

In the Court of Commissioner for Persons with Disabilities
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
Phone-23216002-04, Telefax: 23216005
[Vested with power of Civil Court under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995]

Case No. 4/922/2015-Wel./CD) 1559-60

Dated: 15.9.15

In the matter of :

Sh.R.K.Sharma
C-682, Delhi Administration Flats
Timarpur, Delhi-110054

..... **Petitioner**

Versus

Sh.Sanjeev Sahai
Principal Secretary
Finance Department
Government of NCT of Delhi
4th Level, A Wing, Delhi Secretariat
LP.Estate, Delhi- 110002.

..... **Respondent**

ORDER

1. A representation was filed by Sh.R.K.Sharma a disabled person working as Accounts Officer in NCC Department Government of NCT of Delhi stating that he had qualified the Junior Accounts Officer examination in the year 1999 and was eligible and entitled to be appointed on the post of Junior Accounts Officer immediately after qualifying the examination. As the post reserved for persons with disabilities was lying vacant at the relevant time. Since the case of the petitioner was not considered by the Department he approached the Chief Commissioner for Persons with Disabilities Government of India and as per the order of the Chief Commissioner **Quote** "case of Sh.R.K.Sharma for promotion to the post of Junior Accounts Officer against PH quota be considered if the same is due to him and promote him to the said post if his turn comes before 10.4.2001 i.e the date prior to which the post of JAO was in Group C. Respondents are further directed to prepare a reservation register for persons with disabilities strictly as per the instructions of Department of Personnel and Training for the post of Junior Accounts Officer for the purpose of promotion prior to 10.4.2001 and ensure reservation to PH persons in accordance with Persons with Disabilities Act the instructions issued by Department of Personnel and Training from time to time" **Unquote**.

2. The directions of the Chief Commissioner have not been implemented by the Respondent; the petitioner prayed that the directions given by the Chief Commissioner for Persons with Disabilities may be got implemented.
3. After receipt of the representation the Principal Secretary Finance Department Government of NCT of Delhi was requested to file comments in the matter. Hearings were held during which detailed replies were filed by both the petitioner as well as the respondent. The petitioner reiterated the grounds mentioned in the representation. The Principal Secretary Finance Department stated that **Quote** "The post of JAO was classified as Group C Non-Gazetted and has been upgraded to Group B Non-Gazetted vide Finance Departments order no.F.30/1/88-AC/59-69 dated 10.4.2001. The post of JAO (Group C) was not identified for reservation under PH category in the Government of NCT of Delhi. However two officials Sh.K.L.Sharma who had qualified Common JAO Examination in 1996 and Sh.Rohtash Kumar Sharma who had qualified the said examination in 1999 filed separate petitions No.185/99 and 217/99 respectively with Chief Commissioner for Persons with Disabilities Ministry of Social Justice and Empowerment Government of India claiming promotion under Physically Handicapped Category with effect from the date of qualifying the examination. The Court of Chief Commissioner for Persons with Disabilities passed an order in the matter on 21.10.2002. The operative part of the said judgment is as under : "The respondents are directed consider the complaint namely Sh.K.L.Sharma for promotion to the post of JAO w.e.f the date he would have become eligible for promotion to the post of JAO against reserved quota for PH persons. Respondents are also directed to consider Sh.R.K.Sharma for promotion to the post of JAO against PH quota if the same is due to him and promote him to the said post if his turn comes before 10.4.2001 i.e the date prior to which the post of JAO was in Group C". Sh.K.L.Sharma and Sh.V.K.Sharma had qualified the common JAO examination in the year 1996 and 1995 respectively and were claimants of promotion under PH quota as per order of Hon'ble CCPD mentioned above whereas Sh.R.K.Sharma qualified the Common JAO examination in lateral batch i.e 1999. In this regard it is submitted that Common JAO examination is a qualifying examination to be eligible for promotion to the post of JAO (now AAO) with other conditions as mentioned in relevant RRs notified by DoPT. In compliance of the judgment dated 21.10.2002 the names of Sh.K.L.Sharma, Sh.V.K.Sharma and Sh.R.K.Sharma were placed before the DPC for consideration for promotion to the post of JAO in its meeting held 25.4.2003. As on the date of orders of Chief Commissioner for Persons with Disabilities two official

of Physical Handicapped Category namely Sh.V.K.Sharma (PH) and Sh.K.L.Sharma (PH) were working as JAO on adhoc basis w.e.f 28.8.1995 and 30.11.1996 respectively. Accordingly the DPC in the meeting held on 25.4.2003 considered the name of Sh.V.K.Sharma (PH), Sh.K.L.Sharma (PH) and Sh.Rohtash Kumar Sharma (PH) along with other officials for promotion to the post of JAO on regular basis and recommended the following : As regards the regularization of Physically Handicapped persons the DPC recommended to create 2 supernumerary posts of JAOs as their regularization is to be made from back date as per the judgment/order of Chief Commissioner for Persons with Disabilities and to appoint 2 JAOs of Physically Handicapped category (Sh.V.K.Sharma and K.L.Sharma) from the date of their adhoc appointment. In a cycle of 100 vacancies only three points i.e 1, 34 and 67 are available for persons with Disabilities. As on the date of DPC i.e 25.4.2003 sanctioned strength of JAO was 305, out of which 244 posts belong to AAO being 80% of sanctioned strength leaving only 61 posts for JAO. Accordingly, only 2 posts (post no.1 and 34) are earmarked for PH candidates against which Sh.V.K.Sharma and Sh.K.L.Sharma both senior to the present petitioner Sh.Rohtash Kumar Sharma were available and considered by the DPC. Since the above mentioned two (2) officials were to be appointed with effect from retrospective dates under PH category as per the directions of Chief Commissioner for Persons with Disabilities and the roster points for PwD were not vacant due to the reasons mentioned above, two (2) supernumerary posts of JAOs were created in Pr. Accounts Office, GNCTD with the approval of Hon'ble Lt. Governor Delhi on 5.6.2003 and vide order dated 26.7.2004 Sh.K.L.Sharma was promoted to the post of JAO on regular basis w.e.f 30.10.1996. But Sh.V.K.Sharma could not be promoted as a complaint was received with the allegation that his handicapped certificate is fake. Sh.Sharma was further directed to appear for medical examination and post meant for Sh.V.K.Sharma was kept vacant pending finalization of complaint. Sh.R.K.Sharma was subsequently promoted to the post of JAO on the recommendations of DPC as per the availability of post of JAO w.e.f 18.1.2005 and further promoted as Accounts Officer on regular basis with effect from 15.10.2014. This date was further revised to 01.10.2014 during the review of promotions in compliance of order passed by Hon'ble High Court in another matter of Sh.B.R.Arya Vs GNCTD & others. Sh.Rohtash Kumar Sharma filed a complaint dated 9.11.2009 alleging non-implementation of the order of Chief Commissioner for Persons with Disabilities in case No.217/1999. GNCTD sent a reply to Chief Commissioner for Persons with Disabilities and no further communication was received in this regard vide

letter dated 1.12.2009. Sh.Rohtash Kumar Sharma filed a WP (C) No. 1979/2010 in the Hon'ble High Court Delhi with a prayer to direct the respondents to enforce the order dated 21.10.2002 passed by the Chief Commissioner Persons with Disabilities and consequential benefits and consequently direct the respondents to promote the petitioner to the post of Junior Accounts Officer w.e.f August 1999 when the petitioner cleared the SAS/JAO examination against physically handicapped quota. The above WP (C) No. 1979/2010 was disposed of by the Hon'ble High Court vide order dated 7.9.2010 as under the instructions from the petitioner counsel for the petitioner wants to withdraw the present petition. There is no opposition from the respondents. In view of above submission made the present petition stands dismissed as withdrawn. The directions of Chief Commissioner for Persons with Disabilities dated 21.10.2002 have already been complied by the Government chronological details of compliance are : Common JAO examination is a qualifying examination to identify the eligible candidates for promotion to the post of JAO (now AAO). The appointment on promotion from the eligible qualified candidates is further subject to availability of vacancy relevant RRS and instructions/guidelines issued by DoPT from time to time. In compliance of the order dated 21.10.2002 the names of Sh.K.L.Sharma, Sh.V.K.Sharma and Sh.R.K.Sharma were placed before the DPC for consideration for promotion to the post of JAO in its meeting held 25.4.2003. As on the date of orders of Chief Commissioner for Persons with Disabilities two (2) official of Physical Handicapped Category namely Sh.V.K.Sharma (PH) and Sh.K.L.Sharma (PH) were working as JAO on adhoc basis w.e.f 28.8.1995, 30.11.1996. Accordingly the DPC in the meeting held on 25.4.2003 considered the name of Sh.V.K.Sharma (PH) and Sh.K.L.Sharma (PH) and Sh.Rohtash Kumar Sharma (PH) along with other officials for promotion to the post of JAO on regular basis and recommended : As regards the regularization of Physically Handicapped persons the DPC recommended to create two (2) supernumerary posts of JAOs as their regularization is to be made from back date as per the judgment/order of Chief Commissioner for Persons with Disabilities and to appoint two (2) JAOs of Physically Handicapped category (Sh.V.K.Sharma and K.L.Sharma) from the date of their adhoc appointment. From the record it appears that as on the date of DPC i.e 25.4.2003 sanctioned strength of JAOs in Government of NCT of Delhi was 305 out of which 244 posts belong to AAO (being 80% of sanctioned strength) leaving only 61 posts for JAO and as per roster for PH persons 1, 34 and 67 are earmarked and available in a cycle of 100 vacancies. As on the date of DPC there were 61 posts for JAO and accordingly only

02 posts (Post no.1 and 34) were earmarked for PH candidates against which Sh.V.K.Sharma and Sh.K.L.Sharma both senior to the present petitioner Sh.Rohtash Kumar Sharma were available and considered by the DPC. Since the above mentioned two officials were to be appointed from a retrospective date under PH category as per the directions of Chief Commissioner for Persons with Disabilities and the roster points for PwD were not vacant due to the reasons mentioned in para (iii) of brief facts above, two (2) supernumerary posts of JAOs were created in Principal Accounts Office, GNCTD with the approval of Hon'ble Lt. Governor Delhi on 5.6.2003 and vide order dated 26.7.2004 Sh.K.L.Sharma was promoted to the post of JAO on regular basis w.e.f 30.10.1996. Sh. V.K.Sharma could not be promoted pending a complaint against his handicapped certificate. Sh.Rohtash Kumar Sharma was appointed to the post of JAO with effect from the date of his eligibility on 18.1.2005. In this regard it is submitted that Common JAO examination is a qualifying examination for selecting candidates for promotion to the post of JAO (now AAO) subject to Relevant RRs and guideline notified by DoPT. It is apparent from the ongoing submission that to facilitate the implementation of the order of Hon. CCPD and on the recommendation of Departmental Promotion Committee and finding that the points for PwD (1 and 34) are pre-occupied by non-PwD persons in view of details Hon'ble LG Delhi was pleased to create two supernumerary posts of JAO to promote two eligible candidates namely Sh.V.K.Sharma and Sh.K.L.Sharma (1995 and 1996 batch respectively) who were senior to Sh.R.K.Sharma (1999 batch). Thus no vacancy was left unfilled. Therefore, the question of unfilled/left out vacancies under PH category did not arise." **Unquote**

4. I have meticulously examined the representation and the replies filed by the petitioner as well as the respondent. The appointment/promotion of eligible candidates from the category of persons with disabilities is required to be made in the post of Junior Accounts Officer Group C only. A perusal of the records reveals that Sh.Rohtash Kumar Sharma was promoted to the post of SAS Accountant/Junior Accounts Officer in the pay scale of Rs.5500-175-9000 on adhoc basis for a period of six months or till the appointment was made on regular basis whichever was earlier in pursuance of the order dated 21.10.2002 of the Chief Commissioner for Persons with Disabilities. The post of JAO/group C is identified as suitable for persons with disabilities as per notification no.16-70/2004-DD.III dated 18.1.2007 issued by the Ministry of Social Justice and Empowerment Government of India and the contention of the Department of Finance that the post of JAO (Group C) is not identified as suitable for persons with disabilities is therefore not

tenable. As stated by the representative of the Finance Department the sanctioned strength of JAO as on 25.4.2003 was 305 out of which 244 posts belong to AAO being 80% of the sanctioned strength leaving only 61 posts for JAO. Accordingly only two posts (at point no.1 and 34 of the Reservation Roster) are earmarked for PH candidates against which Sh.V.K.Sharma and Sh.K.L.Sharma both senior to the petitioner Sh.Rohtash Kumar Sharma were available and considered by the DPC. The petitioner was promoted to the post of JAO on the recommendation of DPC as per availability of post of JAO w.e.f 18.1.2005 on regular basis and further promoted as Accounts Officer on regular basis w.e.f 15.10.2014 which was further revised to 1.10.2014 during the process of review of promotion in compliance of the order passed by Hon'ble High Court in another matter of Sh.B.R.Arya & Others Vs GNCTD & Others. In the facts and circumstances of the case it would be necessary to prepare reservation roster register for persons with disabilities for the post of JAO for the period prior to 10.4.2001 i.e from 1996 to 2001. It would also be necessary to clarify whether the reservation for persons with disabilities was being made as per the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 in the recruitment of Junior Account Officer prior to 2001. The information whether reservation was being made for persons with disabilities in the post of Junior Accounts Officer prior to 2001 would indicate whether there was/is any backlog of vacancies during the period 1996-2001. In case as a result of this exercise it is found that there were/are vacancies available the petitioner Sh.R.K.Sharma may be considered for promotion to the post of Junior Accounts Officer with back date with all consequential benefits.

5. An Action Taken Report shall be filed within three months and in any case by 31.12.2015.



Given under my hand and the seal of the Court this 15th day of September, 2015.

K - - 234
(K.S. Mehra) 15/9/15
Commissioner

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari road, New Delhi-02