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**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM & ARUNACHAL PRADESH)  
**ITANAGAR BENCH.**

Sl. No. 444

**WRIT PETITION (C) NO. 81 (AP) / 2010**

Shri Rei Kamki  
S/o Bomre Kamki,  
R/o of Dego Kamki village,  
Kamba, PO-Kamba,  
West Siang District,  
Arunachal Pradesh

.....Petitioner.

**By Advocates:**

Mr. D. Panging,  
Mr. K. Bogo,  
Mr. D. Soki,  
Ms. SV Darang

**-Versus-**

1. **The State of Arunachal Pradesh**  
represented by the Secretary,  
Department of Personnel,  
Govt. of Arunachal Pradesh,  
Itanagar.
2. **Arunachal Pradesh Public Service Commission,**  
represented by its Secretary.
3. **The Commissioner,**  
Department of Finance,  
Govt. of Arunachal Pradesh,  
Itanagar.
4. **Shri Rima Raipodia,**  
C/o Commissioner,  
Department of Finance,  
Govt. of Arunachal Pradesh,  
Itanagar.
5. **Shri Okan Sitek,**  
C/o Commissioner,  
Department of Finance,  
Govt. of Arunachal Pradesh,  
Itanagar.

.....Respondents.

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*[Signature]*  
Asstt. Registrar (Judl)  
Gauhati High Court  
Itanagar Permanent Bench, Warhalagan  
Authorised by J.O. of A.P. No. 1372

**By Advocates:**

Mr. N. Tagia, S/C for APPSC/resp. no.2

Mr. C. Modi for resp no.5.

Mr. N. Ratan, for resp. no.4

Ms. P. Pangu, GA for resp nos. 1 &amp; 3

**BEFORE****THE HON'BLE JUSTICE Dr. (MRS.) INDIRA SHAH**

Date of hearing : 13-03-2013

Date of Judgment &amp; Order : 18-03-2013

**JUDGMENT & ORDER (CAV)**

Heard Mr. D. Panging, learned counsel for the petitioners and Mr. N. Tagia, learned Standing Counsel for APPSC/Respondent No.2 as well as Ms. P. Pangu, learned Govt. Advocate appearing for Respondent Nos. 1 & 3. Also heard Mr. N. Ratan, learned counsel for private respondent No.4 and Mr. C. Modi, learned counsel appearing for private respondent No.5.

2]. The petitioner in the category of disability of hearing impaired appeared in the Arunachal Pradesh Public Service Commission's examination to the posts of Sub-Treasury Officer under reserved quota for physically handicapped persons. After competitive examination, a merit list was published on 14-10-2008 and a final list was published on 17-01-2009. Prior to that on 20-03-2007, the Arunachal Pradesh Public Service Commission (in short, the APPSC') vide notification published in the News daily, the 'Arunachal Times' sought the disability certificates from the candidates with disability within a period of 15 days from the date of publication of the notice to facilitate the selection of genuine and deserving persons to the post. The petitioner accordingly submitted the requisite certificate to the competent authorities. The petitioner was declared successful in the preliminary examination and was qualified for

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 Arunachal Pradesh High Court  
 Disputes Bench, Itanagar, Itanagar  
 Itanagar, Itanagar, Itanagar


the written examination. The qualified candidates were asked to submit application in prescribed form with all supporting certificates to Secretary, Arunachal Pradesh Public Service Commission. Accordingly, the petitioner submitted the application along with all requisite documents and opted for Arunachal Pradesh Civil Service (Entry Grade) as his first preference.

3]. The petitioner was declared successful was qualified for the interview/viva-voce test. When the result was declared, the name of the petitioner was not among the list of successful candidates. Only two persons, i.e. private respondent nos. 4 & 5 were recommended for appointment to the post of Sub-Treasury Officer under the physically handicapped quota and placed at serial nos. 99 & 100 respectively. The petitioner was under bona fide belief that the private respondents were recommended inconsonance with the existing Government Guidelines and Rules, as the select list did not indicate what disabilities the respondent nos. 4 & 5 were having. The appointment of private respondents were challenged by Shri Abu Taba and Shri Ojing Siram by filing two writ petitions i.e. WP(C) 78 (AP) 2009 and WP(C) 100 (AP) 2009.

4]. In those writ petitions, some irregularities in their appointment under physical handicapped quota were brought to the notice of the Court. The petitioner through his advocate procured the copy of the writ petitions, counter affidavit filed by the APPSC and the copy of judgment passed by this Court. The petitioner in WP(C) 100 (AP) 2009 challenged the recommendation made by the APPSC in favour of private respondent no.5 on the ground that the private respondent no.5 did not fall under the purview of blind/low vision category and he was not entitled to get appointment in the quota of blind/low vision.

5]. In WP(C) 78 (AP) 2009, the petitioner therein challenged the appointment of private respondent no. 4 under disability quota and alleged

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Court  
Itanagar, Arunachal Pradesh

that the APPSC had not strictly followed the 3% reservation policy. The APPSC, in both the writ petitions, took the plea that 3% reservation policy was followed and as per the policy, it was required to select 3 disabled candidates but only 2 candidates could be selected as not candidate under the deaf and dumb category was available for selection. While disposing of the Writ Petition(c) 78 (AP) 2009, this Court directed the no.4 herein to appear before a medical board to ascertain whether he is a physically disabled person or not as defined under Section 2(0) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short, 'the Act'). The recommendation of respondent no.5 was quashed and set aside vide judgment passed in WP(C) 100 (AP) 2009 on the ground that respondent no.5, who is a person with low vision has been recommended against a post reserved for orthopaedically and partially deaf persons and further directed the respondent no.5 herein to appear before the State Medical Board within 4 weeks to ascertain the percentage of disability due to loss of vision, if any. The medical board after examination, sent a certificate to the APPSC and wherein it was found that respondent no.5 was 55% orthopaedically disabled and 30% visually disabled (combined percentage 66.66%).

6]. The APPSC, in the earlier writ petitions, took the stand that as there was no candidate from deaf and dumb to be considered for selection, only 2 persons i.e. private respondent nos. 4 & 5 were recommended for selection. Petitioner's claim is that he had already submitted the disabled certificate. He was examined by a Board of Doctors of General Hospital, Naharlagun and it was found that he is suffering from permanent disabled in the category of hearing impaired upto 75%. The petitioner was only candidate having qualified for viva-voce test having disabled category of hearing impaired.

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 A. S. Prasad, J.  
 Additional Judge  
 High Court of Andhra Pradesh  
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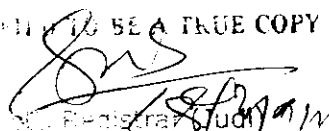
7]. The respondent no.2 i.e. APPSC, in their affidavit-in-opposition, averred that the petitioner although may have been the lone hearing impaired candidate qualified for interview/viva-voce on relaxed standard but he failed to figure in the merit list to be considered for selection and recommendation. The petitioner, nowhere, in his petition, has mentioned about his rank in merit list. The examination was a combined and competitive examination and the selection is based on the combined merit as per performance of the candidate. The private respondent nos. 4 & 5 were recommended as per their position in the merit/select list and disability certificate furnished by them.

8]. The respondent no.5, in his affidavit-in-opposition, has averred that the petitioner failed to secure minimum 33% qualifying marks in 3 out of 8 subjects as well as the requisite overall aggregate marks of 45% but the APPSC called him for viva voce test for reasons best known to the APPSC. The petitioner cannot claim to be qualified for viva-voce test due to mistake of the APPSC, and he has neither locus standi to claim 3% reservation quota under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 nor to challenge the appointment of private respondents.

9]. The petitioner, in his reply affidavit-in-reply, has submitted that the criteria of securing 33% in each paper and 45% marks in aggregate was relaxed by the Govt. Notification dated 07-01-2008, the APPSC further granted relaxation under special provisions of reservation for physically handicapped candidates from 33% to 25% marks in each paper and from 45% to 35% marks in aggregate.

10]. The respondent no.2 has also admitted in their affidavit-in-opposition that the petitioner was qualified for interview/viva-voce on relaxed standard. The merit list of physically handicapped candidates shows that 9 names were shown in the merit list. Out of 9 names, serial no.1

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Sadung Gyadu, qualified the examination on merit. Therefore, in remaining 8 candidates, the petitioner was placed at '8' position in the category of deaf and dumb whereas others were suffering from orthopaedic and low vision. The petitioner secured 631 marks out of 1675. Thus, it is apparent from the list furnished by the respondent-APPSC that petitioner secured more than qualified marks in the written as well as viva-voce examination.

11]. Section 2(a) sub-clause (i) defines and speaks disability means- (1) blindness; (2) low vision; (3) leprosy-cured; (4) hearing impairment; (5) locomotors disability; (6) mental retardation and (7) mental illness. As per Section 32, appropriate Governments shall- (a) identify posts, in the establishments, which can be reserved for the persons with disability.

12]. In terms of Section 32 of the Act, the Department of Personnel, Administrative Reforms and Training, Government of Arunachal Pradesh vide office memorandum dated 17<sup>th</sup> December, 2007, identified the posts, which can be reserved for persons with disabilities in respect of Arunachal Pradesh Civil Service (Entry Grade) Officer.

13]. Section 33 of the Act reads as under:-

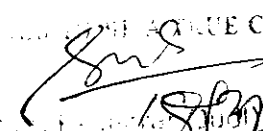
*"S-33. Reservation of posts- Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from-*

- (i) blindness or low vision;*
- (ii) hearing impairment;*
- (iii) locomotor disability or cerebral palsy,*

*In the posts identified for each disability;*

*Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."*

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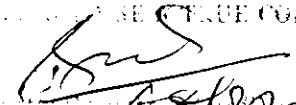
14]. Section 36 says that where in any recruitment year any vacancy under section 33 cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three 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.

15]. In this case, the name of respondent no.4 was recommended against the reserved quota of orthopaedic disability. Respondent no.5 was said to be visually disabled person. However, his recommendation was quashed by the judgment passed in WP(C) 100 (AP) 2009, although the APPSC took plea that there was no candidate, whose name can be recommended against the quota reserved for hearing impairment, that document produced by the petitioner indicating that he was suffering from 75% of hearing impairment has remain un-rebutted. He was the lone candidate, who was suffering from hearing impairment, the recommendation of respondent no.5, was set aside and quashed without further certificate from the medical board that he was visually disabled.

16] Section 2(t) of the Act says that "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority. It was already decided by this Court in the earlier writ petitions that the respondents did not suffer from 40% disability, which is the main requirement of disability under section 2(t) of the Disabilities Act.

17]. The respondent no.5, in his affidavit-in-opposition, has averred that in pursuance to the order passed by this Court in the earlier writ

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petition, he appeared before the State Medical Board and the Board found and certified him as 55% orthopaedically disabled and 30% visually disabled in left eye. He submitted the medical report and also his representation before the Chief Secretary to the Govt. of Aruanchal Pradesh for appointment as APCS (E.G.). On the basis of his representation, the Secretary (Personnel) requested the State Government to appoint respondent nos. 4 & 5 against the reservation of physically handicapped quota. Accordingly, the respondent nos. 4 & 5 were appointed.

18]. Section 33 clearly stipulates that not less than 3% for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision; (ii) hearing impairment and (iii) locomotor disability or cerebral palsy.

19]. Here in this case, three posts were identified i.e. one each in the three category of reserved quota. It was held by this Court that respondent no.5 was not suffering from 55% of the orthopaedic disabled and 30% of low vision was not entitled against the quota reserved for loss of vision, in spite of clear findings of this Court, the respondent authorities appointed him against the reserved quota. Therefore, the appointment of respondent no.5 is illegal and liable to be set aside. It is ordered accordingly.

20]. The writ petition is allowed. The respondent authorities i.e. APPSC is directed to recommend the name of the writ petitioner, who fulfilled all the criteria against the specific post reserved.

*Sd/- I. Shan*  
JUDGE

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*Sd/-*  
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Author