

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1953 OF 2004

UNION OF INDIA
 . APPELLANT

VERSUS

JITENDRA VARSHNEY & ORS.
 .RESPONDENTS

O R D E R

Heard the parties.

In view of the order that we propose to pass for disposing of this appeal it

may not be necessary to recite the entire facts leading to the filing of the present

appeal.

Suffice it to say that the respondents were initially appointed as Chief

Booking Supervisors. They seek promotion to the post of Group 'B' to 'C', which was

denied by the appellant primarily on the ground that they suffered colour-blindness.

Aggrieved thereby, they approached the Central Administrative Tribunal. The CAT

allowed the applications. The appellant carried an unsuccessful appeal to the High

Court. Hence, the present appeal.

The counsel for the respondents contended that the facts of this case are

squarely covered by the decision of this Court rendered in Union of India vs. Sanjay Kumar Jain, 2004 (6) SCC 708, particularly, the direction issued in Paragraph 9 of

the judgment. At the bar it has been conceded by Mr. T.S. Doabia, learned senior

counsel that the aforesaid judgment of this Court has been implemented. Mr. Doabia,

however, tried to distinguish the judgment on the ground that in Sanjay Kumar Jain

(supra) the disability as defined under Section 2(a)(i) and 2(b) of the Persons with

Disabilities (Equal Opportunities) Protection of Rights and Full Participation Act,

1997 (hereinafter the Act), has not been considered by this Court. According to him

the case of the respondents does not fall within the ambit of disability as defined under

Section 2(a)(i) and 2(b) of the said Act. We found that this contention has not been

raised before the tribunal as well as before the High Court. This contention has been

urged for the first time in the Supreme Court. This cannot be allowed in the facts of

this Case. We, however, keep it open to be decided in the appropriate cases whenever

raised such issue before the tribunal or before the High Court. In our view the case at

hand is squarely covered by the decision of this Court in Sanjay Kumar Jain (supra).

In the result the appeal stands dismissed. No order as to costs.

.....J.

(H.K. SEMA)

The appeal stands dismissed in terms of the signed
order. No order as to costs.

(PAWAN KUMAR)
COURT MASTER

(PREM PRAKASH)
COURT MASTER

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(signed order is placed on the file)