

**In the Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
Phone-011-23216002-04, Telefax: 011-23216005,
Email: comdis.delhi@nic.in**

[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No. 716/1011/2019/02/1134-1135

Dated: 06.03.2019

In the matter of:

Suo Motu

Versus

**The Commissioner,
Department of Trade & Taxes
Govt. of NCT of Delhi
3rd Floor, Vyapar Bhawan
IP Estate
New Delhi-110002.**

.....Respondent

Date of hearing: 01.03.2019

Present: Sh. Amiya Kumar Shukla, GSTO (HR) alongwith Sh. B. Chander,
ASO for respondent.

ORDER

Dr. Ram Kishan, a person with locomotor disability vide his email dated 30.01.2019 submitted that Department of Trade & Taxes under Govt. of NCT of Delhi has invited applications for Data Entry Operator (DEO) on contract basis. However, reservation for persons with disabilities in the said recruitment has not been provided.

2. The matter was taken up with the respondent vide show cause-cum-hearing notice dated 05.02.2019 under the Provisions of Rights of Persons with Disabilities Act, 2016, hereinafter referred to as 'Act'.

3. Department of Trade & Taxes, Human Resource Branch vide letter dated 18.02.2019 submitted as under:

“1) This department does not recruit DEOs directly; instead they are outsourced through some Private Agency selected through GEM (Govt. e-Marketplace) Portal.

2) Currently, the DEOs are being outsourced through GA Digital Web word Pvt. Ltd. Company through Gem Portal after observing all codal formalities as per GFR. Previously DEOs had been outsourced through ICSIL company.

3) List of candidates who are registered with them is forwarded by the company after verifying their educational certificates, ID Proofs and character antecedents etc. based on the educational and other requirements provide by the department.

4) Thereafter a typing test of these candidates is conducted in the Computer Lab of this department wherein typing speed of 30 wpm has been set as criteria for selection of eligible candidates. They are deployed in this department according to Merit list. The current duration of the contact is 1.2.19 to 30.11.19.”

4. During the hearing on 01.03.2019, the representatives of the Department clarified that 131 posts of Lower Division Clerk (LDC) are vacant in the Department. The recruitment to the post of LDC is made by the Services Department through DSSSB. Due to unavailability of LDCs and with the approval of Services Department, DEOs are being appointed on outsourced basis. As the Department does not directly recruit reservation is not being provided. They also clarified that DEOs' appointments are initially for 10 months which may be extended. The agency through which the DEOs are recruited, may change.

5. From the submissions of the respondent Department, it is seen that the appointments of DEOs through outsourced agency are being made against the vacancies in the **sanctioned posts**. Had these posts been filled through DSSSB, reservation for persons with benchmark disabilities would have been made. Merely because the nature of appointment and

the agency through which the candidates are recruited, are different from the usual ones, persons with benchmark disabilities cannot be denied their right to reservation as provided under Section 34 of the Act which is reproduced below:

“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."

6. Ministry of Home Affairs's O.M. No. 27/4/67(II)-Estt.(SCT) dated 24.09.1968 which is reproduced below also provides that reservation for Scheduled Castes and Scheduled Tribes should be made in all temporary appointments except appointments which are to last for less than **45** days:

***"Ministry of Home Affairs O.M. No.27/4/67(II)-Estt.(SCT),
dated the 24th September, 1968, to all Ministries/Departments, etc.***

Subject:-Recommendation No. 18 of the Working Group to study the progress of measures for land allotment to Scheduled Castes and their representation in services-Reservation in temporary appointments.

The Working Group under the Chairmanship of Shri M.R. Yardi, Additional Secretary, Ministry of Home Affairs to study the progress of measures for land allotment to Scheduled Castes and their representation in services has inter-alia made the following recommendation:-

Recommendation No. 18

"Rules of reservations should also be extended to purely temporary posts. This would give an opportunity to Scheduled Castes applicants appointed against short term vacancies to gain experience which will facilitate their absorption later in regular vacancies."

2. *Accordingly to existing orders, reservations are made for Scheduled Castes and Scheduled Tribes in all temporary appointments except those which are to last for less than 3 months. The*

recommendation of the Working Group has been considered and it has been decided that the aforesaid reservation orders should in future apply to all temporary appointments which are to last 45 days or more. Accordingly, with effect from the date of issue of this O.M., reservation for Scheduled Castes and Scheduled Tribes should be made in all temporary appointments except appointments which are to last for less than 45 days.

3. *Ministry of Finance etc. are requested to bring these instructions to the notice of all authorities under them.*

4. *This issues with the concurrence of the Comptroller and Auditor General of India in so far as persons serving under him are concerned."*

7. A plain reading of Section 34 of the Act indicates that reservation for persons with benchmark disabilities is not linked to long term, short term or regular appointment. The only condition is that the provision of the said reservation would not be applicable to appointments made by promotion. The manner and the agency through which such appointments are made to fill the vacancies in the posts are not relevant.

8. One of the objectives of making a provision for reservation for persons with benchmark disabilities is to economically empower them and to ensure that they lead a life of dignity on equal basis with others. It is implicit in the provision under Section 34 of the Act that they get their share in the employment opportunities/appointments that are available to other members of public. Therefore, irrespective of whether the appointments are made on long term, short term, regular or by whatever nomenclature these are referred to, the quota that has been earmarked for persons with benchmark disabilities in the statute, must be provided to them. Therefore, every Govt. establishment is mandated under Section 34 of the Act to reserve not less than 4% vacancies for persons with benchmark disabilities against the appointments made by them in the posts in that establishment. For the purpose of computing the reserved vacancies for persons with benchmark disabilities, a running roster as prescribed by DoPT in their OM no. No. 36035/02/2017-Estt. (Res) dated 15.01.1998, should be used.

9. In view of the above, the respondent should place the demand accordingly with the recruiting agency/ supplier of DEOs and ensure that the prescribed percentage of vacancies are reserved and filled up by persons with benchmark disabilities as mandated in Section 34 of the Act.

10. As appointments on short term basis/on contract/outourced basis are being made in various Departments against the sanctioned posts, a copy of this order is being marked to Secretary, Services Department, Govt. of NCT of Delhi with the request to issue appropriate instructions to all the concerned for reservation of vacancies for persons with benchmark disabilities against all the appointments made in the sanctioned posts for a period of 45 days or more.

11. Action taken report on the above mentioned recommendations be submitted to this Court within three months from the date of receipt of this order as required under Section 81 of the Act.

12. The complaint is disposed off.

13. Given under my hand and the seal of the Court this 06th day of March, 2019.

(T.D. Dhariyal)
State Commissioner for Persons with Disabilities

Copy to :

Secretary, Services Department, Govt. of NCT of Delhi, 7th Level, B-Wing, Delhi Secretariat, I. P. Estate, New Delhi-110002 (email: secservices@nic.in) for information and necessary action on para 10 of the order.