

**HIGH COURT OF TRIPURA
AGARTALA**

WP (C) No. 77 of 2022

Smt Mousumi Das

.....Petitioner

Vs.

The State of Tripura & 2 Ors.

.....Respondents

For Petitioner(s) : Mr. A Bhaumik, Adv.

For Respondent(s) : Mr. D Bhattacharjee, GA.
Ms. N Chakma Saha, Adv.
Mr. R Datta, Adv.

HON'BLE MR. JUSTICE S. TALAPATRA
Order

31.05.2022

Heard Mr. A Bhaumik, learned counsel appearing for the petitioner as well as Mr. D Bhattacharjee, learned GA assisted by Ms. N Chakma Saha, learned counsel appearing for the respondents No. 1 & 2 and Mr. R Datta, learned counsel appearing for the respondent No.3-Tripura Public Service Commission (TPSC).

TPSC has published their advertisement No.05/2021 (Annexure-6 to the writ petition) inviting applications for filling up of the post of LD Assistant-cum-typist, Grade-VI of Tripura Secretariat Service under the General Administration (SA) Department, Group-C non-gazetted, Government of Tripura. Out of 23 posts, two posts

have been reserved for the persons with disability. The category of the physically challenged persons have been provided in the following manner:

The Category of PH to be considered is given below:

Categories for which identified.	Functional Classification.	Physical Requirement.
Low vision	LV	S,SE(with suitable aids and appliances), H(with suitable aids and appliances), RW, C, MF, PP, L, M
Hard of Hearing	HH	S, SE, H (with suitable aids and appliances), RW, C, MF, PP, L M
Locomotor Disability including Leprosycured, Dwarfism, Acid attack victims.	OA, OL, OAL, BLOA, Leprosycured, Dwarfism, Acid attack victims.	S, SE, RW, C, MF, PPP, L, M

According to Mr. Bhaumik, learned counsel, the petitioner falls in the locomotor disability category. Typing is an essential qualification and the petitioner being physically challenged is not equipped to complete typing of 50 words per minute. As such, she is apprehensive of failure in achieving the said bench mark of typing.

Mr. Bhaumik, learned counsel appearing for the petitioner has succinctly submitted that the petitioner has applied for the posts as reserved for persons with disability. But in the form as uploaded, no space is there indicating that category.

Be that as it may, if in the physical application the petitioner has submitted the certificate of disability to the effect that she has been suffering from locomotor disability, TPSC should

consider her application in the said category of the persons with disability.

According to Mr. Bhaumik, learned counsel, the respondents No.1 & 2 have admitted in para 6 of their reply that the persons with disability are entitled to appear for the clerical post and they should be exempted from the type test if the competent State Medical Board or a registered government medical officer has certified him or her that the person is unable to type. This provision has been made in para 7(c) of the RRs issued by the GA (P&T) Department vide G.O. No.04 dated 07.11.2020, F.20(3)-GA(P&T)/19.

Mr. Bhaumik, learned counsel has also relied on a decision of the apex court in **All India Confederation of the Blind & Anr. Vs. Union of India & Anr.** reported in **(2017) 3 SCC 525**, where the apex court has observed that it is within the domain of the State Government whether they would extend some relaxation to the physically challenged candidates or not.

Mr. R Datta, learned counsel appearing for TPSC has been categorically stated that the petitioner has not stated in the writ petition that she has suffering from locomotor disability. No certificate issued by the competent medical board, has been even annexed with the petition. But in para 5, the petitioner has stated that the petitioner is physically challenged with permanent disability to the extent of 75%. That apart, the petitioner is having an

amputated left hand. Hence, she falls in the category of locomotor disability. The petitioner has been trying hard to achieve the capacity of type writing rearing her disability. But the petitioner has not achieve the capacity of type.

Mr. Datta, learned counsel has further submitted that the essential qualification for appointment to a post is for the employer to lay according to the need and nature of work. According to Mr. Datta, learned counsel, if the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. Moreover, if there is any ambiguity in the advertisement or is contrary to any rule or law, the matter has to go back to the appointing authority for appropriate order removing the ambiguities. In no case can the court in the garb of judicial review sit or occupy the domain of the appointing authority to decide what is the best for the employees and to interpret the conditions of the advertisement contrary to the plain language of the same.

Mr. Bhattacharjee, learned GA has stated that the position as taken by the respondents No.1 & 2 is in accordance with the recruitment rules. If any physically challenged candidate intends to derive the benefit out of this exemption, he or she is to achieve that benchmark as provided for exemption.

Having appreciated the submission of the learned counsel for the parties, TPSC is directed to re-scrutinize the

application of the petitioner to find out whether the disability certificate issued by the competent medical board has been filed by her or the petitioner is covered by the rules or exemption as made under GO 04 dated 07.11.2022 (Annexure-RA to the reply filed by the respondent No. 1 and 2.)

The exemption as provided by the said rule, if is applicable in the case of the petitioner that shall be extended to the petitioner. If there is no other embargo, the petitioner shall be allowed to participate in the selection process and she might be exempted from the type test.

It is to be noted that if any special skill that the petitioner has acquired, the petitioner is entitled to place the records of special skill relevant for the post to the authority at the time of selection.

In terms of the above, this writ petition stands disposed of.

There shall be no order as to costs.

JUDGE