

(C-III, item -56)



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

O.A. No. 1657/2022

M.A. No. 3585/2022

M.A. No. 303/2024

This the 29th day of February, 2024

Hon'ble Mr. Tarun Shridhar, Member (A)

Hon'ble Mr. Manish Garg, Member (J)

1. RAVINDRA KUMAR GUPTA, Group 'B'
Aged about 51 years (Approx.),
Working as Sub-Divisional Engineer
R/O BSNL CO New Delhi
S/O KASHI PRASAD GUPTA
R/O 21/1-B BSNL QUARTER KALI BARI MARG GOLE
MARKET NEW DELHI 110001
OH 50%
Mob. 9868188979
Email ID: ravindergupta.2008@gmail.com

2 DEVI PRASAD MADIRAJU, Group 'B'
Aged about 43 years,
Working as Sub-Divisional Engineer
O/O RTTC Hyderabad
S/O M Nataraju R/O Flat No 2055,
Luxor Height PJR Enclave,
Madhavapuri Hills,
Chandan Nagar, Hyderabad 500050 OH 40% Mob.
9490118909
Email ID: deviprasadmadiraju@gmail.com

3 FARID AHMED QAZI, Group 'B'
Aged about 43 years,
Working as Sub-Divisional Engineer
Mandsaur
O/O Sharif Ahmed Qazi
R/O 7 Arora Colony, Nahar Sayyed Road Mandsaur
M.P. 458001
Or thi, 42%
Mob. 9479986786
Email ID: faridaqazi@yahoo.co.in

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4 APARNA MAHAJAN, Group 'B'

Aged about 45 years,

Working as Sub-Divisional Engineer

O/O Bhopal MP W/O Shri Y F Mahajan

R/O H no 13 Soumya Estates near Awadhपुरi BDA Road

Bhopal-462022

Orthopedic, more than 40%,

Mob. 9425608074

Email ID: aparna772000@yahoo.co.in

5 MURALIDHARAN R, Group 'B'

Aged about 49 years,

Working as Sub-Divisional Engineer O/O BANGALORE

EAST R/O Bangalore, Karnataka

OH, 40%,

Mob. 9449827880

Email ID: rmurali31@gmail.com

6 SURENDRAN PP, Group 'B'

Aged about 47 years,

Working as Sub-Divisional Engineer KANNUR BA S/O

KUNHIRAMAN PP R/O Thejus, Pallikkara, Nileshwar,

kasaragod dt, Kerala - 671314

LOCO MOTIVE,

Mob. 9446538789

Email ID: surenocb@yahoo.co.in

7 K K BADAL,, Group 'B'

Aged about 42 years (Approx.),

Working as Sub-Divisional Engineer Gwalior,

MP S/O V. K. Badal R/O: 103, Gajanan Vila,

Behind S P office, Patel Nagar, Gwalior 474011

Orthopadic,

45%,

Mob. 9425418625

Email ID: kaushalbadal@rediffmail.com

8 SUNDARA RAO D, Group 'B'

Aged about 44 years (Approx.),

Working as Sub-Divisional Engineer O/O HYDERABAD

R/O Hyderabad

OH 55%

Mob. 9441166088

Email ID: dsunderrao@bsnl.co.in

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9 MADHAVA REDDY P, Group 'B'

Aged about 51 years (Approx.),

Working as Sub-Divisional Engineer O/O GM (ITPC) -
AMEERPET- HYDERABAD

S/O P Chinna Veera Reddy

R/O P Madhava Reddy, C-2, BSNL Qrts, Road No 66,
Jublee Hills, Hyderabad - 33

Mob. 9490244255

Email ID: vasapuram@gmail.com

10 MOHINDER SINGH. Group 'B'

Aged about 47, years (Approx.),

Working as Sub-Divisional Engineer S/O KURUKSHETRA
HARYANA R/O 127 Mathana Kurukshetra

HR 136131 70 percent updated in ERP

Mob. 8901300100

Email ID: msgbdi@gmail.com

11 DHANASEKARAN S, Group 'B'

Aged about 42 years (Approx.),

Working as Sub-Divisional Engineer O/O Chennai

Telephones S/O P Sundararaj

R/O Flat F2, Sharon Apartments, Plot No.29, First Street,
Ranganathan Nagar-2, Selaiyur, Chennai-73 OH and 45%.

Mob. 9444002552

Email ID: sdsekar1980@gmail.com

12 AJIT KUMAR DUBEY, Group 'B'

Aged about 49 years (Approx.), Working as Sub-Divisional
Engineer O/O Raebareli upeast S/O SHRI KRISHNA

MOHAN DUBEY

R/O AS SAP ERP ADDRESS Locomotor disabled 55
percent

Mob. 9450925915

Email ID: Jtogerblbsnl@gmail.com

13 ANIL KUMAR T, Group 'B'

Aged about 41 years (Approx.), Working as Sub-Divisional
Engineer O/O HYDERABAD

R/O 21/1-B BSNL QUARTER KALI BARI MARG GOLE
MARKET NEW DELHI 110001 ORTHOPEDIC 60%

Mob. 9440884222

Email ID: anil.tel@gmail.com

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14 VASU BHONAGIRI, Group 'B'
 Aged about 42 years (Approx.),
 Working as Sub-Divisional Engineer O/O ITPC Dev Unit
 Hyderabad R/O Kurmapally, Regatla, Village, Kanagal,
 Nalgonda OH, 49 or 50%.
 Mob. 9490137222
 Email ID: vasu.bhonagiri@gmail.com

15 PAGALAVAN R, Group 'B'
 Aged about 48 years (Approx.),
 Working as Sub-Divisional Engineer
 O/O CHENNAI TD
 S/O E RADHAKRISHNAN
 R/O NO.1.BALAJI MAIN STREET, VIVEKANANDA
 NAGAR, KOLATHUR.CHENNAI-99
 OH-50%
 Mob. 9444000246
 Email ID: pagalvir@gmail.com

16 RENUKA PT, Group 'B'
 Aged about 42 years (Approx.), Working as Sub-Divisional
 Engineer O/O Bengaluru
 R/O 21/1-B BSNL QUARTER KALI BARI MARG GOLE
 MARKET NEW DELHI 110001 Orthopaedic 70%
 Mob. 9483547878
 Email ID: getmerenuka@gmail.com

17 RITESH KUMAR GUPTA, Group 'B'
 Aged about 44 years (Approx.), Working as Sub-Divisional
 Engineer O/O JAIPUR, BA S/O Rajkumar Gupta
 R/O 69 SHRIPURAM COLONY GURJAR KI THADI JAIPUR-
 302019 Orthopaedic Handicapped, 40%
 Mob. 9413395293
 Email ID: riteshguptabsnl@gmail.com

18 MANJUNATHA D, Group 'B'
 Aged about 44 years (Approx.), Working as Sub-Divisional
 Engineer O/O RTTC, Mysore, Karnataka Circle S/O D.
 Harishwarappa
 R/O D. Manjunatha, E6, Type E Quarters, RTTC Staff
 Quarters NEAR KAMAKSHI HOSPITAL, T.K. Layout, Mysore
 OH Mob. 9449856600
 Email ID: manjudonekal@gmail.com

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19 RANJITH KUMAR K, Group 'B'
Aged about 45 years (Approx.),
Working as Sub-Divisional Engineer Vijayawadcom
R/O M.G ROAD VIJAYAWADA OH (ORTHOPEDIC), 55%
Mob.9441478777 Email ID:
Ranjithkumarkalaparathi77@gmail.com

20 SUDHEER V PATIL, Group 'B'
Aged about 43 years (Approx.), Working as Sub-Divisional
Engineer O/O Bangalore S/O Vasant Rao Patil
R/O A16 BSNL staff quarters opposite SBI bank 80 feet
road Indiranagar Bangalore 560075
Locomotive 45% Mob. 9449859700 Email ID:
svppatil1979@gmail.com

21 PADMA KUMAR E, Group 'B'
LOCOMOTOR DISABILITY 50% UPDATED IN SAP
Mob. 9486103746
Aged about 49 years (Approx.), Working as Sub-Divisional
Engineer O/O NAGERCOIL BA S/O P EASWARA PILLAI
R/O Thuckalay 629180
Email ID: epadma@gmail.com

22 MOHAMMED ABDUL JALEEL K K, Group 'B'
Aged about 47 years (Approx.),
Working as Sub-Divisional Engineer
O/O Calicut BA
S/O KK Aboobacker Moulavi
R/O Kandam Kulangara House, Kottupadam, Vazhayoor
P.o, Malappuram, Kerala, PIN 673633 Orthopaedic, 50%
Mob. 9446330050
Email ID: kkmabduljaleel19@gmail.com

23 SHIV KUMAR SINGH, Group 'B' Aged about 46 years
(Approx.), Working as Sub-Divisional Engineer O/O Bihar
Circle Patna
R/O AS SAP ERP ADDRESS Locomotor disability, 84%,
Yes
Mob. 9431200479
Email ID: shiv.hajipur@gmail.com

24 PALASH NANDI, Group 'B'
Aged about 43 years (Approx.),
Working as Sub-Divisional Engineer
O/O Kolkata Telecom District

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S/O Prabhat Nandi
 R/O Flat-2B, BL-2, Sunnydew, 3919,
 Majumdarpara,
 Garia, Kolkata-700084
 Disability in right hand
 Mob. 9432000024
 ID: kshmisutmentsheela@gamil.com

25 PADGHANE PIRAJI, Group 'B'
 Aged about 43 years (Approx.),
 Working as Sub-Divisional Engineer
 O/O Naded TD, MH
 S/O Narayan Gangaram Padghane
 R/O Padghane P N Near Lumbini Buddha Vihara
 Saptagiri Colony Taroda BK Nanded-431605
 Orthopaedic
 Mob. 9422797358
 Email ID:PIRESHP@GMAIL.COM

26 Azeez KA, Group 'B'
 Aged about 56 years (Approx.),
 Working as Sub-Divisional Engineer O/O Ernakulam S/O
 ABDUL KHADER K K
 R/O Kakkattu House (Vathisseril), Edavanakad,
 Ernakulam, Pin-682502 Locomotive 50% Mob.
 9447718177
 Email ID: AZEEZBSNL@GMAIL.COM

27 Shashidhar Kulkarni, Group 'B'
 Aged about 49 years (Approx.),
 Working as Sub-Divisional Engineer O/O Bangalore S/O
 Ramarao Kulkarni
 R/O G 002 Sri Residency Apartment 24 1st main1st block
 BEL Layout Vidyaranyapura Bangalore 97 OH updated in
 SAP
 Mob. 9449858008
 Email ID: shashidhar.kullarni@gmail.com

28 AMIT KUMAR TANEJA, Group 'B'
 Aged about 44 years (Approx.), Working as Sub-Divisional
 Engineer O/O Chandigarh S/O Khushi Lal Taneja
 R/O 2274, GF, bl-2, sector 63, Chandigarh Hearing
 Impaired, 65%.
 Mob. 941740Shinde Email ID:
 amitkumartaneja@gmail.com

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29 Manish kumar Shrivastava, Group 'B'
 Aged 43 years (Approx.),
 Working as Sub-Divisional Engineer
 O/O CNTX-W Gwalior
 S/O S.S. Shrivastava
 R/O F-1, Panchsheel Society, Anupam Nagar, Ext -2,
 City Centre Gwalior Madhya Pradesh
 OA 40%
 Mob. 9425430505
 Email ID: manish7946@gmail.com

30 M RAMANJANEYULU, Group 'B'
 Aged about 42 years (Approx.), Working as Sub-Divisional
 Engineer RCNGN, HYDERABAD
 O/O S/O M.Venkateswarlu
 R/O Plot no:117&118, flot no: 201, Lakshmi Susheela
 Apartment, Sardhar Patel Nagar, near Community Hall,
 Opp: Nizampet X road, Hyderabad: 500085 OH,45%, Mob.
 490000608
 Email ID: ramanji.bsnl2002@gmail.com

31 SHINDE MILIND GHANSHYAM, Group 'B'
 Aged about 49 years (Approx.),
 Working as Sub-Divisional Engineer
 O/O SDE (ADMIN) Kalyan, O/o GMTD BSNL Kalyan,
 MH Circle
 S/O Ghanshyam Tukaram Shinde
 R/O 11/401, Vidhi Complex, Near Yogidham, Kalyan
 (West)-421301, Maharashtra OH-40%
 Mob. 9422330007
 Email ID: milind shinde@yahoo.com

32 RAJESH KUMAR, Group 'B' Aged about 50 years
 (Approx.), Working as Sub-Divisional Engineer O/O
 Lucknow S/O Sh R. L. Kureel
 R/O Type-IV/2, BSNL Colony, Sec-G, LDA Colony,
 Lucknow-12 Ortho Handicapped- 85%- yes updated
 Mob. 9450932637
 Email: krajesh240@yahoo.co.in

33 SURESH CHANDRA, Group 'B'
 Aged about 41 years (Approx.), Working as Sub-Divisional
 Engineer O/O AGRA BA Mob. S/O AJAY CHANDRA

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R/O H.NO.16, MAYA COLONY EXTENSION, PO- KRISHNA
NAGAR, MATHURA-281004 OH 42%

Mob. 9412777773

Email ID: IETSURESH@GMAIL.COM

34 SASIDHAR G, Group 'B'

Aged about 46 years (Approx.), Working as Sub-Divisional
Engineer O/O Anakapalli, Visakhapatnam BA S/O G

JAGANNADHA RAO

R/O Sasidhar G, 2nd Floor, 6-17-1, Sai Marg Apartments,
Anakapalli - 531001 OH, 60%

Mob. 7382626827

Email ID:sasi.goddu@gmail.com

35 HANUMANTHU V, Group 'B'

Aged about 37 years (Approx.), JTO O/O Hyderabad S/O V
LALYA

R/O Hyderabad OH 81%

Mob. 39445483628 Email ID:rkpamar12@gmail.com

36 HRADESH KUMAR, Group 'B'

Aged about 39 years (Approx.), Working as Sub-Divisional
Engineer O/O Lucknow UP East circle MR.

R/O RTTC Lucknow OH 80%

Mob. 9415004040 Email ID:

EMAIL:hradeshkumar@gmail.com

37 PRIYA VARMA, Group 'B'

Aged about 52 years (Approx.), Working as Sub-Divisional
Engineer O/O Ernakulam

R/O Ernakulam

9447351600

Email ID: priyasreedevan@gmail.com

...Applicants

(By Advocate: Mr. Amit Anand)

Versus

Union of India & Other

[Ministry of Communications, Department of Telecom

(Bharat Sanchar Nigam Limited)]

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Through:

1. The Secretary Ministry of Communications, Department of Telecom Sanchar Bhawan, 20 Ashoka Road, New Delhi-110001.

2. The Chairman-Cum-Managing Director Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, Road, H.C. Mathur Lane, New Delhi, Delhi-110001 Contact No.011-23372424 Email ID: cmdbsnl@bsnl.co.in

3. The Secretary, Department of Public Enterprises, C.G.O. Complex, Lodhi Road, New Delhi-110003

...Respondents

(By Advocates: Mr. Pradeep Kumar Mathur and Mr. S. K. Tripathi for Mr. Gyanendra Singh)

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ORDER (ORAL)**By Hon'ble Mr. Tarun Shridhar, Member (A):**

The applicants herein are Sub-Divisional Engineers (SDEs) in Bharat Sanchar Nigam Limited (BSNL) and seek promotion to the higher rank in terms of the provisions of reservation in promotion for persons with bench-mark disabilities. To this end, they have sought the following relief by virtue of the instant OA:

(I) To quash and set aside the Impugned Order No. U.O. No. BSNLCO PERS/13(11)/2/2022- DPC, dated: Dated 08.06.2022 (Annexure A/1) and direct the respondent to consider reservation in promotion for the Persons with Benchmark Disabilities i.e. the applicant in compliance of Judgment dated 28.09.2021 in Misc. Application No. 2171/2020 in Civil Appeal No. 1567 of 2017 In the matter of " Siddaraju vs. The State of Karnataka & Ors. and in compliance of Office Memorandum No.36012/1/2020-Estt. (Res.-II) dated 17.05.2022 issued by DoPT in compliance of said Judgement of Hon'ble Supreme Court.

(II) Direct the respondents to include the name of the applicant in the list of 3354 SDES candidates DPC for promotion to the post of DE(T)/AGM(T) in terms of Office Memorandum No. 36012/1/2020-Estpara 1t. (Res.-II) dated 17.05.2024.

(III) To allow this O.A. with exemplary cost for undue harassment to the applicants.

(IV) Direct the respondents not to harass the applicants intentionally further.

(V) To pass any other order or orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

2. Pending adjudication of this OA, the applicants have also made the following prayer for interim relief:

"This Hon'ble Tribunal may graciously be pleased to direct the respondents to stay the operation of impugned

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Order dated 08.06.2022 (Annexure A/1) till the disposal of this OA.

ii) Any other relief(s) may also be granted in the favour of the applicant to secure their legitimate claim reservation in promotion for Person with Benchmark Disabilities, in the interest of justice.”

3. The issue at stake in this OA has been considered and discussed and thereafter, recorded on different dates, when the matter came up for hearing. It would be appropriate to reproduce the relevant orders in a sequence for a holistic understanding the totality of the issue.

4. The order dated 28.06.2022, reads as under:

“Admit.

The applicants are aggrieved that the respondents while considering the proposal for promotion from the post of SD (E) to DE(T)/AGM(T) grade are not giving due weightage to the principles and rules governing reservation in promotion to the persons with disabilities in accordance with rules and guidelines. The matter has been listed before the vacation Bench for consideration on the prayer for interim relief vide which the applicants seek the stay on the operation of communication dated 08.06.2022 vide which Vigilance clearance status of executives in the zone of consideration for promotion has been sought for.

Issue notice. Mr. Gyanendra Singh, learned counsel, who appears for respondents on advance service, accepts notice.

Learned counsel for the applicants argues that since the proposal for promotion is violative of rules governing reservation for the persons with disabilities in promotion, the impugned communication deserves to be stayed. Learned counsel for the respondents, on the other hand, seeks a reasonable time to respond to the aforesaid prayer before it can be considered. Since, the impugned order/communication merely seeks information with respect to the Vigilance status, it would not be appropriate to stay its operation without adequate opportunity to the respondents. Accordingly, a period of

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10 days is allowed to the respondents to seek appropriate instructions and/or to file short reply to the aforesaid prayer.

List for consideration of interim on 11.07.2022.

Since, Mr. Gyanendra Singh, learned counsel is represented on behalf of the respondents, let him file reply to the OA within six weeks. Further two weeks' time is granted to the learned counsel for the applicants to file rejoinder thereafter, if he so wishes.

List for completion of pleadings on 31.08.2022.”

5. The order dated 07.09.2022, reads as under:

“The applicants seek consideration of their claim for promotion under the provision of reservation in promotion to persons with disabilities. Learned counsel for the applicants seek an interim relief by way of a stay of the operation of a communication dated 08.06.2022 vide which vigilance clearance status in respect of SDE (T) has been called for. He submits that while seeking the relevant status in respect of the SDE(T), whose list has been annexed, the respondents have ignored the provision of reservation in promotion to Persons with Benchmark Disabilities (PwBDs) which is detriment to the bonafide claim of the applicants, who are eligible for such promotion. Learned counsel submits that in case the respondents resort to convening of the meeting of the Departmental Promotion Committee (DPC) and thereafter effecting promotion without giving effect to reservation, their interest may be jeopardized adversely, and hence, the respondents be restrained from going ahead with the proceedings initiated for promotion unless they apply the principle of reservation for PwBDs. Learned counsel also draws attention to the Office Memorandum of DOP&T dated 17.05.2022, in which detailed guidelines and instructions for applying the principle of reservation in

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promotion to persons with benchmark disabilities has been given. He submits that the claim and eligibility of the applicants is squarely covered in terms of the said memorandum which in fact gives effect to the judgment rendered by the Hon'ble Apex Court in "**Siddaraju vs. State of Karnataka (Civil Appeal No. 1567/2017)**".

Learned counsel for the respondent no. 2 (BSNL) strongly contests the arguments put forth by the learned counsel for the applicants and, at the outset, submits that the present Original Application is not tenable in law. He further claims that some of the applicants do not even fulfill the basic eligibility in terms of the Recruitment Rules of year 2009 for the relevant post(s). Learned counsel argues that no doubt the reservation for persons with disabilities will be governed in terms of the DOP&T Memorandum of 17.05.2022, however, the Memorandum shall be applied with prospective effect. Clarifying further, the learned counsel submits that the present promotions are being considered for vacancies of the preceding years and the instructions of this Memorandum shall apply only to the vacancies, which accrued after 17.05.2022, which is the relevant date on which this Memorandum was issued. Drawing attention to section 34 of Rights of Persons with Disabilities Act, 2016, specifically to its proviso, learned counsel submits that it is abundantly clear that this statutory provision shall be acted upon only on receiving appropriate instructions from the relevant authority in the Govt. Since these instructions have been issued only on 17.05.2022, the same shall be applied with respect to vacancies, which arise thereafter. Closing his arguments, he submits that in terms of this Memorandum, the respondents shall consider all eligible persons in accordance with law and instructions *albeit* only for vacancies arising after 17.05.2022.

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We have heard the learned counsels for the parties and also gone through the documents on record, particularly, the ones to which the learned counsels have drawn our attention to.

There is no doubt about the fact that the Rights of Persons with Disabilities Act, 2016, contains a statutory provision for providing reservation in both recruitment and promotion to the persons with disabilities to the aforesaid extent. This has further been re-affirmed in the judgment of the Hon'ble Apex Court in '**Siddharaju** case (supra). Pursuant to this judgment, the DOP&T has issued a Memorandum dated 17.05.2022 giving detailed instructions & guidelines and each and every department and office of Govt. of India shall be obliged to follow the same. Without going into the larger question whether these guidelines shall be applicable with prospective effect or not, in our view, no prejudice is likely to be caused to the respondents, if a limited direction is given to them, specifically to respondent no. 2 (BSNL), to ensure that while conducting the DPC for promotion from the post of SDE(T) to DE(T)/AGM(T) grade for which they have already set the process in motion, they consider the eligibility of the applicants also strictly in accordance with the aforesaid DOP&T Memorandum and if the applicants are persons with disabilities to which there is no dispute, and otherwise eligible, obtain their vigilance clearance status as well and process their claim also along with the claim of others under the 4% quota of reservation of persons with disabilities. The DPC shall independently evaluate the eligibility and the merit of the applicants, however, the recommendations in the DPC with respect to the applicants shall not be given effect to till the disposal of the present Original Application.

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Learned counsels for the respondents is allowed four weeks' time to file a comprehensive reply to the Original Application. Further one week's time is allowed to the applicants to file rejoinder, if they so wish.

List for final hearing on 10.11.2022.”

The order recorded on 07.09.2022 throws adequate light on the subject of the OA.

6. Subsequently, vide order dated 17.02.2023, the respondents were directed to proceed further with the process of keeping at least four percent vacancies in terms of reservation for persons with Disabilities.

7. On 06.09.2023, the following detailed order was recorded:

“Learned counsel for the applicants points out that although the Rights of Persons with Disabilities Act, 2016 had come into force w.e.f. 19.04.2017, instructions regarding the said Act were circulated by the Corporate Office of BSNL vide their letter No.5-8/2017/Estt-IV/PWD 2016 dated 29.03.2017, bringing to the notice of Heads of all Telecom Circles, Administrative Units of BSNL, the provisions under the said Act with specific mention of the Gazette Notification *inter alia* vide Chapter VI para 34(1). The stipulations were also spelt out in detail so as to make all the Units under BSNL aware of the provisions of the said Act. This clearly indicates that BSNL was fully aware of passing of the Act and the Corporate Office had directed the subordinate units to keep themselves in readiness for implementation of the provisions under the Act.

He adds that it is a matter of record that DPCs for promotion from the post of Sub Divisional Engineer to Divisional Engineer have not been held ever since 2017. He further states that promotion quota vacancies for

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promotion from the post of Sub Divisional Engineer to Divisional Engineer are yet to be filled up. The respondents are not implementing provisions of the Act w.e.f. 2017 but are insisting on applying them only w.e.f. the year 2022, the date on which the DOP&T issued instructions, detailing the procedure to be adopted for implementation of the said Act.

He draws attention to the interim directions given by this Tribunal vide order dated 07.09.2022, as per which, filling up of 71 posts has been held in abeyance till final outcome of the OA. These 71 vacancies are less than 4% of total vacancies i.e. 2100.

He, therefore, contends that the respondents may be directed to fill up the 4% quota prescribed for persons with disabilities to be filled up by promotion, at the earliest. Since the exercise of filling up the posts right from 2017 is being undertaken now, it is expected that the 4% quota, reserved for persons with disabilities, will be made applicable qua the unfilled vacancies.

Per contra, learned counsel for the respondents draws attention to DOP&T's circular dated 17.05.2022, as per which detailed directions have been given for implementing the provisions of the Persons with Disabilities Act, 2016. He also points out that as per the clarification sought from DOPT, the date of application of this circular would be the date of issue of the circular because it has not been issued with retrospective effect.

On hearing learned counsel for both the parties, we direct learned counsel for the respondents to clarify the following points:

- (i) Whether the provisions contained in para 9 of the DOPT OM dated 17.05.2022, have been identified in each of the groups i.e. 4% of the cadre.
- (ii) Whether in terms of Para 10(1), a separate 100 point vacancy based reservation roster has been prepared or not regarding the promotional vacancies.
- (iii) What is the total number of vacancies which are proposed to be filled up against the promotion quota and why 4% of the vacancies have not been reserved for physically disabled employees.
- (iv) Ministry of Communication letter dated 20.10.2022 refers to a proposal received from BSNL which was sent to DOPT seeking clarification of various points. The original file containing this correspondence may also be produced on the next date of listing.

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The respondents may file an affidavit clarifying the aforementioned details within a period of four weeks with an advance copy to the other side.

Let the matter be listed on 12.10.2023.”

8. Learned counsel for the parties have confirmed today that DPC with respect to the applicants and persons with bench-mark disabilities has already taken place, however, in terms of the order dated 07.09.2022, the recommendations of the DPC have not been given effect to.

9. Learned counsel for the respondents confirms that the respondents are committed to give effect to the recommendations of the DPC, however, strictly in accordance with the provisions of the DoP&T OM dated 28.12.2023 on the subject of reservation in promotion to persons with bench-mark disabilities. For the sake of clarity, the contents of the said memorandum are reproduced below:

“Subject:- Reservation in promotion to Persons with Benchmark Disabilities (PwBDs) regarding.”

The undersigned is directed to say that the Hon’ble Supreme Court, vide its Judgement dated 30.6.2016, in the WP(C) No.521/2008, titled ‘*Rajeev Kumar Gupta Vs. UOI*’, had directed the Government to extend three percent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. However, subsequently the Hon’ble Supreme Court, vide its Order dated 3.2.2017, in the Civil Appeal No. 1567/2017 titled ‘*Siddaraju Vs. State of Karnataka & Ors.*’ referred to the prohibition made against reservation in promotion as laid down by the majority

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in *Indra Sawhney & Others v. Union of India & Others* (1992) and observed and held that its Judgement dated 30.6.2016 in *Rajeev Kumar Gupta* needed to be considered by a larger Bench. However, the Hon'ble Supreme Court finally disposed of the *Siddharaju* matter vide its Judgement dated 14.1.2020 and held that its Judgement in *Rajeev Kumar Gupta* would bind the Union and State Governments and it must be strictly followed.

2. However, the Union of India needed some clarification with regard to the implementation of the Hon'ble Supreme Court Judgement dated 30.6.2016 and 14.1.2020, and, therefore, Application for Clarification was filed by the UOI before the Hon'ble Supreme Court seeking clarification which *inter alia* included whether the vacancies for promotion for PwDs would be computed only on the basis of the vacancies against the identified posts or against the vacancies in both identified and non-identified posts and whether the judgement dated 14.1.2020 needs to be implemented on the basis of PwD Act, 1995 or RPWD Act, 2016. Hon'ble Supreme Court disposed of this Application for Clarification vide its Order dated 28.9.2021 directing the Government of India to issue instructions regarding reservation in promotion as provided in Section 34 of the RPwD Act, 2016.

3. Proviso to Section 34 of the RPWD Act, 2016 provides that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time. Accordingly, DoPT vide its OM of even number dated 17.5.2022 issued detailed instructions for extending the benefit of reservation in promotion to PwDs up to the lowest rung of Group 'A' in posts and services under the Central Government. This OM is effective with effect from the date of its issue i.e. 17.5.2022.

4. However, in a Contempt Petition (Civil) No.873/2023 filed by Shri S. S. Sundaram against Department of Revenue, the Hon'ble Supreme Court vide its order dated 18.7.2023 has directed "*Though it is pointed out that the judgement of this Court of which breach is alleged, has been complied with effect from 15.7.2023, the fact remains that the judgement is of 30.6.2016 directing the respondents to implement the 1995 Act. Therefore, the respondent will have to consider of giving at least notional promotion to those who are eligible from an earlier date*".

5. The aforesaid directions dated 18.7.2023 of the Hon'ble Supreme Court has been considered in consultation with the Department of Legal Affairs and it has been decided to grant notional promotions to the PwD candidates w.e.f. 30.6.2016 as under:

- (i) PwD employees in posts and services of the Central Government, will be considered for grant of the benefit of reservation in promotion up to the lowest rung of

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Group 'A' on notional basis w.e.f. 30.6.2016 subject to their fulfilment of the eligibility conditions as laid down in the DoPT OM of even number dated 17.5.2022 regarding reservation in promotion to PwDs. However, the extent of reservation in promotion may be in accordance with the relevant provisions contained in the PwD Act 1995 and RPWD Act 2016. Further, this benefit may be extended after holding Review DPC as per the extant instructions issued by DoPT on the subject. In case the PwD employees are found eligible and suitable for promotion from any date subsequent to 30.6.2016, then the benefit of reservation in promotion may be extended to them from the date they become eligible for promotion. This promotion on notional basis includes promotion on seniority quota as well as Departmental Examination/Departmental Competitive Examination. In case of Departmental Examination/Departmental Competitive Examination, which has already been held during the period from 30.6.2016 to 16.5.2022, the eligibility of the PwD candidates may be assessed on the basis of their performance in the said examination. The concerned Administrative Authorities are given discretion to consider holding of special examination for assessing the suitability or eligibility of PwD employees for such Departmental Competitive Examination.

- (ii) Any such promotion during the period from 30.6.2016 till the PwD employee actually assumes the charge of the post will be only on notional basis and the actual financial benefit of promotion will be effective to them with effect from the date they actually assume charge of the promoted post, meaning that no financial arrear will be admissible to them for the period from the date on which they get the benefit of notional promotion and the date on which they actually assume or have already assumed the charge of such promoted post.
- (iii) Extending the benefit of reservation in promotion to the PwD employees on notional basis between 30.6.2016 and actual assumption of the charge of the post may affect the inter-se-seniority of the officials in various grades. Due to this, there may be cases in which some officials may have to be placed in a select list/seniority list, subsequent to the year of their existing/present seniority list/select list. This may have a chain effect as it may result in revision in seniority lists in subsequent years in many cases which may cause administrative inconvenience. In order to avoid such situation, supernumerary posts may be created to adjust the lien of such PwD employees with effect from the date on or after

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30.6.2016, when they become eligible to get the benefit of reservation in promotion, till the availability of vacancy in which the promotion is to be made or till they vacate the post on their retirement, further promotion etc. whichever is earlier.

- (iv) The creation of supernumerary post, as stated above, will be personal to the PwD employee who is given the benefit of reservation in promotion on notional basis and such supernumerary post will stand abolished on the date when such PwD employee is adjusted against available vacancy in the grade in which the promotion is given or when that PwD employee vacates the post on his/her retirement, further promotion etc., whichever is earlier.
- (v) Ministries/Departments are advised to undertake an exercise to ascertain the requirement of supernumerary posts required by them and submit the proposal for creation of posts to the Department of Expenditure through DoPT. Such proposal shall contain the proposal in respect of the entire Department/Ministry and the proposal in piecemeal shall not be accepted. A certificate to the effect that the proposal is complete in all respects and the requirement of creation of supernumerary posts has been projected in respect of the entire Department may also be furnished along with the proposal. Further, each proposal shall have the concurrence of the Liaison Officer for PwDs of the Department/Ministry concerned and shall be forwarded with the approval of the Secretary of the Administrative Department/Ministry.
- (vi) It is clarified that the benefit of notional promotion, as proposed above, shall not adversely affect those PwD candidates who have already been granted the benefit of reservation in promotion in personam in pursuance of the Orders/judgements of various Courts of Law.

6. This issues with the approval of Department of Expenditure conveyed vide their ID Note No.7(1)/E. Coord.I/2017 Part (V) dated 12.12.2023.”

10. Mr. Amit Anand, learned counsel for the applicants submits that the applicants would be satisfied if the respondents were to take recourse to further action in accordance with the DPC recommendations read with the

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DoP&T memorandum. Further, we also take note of the submission made by the learned counsel for the respondents that rest of the eligibility parameters governing promotion shall also have to be ascertained.

11. In view of what has been outlined above and recorded on different dates of hearing, the present OA is disposed of with a direction to the respondents that further consequential action pursuant to the DPC with respect to the applicants and other persons with bench-mark disabilities be taken in accordance with the recommendations made by the said DPC and against the background of the provisions in reservation in promotion for persons with bench-mark disabilities as outlined in the DoP&T OM, which has been quoted above.

12. These directions shall be complied with within a period of twelve weeks from the date of receipt of a certified copy of this order. Needless to say, that the applicants shall be entitled to all the consequential benefits, which may accrue as an outcome of this order. Pending MAs also stand disposed of. No costs.

(Manish Garg)
Member (J)

(Tarun Shridhar)
Member (A)

/as/