossier, which included all the documents, manually. Curiously, this fact has been admitted by the respondents in the communication dated 15.03.2023 vide which the status report has been furnished. The said communication unambiguously records “applicant had submitted her documents manually but had not submitted in online mode, i.e., through e-dossier”. Immediately after this sentence, the respondents write “Therefore, her candidature was rejected vide result notice no. 767 dated 18.02.2020”.

9. In our view, this is a perverse inference. The candidate is a visually handicapped person; if she had submitted the documents manually, there was no reason to reject her candidature on this specious plea that e-dossier had not been uploaded. If uploading of e-dossier was a statutory requirement, the respondents could have assisted her in uploading the same. We can presume nothing else except that the applicant was eligible in all respects and



meritorious enough for appointment as PGT (Hindi), as the same has not been questioned anywhere by the respondents and the entire rejection is on a sole ground. Moreover, we note that when this candidature was rejected, this subject was already under consideration of this Tribunal for adjudication and hence, the respondents should have consciously desisted from taking a decision in this respect which, in fact, amounts to frustration of the Original Application.

10. Reservation of posts in Government is provided for in the Rights of Persons with Disabilities Act, 2016. This Act elaborately outlines the principles as also the procedure for providing this reservation. DoP&T has further given detailed guidelines regarding the procedure to be adopted for application of the provisions of this Act. It was incumbent upon the respondents to ensure that the provisions outlined in the Act and outlined subsequently in the DoP&T instructions are adhered to in letter and spirit. In the instant case, the status of the applicant as a person with disability suffering from visual handicap was not disputed nor was it disputed that she has all the relevant documents to establish the same. Further, these documents were submitted to the respondents and they were in their

Item No. 50 (C-4)

M.A. No. 2962/2023  
In  
O.A. No. 4191/2017

possession in physical form. Mere failure to provide electronic version of the same, could not have been a sufficient ground unless it was established that the applicant was deliberately trying to avoid uploading them. The respondents were obliged to take into consideration not only the peculiar circumstances of the applicant but also her explanation that it was on account of some problem in the virtual system which was preventing her to upload e-dossier.

11. In the light of what has been detailed and discussed above, the present Original Application is allowed. Respondent No. 1 shall ensure that its recommendations with respect to selection of the applicant as PGT (Hindi) pursuant to vacancy notification of February 2012, along with the necessary documents is sent to Respondent No. 2 within a period of four weeks from the date of receipt of a certified copy of this Order. Respondent No. 2 shall within a period of four weeks, thereafter, ensure that the relevant department and competent authority of Government of NCT of Delhi issues an offer of appointment to the applicant, of course, subject to her fulfilling other eligibility conditions set forth in the Recruitment Rules of the said post.



Item No. 50 (C-4)

M.A. No. 2962/2023  
In  
O.A. No. 4191/2017

12. The date of appointment of the applicant shall be the date on which last of the candidate selected pursuant to the subject vacancy notification was appointed. The consequential benefits as would accrue to the applicant as a result shall be extended in her favour on notional basis from the said date and actual basis with effect from the date she assumes charge of her position. These consequential benefits shall include, but not restricted to, appropriate place in the seniority and fixation of pay and allowances. The arrears of such pay and allowances as the applicant would be entitled to would be released in her favour within a period of twelve weeks from the date of her assuming charge of the position.

13. The OA stands disposed of against the background of the directions given above. Associated MAs also stand disposed of.

14. There shall be no order as to costs.

**(Manish Garg)**  
**Member (J)**

**(Tarun Shridhar)**  
**Member(A)**

/aks/