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**(2013) 05 DEL CK 0358**

**Delhi High Court**

**Case No:** Cont. Cas (C) 696 of 2012

Sakti Prosad Datta

APPELLANT

Vs

DM Spolia and Others

RESPONDENT

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**Date of Decision:** May 9, 2013

**Acts Referred:**

- Constitution of India, 1950 - Article 16(4), 335

**Citation:** (2013) 5 AD 101

**Hon'ble Judges:** G.S. Sistani, J

**Bench:** Single Bench

**Advocate:** Avnish Ahlawat and Ms. Latika Chaudhary for respondents 1 and 2, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

G.S. Sistani, J.

Petitioner alleges willful disobedience of an order passed by a Division Bench of this Court dated 30.9.2011. Petitioner in person has relied upon para 15 and 16 of the judgment which are reproduced below:-

15. There is yet another aspect highlighted by the petitioner which needs to be dealt with. He drew our attention to the orders dated 22.08.1995 issued by the respondent. Vide that order, those who had qualified JAO Examination, Part-II, 1995 were appointed to the post of SAS/JAO by the Govt. of NCT of Delhi. Eight successful candidates are mentioned therein. Seven of them belong to SC candidates; one Shri Vijay Kumar whose name is mentioned at Serial No. 2 is shown as Physically Handicapped candidate. On this basis, it was the submission of the learned counsel for the petitioner that the Government is applying relaxed standard to Physically Handicapped persons as well. Though it is not discernible from the order, this may be true, as the respondents have filed only short reply, without giving any parawise reply and had not traversed to the aforesaid aspect highlighted by the petitioner in

this petition.

16. Thus, while we are not in a position to help the petitioner because of the aforesaid legal impediments, at the same time, we are of the opinion that if relaxed standard is extended to other handicapped persons by the Government, then the same treatment be accorded to the petitioner as well. This aspect shall be looked into by the respondents and necessary order in this behalf be passed within two months.

Petitioner submits that in para 16 of the order the Division Bench had expressed their opinion that if relaxed standard is extended to other handicapped persons by the Government of India then the same treatment be accorded to the petitioner as well.

2. Having regard to the above the respondents were directed to look into the case of the petitioner and pass necessary orders within two months. Pursuant to the directions contained in the order dated 30.09.2011, the respondent has passed an order dated 2.5.2012. The petitioner was informed that his case was examined again and it was found that he was not entitled to relaxation in qualifying marks for SAS/JAO examination. It is submitted by the petitioner who appears in person that the respondents have not implemented the judgment in its true spirit as they have not dealt with the matter as per the observations in the judgment. It is submitted that the respondents have not clarified the position regarding the order of 22.8.1995 in which one Shri Vinod Kumar who was at serial No. 2 has been shown as a physically handicapped candidate.

3. Reply to this contempt has been filed. The Department has reiterated its stand that no relaxation was provided for physically handicapped candidates. In the reply affidavit filed it has been stated that in the final result declared no relaxed standard had been followed by the respondent while dealing with cases of physically handicapped candidates. Copies of the results for the year 1995-96 have been annexed along with the reply. The result shows that Shri Vinod Kumar and Shri Kirori Lal Sharma whose names have been quoted have been declared as passed whereas the result shows that the petitioner has failed. In support of the plea that the relaxed standards were applied only to the SC/ST candidates and no other category, reliance is placed on the format of the result to show that there is a claim for SC/ST but no separate column for candidates belonging to General category, Physically Handicapped candidate or any other category. Reliance is also placed on the counter affidavit filed by the respondent way back in the year 2002 wherein a stand was taken that there is no relaxation in the qualifying marks for physically handicapped candidates.

4. Para 7 and 8 of the reply dated 22.5.2002 reads as follows:-

7. That there is no rule or order under which the petitioner is entitled to relaxation in qualifying marks or additional marks, in the Examination.

8. That it is further submitted that no other physically handicapped candidate has been granted relaxation/additional marks by the Controller General of Accounts, in the aforesaid Examination.
5. The respondent has further clarified that the office orders dated 22.8.1995 and 29.10.1995 referred to in the order dated 15.10.2012 have been issued by the Delhi Government and not by the office of the deponent.
6. It is further clarified that there is a distinction between applying relaxed standards for declaring a candidate successful in examination and reserving posts for the purpose of promotion. Relaxation in qualifying marks and reservation of posts for the purpose of promotion are two different aspects. It may be possible that Delhi Government might have given Shri Vinod Kumar and Shri Kirori Lal Sharma benefit of reservation in promotion even though they did not get any benefit of relaxation in qualifying marks. Ms. Avnish Ahlawat submits that it is for Delhi Government to explain in what context they mentioned Shri Vinod Kumar and Shri Kirori Lal Sharma as physically handicapped candidates.
7. I have heard the petitioner in person and counsel for the respondent. The facts of the case as noticed by the Division Bench are that the petitioner had appeared in the Combined JAO/SAS Examination in January 1995. Candidates were required to obtain minimum 40% marks in each paper to qualify the examination. Out of the three papers the petitioner obtained more marks than the marks required in two papers, however, he obtained 12 marks less in the PWD paper than the required marks. The petitioner who is a physically handicapped person claimed that he was entitled to 30 marks under relaxed standard of marking in accordance with the Government of India OM 14016/88/Estt./SCT dated 4.9.1995 as well as letter dated 13.9.1993 issued by the Comptroller and Auditor General of India. Representations made in this regard were rejected as according to the respondent OM dated 4.9.1985 and communication dated 13.9.1993 only related to SC/ST candidates and did not cover physically handicapped persons. Petitioner challenged the rejection by filing OA No. 493/1996 before the Central Administrative Tribunal. The OA filed by the petitioner was dismissed on 22.7.1997. It was inter-alia observed as under:-
6. In this connection, the Hon'ble Supreme Court in their judgment dated 1.10.96 in Civil Appeal No. 12676/96 S. Vinod Kumar and another Vs. UOI & Ors. has held that the provision for lower qualifying marks or lesser level or evaluation in the matter of promotion is not permissible under Article 16(4), in view of the command contained in Article 335 of the Constitution.
7. In view of the above, the OA is dismissed. No costs.
8. The order passed by the Central Administrative Tribunal (CAT) was not challenged. Meanwhile, a Three Members Bench of the Supreme Court delivered a judgment on 19.11.1999 in the case of Haridas Parsedia Vs. Urmila Shakya reported as 1999 (7) SCALE 152. According to the petitioner as per this judgment he was entitled to

relaxation which was given to SC/ST candidates. Another representation was made and thereafter OA No. 1222/2000 was filed praying for the same relief as prayed earlier in OA No. 493/1996. Reliance was placed by the petitioner on the decision of the Supreme Court in Haridas Parsedia case (supra). The OA was dismissed on 6.7.2000 holding it to be barred by res judicata or principles analogous to res judicata. The order of the CAT was challenged by filing writ petition being WP (C) No. 6272/2000 which was decided on 30th September 2011. The order of the CAT was not interfered by the High Court. The High Court not only came to the conclusion that the Tribunal had rightly stated that the second OA would be impermissible as it was hit by res judicata or principles analogous to res judicata but also that the judgment in the case of Haridas Parsedia case (supra) would not come to the aid of the petitioner at all as the Supreme Court was not dealing with promotions in that case. It also decided against the petitioner that the OM relied upon by him was not applicable. The Division Bench referred to the judgment of the Constitution Bench in the case of Indira Sahni & Ors. v. Union of India reported as AIR 1993 SC 447 wherein it was categorically held that relaxation given to SC/ST candidates would not apply to other categories. The case of the petitioner before the CAT in both the OAs filed was that he was entitled to relaxed standards in qualifying examination held in 1995. This plea of the petitioner has not been accepted either by the CAT or by the High Court. While disposing of the writ petition the Division Bench was of the opinion that if relaxed standard is extended to other handicapped persons by the Government then the same treatment should be accorded to the petitioner as well. In view of the categorical affidavit filed by the respondent, the stand taken by the respondent as far back as in the year 2002 in their counter affidavit which has been reproduced above and also taking into consideration the result which has been produced including the result of Vinod Kumar and Kirori Lal Sharma which show that both these candidates had cleared the examination whereas the petitioner had failed. I find no grounds to initiate contempt proceedings against the respondents. 9. Accordingly, the present petition is dismissed. No costs.