

AMITA  
v.  
UNION OF INDIA AND ORS.

AUGUST 11, 2005

[Y.K. SABHARWAL, D.M. DHARMADHIKARI AND  
TARUN CHATTERJEE, JJ.]

*Constitution of India—Articles 14 and 16—Banking Services Recruitment Board inviting applications for post of Probationary Officers stipulating eligibility conditions of a graduate and age limit—Rejection of application by the Board of a visually impaired applicant on the ground that the posts were not identified for visually handicapped candidates—On a Writ Petition under Article 32 of the Constitution—Held, the action of the Board in rejecting the application of a usually impaired applicant, who satisfied the eligibility conditions, was arbitrary and violative of Articles 14 and 16 of the Constitution—In view of subsequent Government Notification identifying the post of Probationary Officers as suitable for usually impaired persons, the writ petition is disposed of with observations.*

**Banking Services Recruitment Board issued a newspaper advertisement inviting applications for the post of Probationary Officers in a Public Sector Bank. According to the advertisement, the applicants should be a graduate from a recognised University and within a prescribed age limit. Writ Petitioner, who satisfied both the conditions, submitted her application but it was rejected by the Board on the ground that she is a visually impaired lady. The petitioner filed a Writ Petition before the Court under Article 32 of the Constitution challenging the action of the respondents.**

**The writ petitioner contended that the action of the Board in rejecting the application was erroneous since the advertisement inviting applications stipulated only the qualification of graduation and age limit: and hence, the denial of opportunity to her on the ground of being a visually impaired lady violated Articles 14, 16, 19 and 21 of the Constitution of India.**

**The respondents contended that the application of the writ petitioner was rejected on the ground that the post of Probationary Officer was not**

**A** earmarked for visually impaired persons as per the Government of India  
Notifications; that the duties of a Probationary Officer of a Bank are very  
exhaustive, complex and difficult requiring greater alertness, presence of  
mind and maximum utilisation of the physical and mental faculties of a  
**B** person; and that, owing to nature of various duties of a Probationary  
officer in a Bank, a person of visual deficiency would not prove to be  
effective and likely to commit losses to the banking institutions as well as  
public money.

**Disposing of the Writ Petition, the Court**

**C** HELD: 1.1. The writ petitioner has satisfied the two conditions viz.  
graduation degree and age limit. Therefore, there is no reason for refusal  
to give such opportunity to the writ petitioner to write the examination  
by the Board. The fact of the grant of admit card to the writ petitioner  
by the Board in another recruitment would clearly show that the writ  
**D** petitioner could not be thrown out on the ground that she was visually  
impaired lady. The order passed by the Board rejecting the application  
of the writ petitioner was erroneous, illegal and invalid in law and therefore  
cannot be sustained. [569-D, E]

**E** *National Federation of Blind v. Union Public Service Commission &*  
*Ors.*, [1993] 2 SCC 411, relied on.

1.2. Article 14 of the Constitution of India was infringed for denial  
of permission to the writ petitioner to sit and write the examination.  
There is discrimination by the respondents between the writ petitioner  
and persons who are substantially in similar circumstances or conditions.  
**F** Therefore, the rejection of the application by the respondents was not on  
reasonable grounds and was arbitrary and violative of Article 14 of the  
Constitution which is a fundamental right of every citizen to be treated  
equally. [572-D, G]

**G** 1.3. The primary object, which is guaranteed by Article 16(1) of the  
Constitution, is equality of opportunity and that was violated by the  
Board by debarring the writ petitioner from appearing in the examination  
on the mere fact of disability which was not mentioned in the advertisement  
and which according to the writ petitioner is not an impediment for the  
**H** post. The writ petitioner, without asking for any favour, had applied for

writing the examination for selection not as a reserved handicapped candidate but as a general candidate. Hence, the action of the Board was arbitrary, baseless and was in violation of the right of the writ petitioner Under Article 16(1) of the Constitution. [573-H; 574-A, B]

1.4. In view of the subsequent Government Notification in May 2001 that the post of Probationary Officers has been identified as suitable for' visually handicapped persons and in view of the specific stand taken by the Union of India in their written submissions and affidavits and considering the fact that the writ petition was pending for more than four years, age restriction, so far as the writ petitioner is concerned, shall stand relaxed. If the writ petitioner chooses to appear as a general candidate to sit and write any forthcoming examination as a Probationary Officer of the Bank, she will be entitled to do so. If selected, she may be appointed as Probationary Officer subject to her satisfying the other terms and conditions for appointment in the said post. If the writ petitioner writes the examination as a reserved candidate that is to say on the visually impaired seat, if there be any, and she succeeds in the said examination, she can be appointed on such reserved category in the event percentage of Probationary Officer's post is kept reserved for visually impaired candidate by the respondents. [581-C, D, E, F]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 31 of 2000.

Under Article 32 of the Constitution of India.

Ms. Neeru Vaid and Ms. Eliza Rumthad for Petitioner.

Ambrish Kumar, A.D.N. Rao, A Subba Rao and Ms. Sushma Suri for the Respondents.

The Judgment of the Court was delivered by

**TARUN CHATTERJEE, J.:** Pursuant to an advertisement issued at the instance of the Banking Services Recruitment Board, Chennai ( in short "the "Board") in the Employment Newspaper dated 9-15th October, 1999 inviting applications for the post of Probationary Officers in Indian Overseas Banks, the Writ Petitioner, who is a visually handicapped lady, applied for the said post. The requisite qualifications for eligibility were:

A (a) A degree from a recognized University or any qualification recognized as equivalent by Government of India.

(b) Not below 21 years and above 30 years.

B It is not in dispute that the writ petitioner fulfilled both the requirements. The writ petitioner had sent her application along with a demand draft. While filling up the said application form, the writ petitioner mentioned that she was a blind candidate so that the Board could make adequate arrangement of a scribe for her during the entrance test as is normally done. Unfortunately, the application of the writ petitioner for writing the examination, as stated above, was returned with the following order:

C *“As we do not recruit blind candidates for the post of Probationary Officers, your application is rejected.”*

D As against this order and also for other reliefs, the writ petitioner has filed this writ application under Article 32 of the Constitution of India. After the Writ Petition was moved by the writ petitioner, on her prayer, the writ petitioner was allowed to amend the writ application in which she claimed additional reliefs which are as follows:

E (a) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to hold the entrance examination for the benefit of the petitioner under the advertisement dated 9-15th October, 1999 issued in Employment Newspaper.

F (b) Issue a writ of declaration or any other appropriate writ, order or direction declaring that the denial of opportunity to contest under general category to the visually disabled person to the post of Probationary Officer is violative of fundamental rights enshrined under Art.14,16,19(g) and 21 of the Constitution.

G (c) Issue a writ of mandamus or an appropriate order or direction calling upon the respondents to show the steps taken by them under sections 32, 33,38,42 and 47 of “The Persons with Disabilities (Equal Opportunities etc.) Act 1995” (hereinafter in short “The Act of 1995).

H On behalf of the writ petitioner, Ms. Neeru Vaid contended that the

order passed by the Board rejecting the application of the writ petitioner on the ground that since the writ petitioner being a visually impaired lady could not be recruited in the Bank for the Post of Probationary Officers, was erroneous on its face as in the advertisement the requirements of the Board were only to the extent that a candidate should not be less than 21 years and not above 30 years and he or she should be a Graduate. It was also argued that denial of opportunity to sit and write the examination in question also violated Articles 14 & 16, 19 & 21 of the Constitution of India. On the other hand, the learned counsel for the respondent urged that since the post of Probationary Officer was not earmarked for visually impaired persons the rejection of the application of the writ petitioner was valid.

Having heard the learned counsel for the parties and after going through the materials on record, we are of the view that the order passed by the Board rejecting the application of the writ petitioner on the aforesaid ground cannot be sustained. As noted hereinafter, the requirements asked for by the Board for writing the examination for appointment to the post of Probationary Officer in the Bank were that a candidate shall not be less than 21 years and not above 30 years and that the candidate must possess a Graduation degree. There is no dispute that the writ petitioner has satisfied the aforesaid two conditions. That apart, the writ petitioner although being a visually impaired lady had applied to write the examination for the post of Probationary Officer of the Bank as a general candidate and therefore we do not find any reason why such opportunity to write the examination should be refused by the Board. That apart, we find that the writ petitioner had also applied to B.S.R.B. Bangalore for the same post. There she had mentioned the fact of her disability on the application form and in spite of informing the Board she had received the admit card for the entrance test which was held on 20th February 2000 and such grant of admit card would clearly show that the writ petitioner could not be thrown out on the ground that she was visually impaired lady, who could not be allowed to sit and write the examination for the post of Probationary Officer in the bank.

This question is, however, concluded by a decision of this Court in *National Federation of Blind v. Union Public Service Commission & Ors.*, [1993] 2 SCC 411 which was rendered on a writ application filed for direction for permission for the visually impaired persons to compete and write Civil Services Examination and also for being given preferential treatment in respect of the identified post. It is also important to mention that the said

A decision of this Court in *National Federation of Blind v. Union Public Service Commission & Ors.* also observed as follows:

B “The question of giving preference to the handicapped in the matter of recruitment to the identified posts is a matter for the Government of India to decide. The matter is pending for decision with the Government of India for the last several years. While appreciating the handicapped persons we commend the Government of India to decide the question of providing preference/reservation to the handicapped in Group A and B posts as expeditiously as possible..”

C Again at Page 416 of the said decision of this Court it observed as follows:

D “The list of category A & B posts identified as suitable for the visually handicapped by the committee includes number of posts which are filled as a result of the civil services examination. When there are posts to which blind and partially blind can be appointed, we see no ground to deprive them of their rights to compete for those posts along with other candidate belonging to general category.”

E Finally this Court directed the authorities to permit the visually impaired persons to compete the Civil Services Examination. While appreciating the handicapped persons this Court commended the Government of India to decide the question of providing preference/reservation to the handicapped in Group A & B posts as expeditiously as possible. This Court in the aforesaid decision also observed that the list of jobs identified by the committee as suitable for being held for physically handicapped persons was not exhaustive and that the Ministries/Departments can further supplement the list based on their knowledge for jobs requirements, essential qualifications etc.

G From the aforesaid decision of this Court, it would also be clear that the only restriction which can be spelt out from the ratio of that decision was whether the post in respect whereof the petitioner sought consideration was whether *the post is liable to be considered as totally unsuitable* for visually handicapped person *having regard to the nature of duties* attached to the office/post.

H (Emphasis supplied)

From the aforesaid observations of this Court, we are confident that the visually impaired candidate would be entitled to sit and write the examination for selection for the post of Probationary Officer in a Bank but only restriction that would be standing in the way of the writ petitioner for selection is that the nature of duties attached to the office/post would be unsuitable for the visually impaired candidate. Accordingly, we are of the view that the order passed by the authorities rejecting the application of the writ petitioner on the ground shown in the order was erroneous, illegal and invalid in law and therefore cannot be sustained. In any view of the matter, so far as prayer for permitting the writ petitioner to sit and write the examination for the year in question of which rejection order was passed, in our view, the Writ Petition had rendered infructuous as it is now an admitted position that the examination for selection in the post of Probationary Officer in the Bank of the year in question was held, result was subsequently published and the vacancies were duly filled in by making appointments on the basis of such selection of candidates. In view of the other reliefs prayed by the writ petitioner in the amended Writ Petition, the question now needs to be decided is whether the writ petitioner being a visually impaired lady would be allowed to sit and write the forthcoming examination for the post of Probationary Officer and can be appointed in such post, in view of nature of duties attached to a Probationary Officer. As found herein earlier, it cannot be doubted that a visually impaired candidate is entitled to sit and write the Probationary Officer examination along with other general candidates where any post is not earmarked for handicapped persons, as a general candidate.

Taking our findings, as made herein earlier to the extent that the writ petitioner was entitled to sit and write the examination for selection of Probationary Officer in the Bank, let us now proceed to consider whether the writ petitioner would be entitled for appointment in the post of Probationary Officer of the Bank in question, if successful in the written examination in view of the nature of the job to be performed as Probationary Officer. Before we deal with this aspect of the matter, we may take into consideration yet another aspect of the matter, namely, whether denial of permission to the writ petitioner to sit and write the examination for the post of Probationary Officer in the Bank offends Articles 14 and 16 of the Constitution of India. Article 14 of the Constitution of India guarantees to every citizen of India the right to equality before the law or the equal protection of law. The first expression "equality before the law" which is taken from the English common law, is a declaration of equality of all persons within the territory of India, implying

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- A thereby the absence of any special privilege in favour of any individual. It also means that amongst the equals the law should be equal and should be equally administered and that likes should be treated alike. Thus, what forbids is discrimination between persons who are substantially in similar circumstances or conditions. It does not forbid different treatment of unequal.
- B Article 14 of the Constitution of India is both negative and positive right. Negative in the sense that no one can be discriminated against anybody and everyone should be treated as equals. The latter is the core and essence of right to equality and state has obligation to take necessary steps so that every individual is given equal respect and concern which he is entitled as a human being. Therefore, Art.14 contemplates reasonableness in the state action, the absence of which would entail the violation of Art.14 of the Constitution.
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- In our view, and in view of the discussions made herein earlier, in the facts and circumstance of this case, Art.14 was infringed for denial of permission to the petitioner to sit and write the examination for selection of Probationary Officers. As noted herein earlier, writ petitioner was not allowed to sit for the competitive examination for the post of the Bank Probationary Officer on the ground that she was visually impaired candidate although the advertisement in the newspaper did not disclose that a visually impaired candidate cannot be allowed to sit and write the examination as the nature and duty of the job were not suitable for the visually impaired candidate. It is not in dispute that the writ petitioner had qualified for the post of Bank Probationary Officer as per the advertisement. Statement has been made in the writ petition by the writ petitioner to the effect that the writ petitioner like other visually impaired persons can perfectly perform the job of a Probationary Officer. She also applied for the same post to the B.S.R.B. and received her admit card for the same. Thus, there is discrimination by the respondent No.2 between the writ petitioner and persons who are substantially in similar circumstances or conditions. Here the writ petitioner was not allowed to sit for the entrance examination and hence was discriminated against the others who qualified for the same entrance examination. Therefore, the rejection of the application by the respondents besides the ground already stated hereinafter, was not on reasonable grounds and was arbitrary and violative of Art. 14 which is a fundamental right of every citizen to be treated equally. In this connection, it is stated by the writ petitioner that a visually impaired lady Ms. Nafisa is now functioning as a Probationary Officer in one of the Central Bank of India situated at Bombay. Under Art.16 of the Constitution the general rule laid down is that there should be equal
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opportunity for citizens in matters relating to “employment” or “appointment to any office” under the State. The expression “matter relating to employment or appointment” includes all matters in relation to employment both prior and subsequent to the employments which are incidental to the employment and form part of the terms and conditions of such employment. Therefore, under Art.16 of the Constitution what is guaranteed is the equal opportunity to all persons. This Clause accordingly does not prevent the state from laying down the requisite qualifications recruitment for government service, and it is open to the authority to lay down such other conditions of appointment as would be conducive to the maintenance of proper discipline among government servants. Like other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But this can only be done only on one condition that all applicants must be given an equal opportunity along with others who qualify for the same post. The selection test must not be arbitrary and technical qualifications and standards should be prescribed where necessary. In this case, in our view, there is violation of the right of the writ petitioner under Art. 16(1) which provides for general rule, that there should be equal opportunity for citizens in matters relating to “employment” or “appointment to any office” under the State, matters incidental to employment both prior and subsequent to the employments which form part of the terms and conditions of such employment. In this case, the writ petitioner was in the first instance denied equal opportunity as given to other applicants from appearing in the entrance examination on the ground of disability which was not mentioned as a condition in the advertisement. That apart, the writ petitioner, although a visually impaired lady had not asked for any special favour for the post of Probationary Officer for selection in the post of Probationary Officer. The writ petitioner without asking for any favour had only applied for writing the examination for selection not as a reserved handicapped candidate but along with general candidates who were allowed by the Board to sit and write the examination. Since the writ petitioner was similarly situated with other general candidates, and the writ petitioner had not asked for any advantage for being a visually impaired candidate, we failed to understand why she was not permitted to sit and write the examination for the post of Probationary Officer in the Bank..

At the risk of repetition, it may be reiterated that writ petitioner fulfilled all the conditions mentioned in the advertisement for the post. The primary object which is guaranteed by Art. 16(1) is equality of opportunity and that

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A was violated by the Board by debarring the writ petitioner from appearing in the examination on the mere fact of disability which was not mentioned in the advertisement and which according to the writ petitioner is not an impediment for the post. We are therefore of the view that the action of the Board was arbitrary, baseless and was in violation of the right of the writ  
 B petitioner under Art. 16(1) of the Constitution. Further discussion on violation of Articles 19 and 21 of the Constitution would not be necessary in view of the stand taken by the authorities in their written submissions, affidavits and rejoinder affidavits filed on different dates.

C Let us now consider whether the writ petitioner was entitled to be selected and appointed as Probationary Officer in the Bank in view of the nature of duties to be performed by her as Probationary Officer.

D Before we take up this question for decision we keep it on record that this petition under Art. 32 of the Constitution was entertained by this Court on 8th May 2000. This Court granted four weeks time to the respondents to file a counter affidavit. However, pending hearing of the writ petition, this Court passed an interim order to the effect that in the meantime, if all the posts were not filled up, one post shall not be filled up till further orders from this Court. Subsequently, on 1st August 2000 counter affidavit was filed by  
 E the Board in which it was, *inter-alia*, stated that the post of Probationary Officer was not identified for the "Blinds" under the Notification of the Department of the Personnel and Training dated 25th November 1986. The Board also in their counter affidavit stated that the reason for rejection of the application of the writ petitioner was due to the fact that the posts of Probationary Officers were not identified posts for visually handicapped  
 F candidates. In the counter affidavit, the Board had relied on a Circular issued by the Govt. of India, Department of Personnel and Training O.M. No.F. 36034/4/ESTT. (SCT) dated 25th November 1986 which identified post of General Banking Officer as suitable only for the following 4 categories:-

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1. BL—Both legs affected but not arms
  2. OS—One arm affected (R or L)
  3. OL—One leg affected (R &/OL)
  - H 4. MW—Muscular weakness and limited physical endurance.

In view of the above and in view of the assertions made by the Board in their counter affidavit regarding the capability of a blind person to serve the post of Probationary Officer in the Banks, it was stated that the application of the writ petitioner who being a visually impaired candidate was rightly rejected by the Board. That apart, it was specifically stated in the counter affidavit that the nature of job of a Probationary Officer demands performance of various types of jobs under different Departments like Savings Bank and Current Account, other term deposits, collecting and clearing (inward and outward Bills), Cash counter and recounting of currency notes and remitting excess cash balance. It was further asserted by the Board that various duties and responsibilities of an officer in the above departments were only illustrative and not exhaustive, and that it was expected of a Probationary Officer to make himself/herself available for the services of the Bank as per the exigencies of service. Apart from that, the function of the Bank has now become far more varied and diversified with the advent of liberalization of economy, so that the duties and functions of a Bank Officer have become more complicated, complex and difficult requiring greater alertness, presence of mind and maximum utilization of all his/her physical and mental facilities. In the counter affidavit, the Board also categorically has stated that the job of a Probationary Officer is not a specialist officer's job and a Probationary Officer is also transferred from one station to another during his/her tenure. The officer in Savings Bank Account/Current Account Department is required to verify the specimen signature of the customers while passing cheques for payment. At the same time the Probationary Officer concerned should also know the customers who come to Bank on and off for transacting business and that it would not be possible for a blind officer to get to know about the customers and verify their signatures for day-to-day banking transactions. According to the respondents, and considering all these patent impediments and constraints the Government of India did not identify the post of Probationary Officers for "Blinds". Subsequently a written submission was filed by the respondent No.1 Union of India in which it has been clearly stated that the scheme of reservation to physically handicapped persons has been in vogue in respect of Group C & D employees in the Central Government Services. This policy has also been extended to Public Sector Banks. However, there was no such reservation in Group B and A services of the Central Government. Accordingly, there was no reservation for physically handicapped persons including visually handicapped in any of the post under the officers category in Public Sector Banks till the enactment of the Act 1995 which came into force from January 1996. The then Ministry of Welfare which is now renamed as Ministry of Social Justice and

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A Empowerment had identified various posts in Group C & D in which reservation to physically handicapped candidates, namely, Orthopaedically handicapped, hearing impaired and visually handicapped for recruitment should be provided on percentage basis. In spite of this stand, there was no reservation in Group A & B services at that stage. As noted herein earlier, it was brought to the notice of this Court by the respondent No.1 in their written submission that the post of General Banking Officer could be identified as suitable for the following four categories under the Orthopaedically handicapped category.

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- a. BL—Both legs affected but not arms
  - C b. OA—One arm affected (R or L)
  - c. OL—One leg affected (R or L)
  - d. MW—Muscular weakness and limited physical endurance.

D From the written submission it would also be evident after the introduction of reservation to persons with disabilities under the Act 1995, the Ministry of Social Justice and Empowerment had advised all the Government Departments to provide reservation in the posts in Group A and B which were identified as suitable for a particular category of physically handicapped as per list provided by them earlier in 1996. A committee was set up by the Ministry of Social Justice and Empowerment for fresh identification of various posts in Group A & B in which reservation should be provided to different categories of disabled persons. It was the further case of the Union of India in their written submission that the post of Probationary Officers for which entrance tests are conducted by different BSRB including the Board are the posts which are identified as a suitable post only to Orthopaedically handicapped persons of the description as noted above. Thus, neither visually handicapped nor hearing impaired was suitable for the post of General Banking Officers.

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G According to the Board, the reason behind such identification was that a Banking Officer working generally in the branches and other public offices are required to verify the legal documents including cheques, drafts, bankers cheques etc. and such officers have to have close interactions with the public members, senior officials of the organization as well as various public institutions etc. For the aforesaid reason a person of visual deficiency may not prove to be effective and likely to commit losses to the institutions as well as public money.

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On 30th November 2000, this Court granted six weeks time to the learned Solicitor General for filing the necessary order and passed the following order:

“the learned Solicitor General appears and submits that keeping in view humane aspects of the problem, he would examine and discuss the matter after summoning concerned officials and file an affidavit by the next date indicating *such posts as in the Banking Division of the Ministry of Finance where visibly handicapped candidates may be considered for appointment.* He also submits that he would impress upon the concerned ministry to take steps for revision of the list which was formulated as early as in 1986.”

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The writ petitioner on 23rd December 2000 filed an additional affidavit to bring certain additional facts before this Court. The petitioner pointed out that she was undergoing an advanced diploma course in computer application and access technology. This course would enable her to use computer as an effective tool for reading hard copy printed text, to create and edit documents, to browse the web and send mails in general to use the computer for any general or customized software independently. The petitioner also brought to the notice of this Court that the National Association for the Blind also recommended for identification of category A & B posts for the visually challenged persons in the Nationalised Banks including State Bank of India and Reserve Bank of India to the standing committee for identification of jobs for the handicapped, Department of Personal & Training. The association had brought to the notice of the committee that “visually handicapped persons in the absence of sight are suitably trained to develop their auditors, tactile and kinesthetic senses and are imparted by knowledge by training in computers, Braille and mobility. The specialized training helps them to develop complete personality with good communication skills and socially desirable mannerism whereby they can optimally utilize their mental faculty to take decision in policy matters and discharge of duties that may be assigned to them.” The association also quoted examples of various visually disabled persons working in the managerial classes and after careful consideration has recommended list of posts which can be identified (like Faculty Member/ Training Manager, Administrative Officials, Economic Affair Officers, Raj Bhasha Adhikari/Hindi Officer, Law Officer etc.) for the visually handicapped persons in the Nationalised Banks.

The writ petitioner also pointed out that by an order dated 7th August

A 2000 of the Chief Commissioner of Disabilities in Case No. 7/1999 *Rajni Kant Bansal v. General Manager, Union Bank of India* wherein the Bank modified its recruitment and promotion policy to bring it in alignment with the Persons with Disabilities Act, 1995 and resolved that one percent of the posts be reserved for the visually handicapped from clerical cadre to Officer  
B Cadre. On 5th June 2001, this Court passed the following Order:

C “This is a typical case showing how the laudable object with which the Parliament enacted Disability (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995 and framed rules 1996 is being frustrated by non-implementation of that Act by  
D the concerned authorities. The list drawn up in 1986 was sought to be revised and we are informed by the learned Solicitor General that an Expert Committee was constituted to revise the 1986 list in 1998. It was re-constituted in July 1999. The reconstituted committee also did not submit its report and about three months after its constitution it formed up three sub-committees, which also seem to have done nothing so far.

We are pained and distressed at this apathy being shown towards the unfortunate disabled and handicapped. The attitude of indifference causes us concern.

E We direct and hope that within two months the sub-committees would submit their report and within three months from this date, the Expert Committee would furnish the revised list to the Government that shall be placed in record in the Court.”

F On 20th April 2001 this Court granted the prayer of learned Solicitor General when he submitted that the reconstituted Expert Committee has already submitted its report on 3/3/2001 and as a result thereof many categories have been added in the list pertaining to Groups A,B,C and D posts and this Report has been sent to the concerned Ministry for consideration and that within six weeks he shall be in a position to place the copy of the report  
G together with the follow up action taken by them on the affidavit.

On 25th January 2002 this Court passed the following order:

H “The response from the Union of India is not forthcoming. In view of the earlier adjournments granted, we give a last opportunity of two weeks on a prayer made by the learned counsel for the Union

of India subject to the payment of Rs.10,000 (payable Rs.5,000 to petitioner and Rs.5,000 to Supreme Court Legal Services Committee) by way of costs. In the event of a response forthcoming in two weeks positively, costs shall stand waived.”

Subsequent to this another affidavit was filed by the Union of India on 8th February 2002 in which it has been stated that the Ministry of Social Justice and Empowerment of the Government of India in pursuance of provisions of section 32 of the said Act 1995 had constituted an Expert Committee on 2nd July 1999 under the Chairmanship of the Additional Secretary, Ministry of Social Justice and Empowerment to identify/review the posts in Group A,B,C and D to be reserved for the Persons with disabilities in its Ministries/Departments and Public Sector Undertakings.

In this affidavit, the Union of India has further stated that due to the order of this Court dated 5th January 2001 which directed the Government to do the needful within three months, the Expert Committee had finalized its report by holding proper consultation with all concerned like The Indian Banks Association and submitted its report on 3rd March 2001. In this affidavit the Union of India for the first time has come forward to say that the *post of Probationary Officer Grade “A” has also been included in the posts identified as suitable for the blind by its committee.* This report was circulated to all Central Ministries/Departments to obtain their comments on the recommendations/posts identified by the Expert Committee. But before the responses could be received or attended as there was an urgency to notify the report of the Expert Committee to enable the persons with disabilities to avail of the benefits of reservation against the newly identified posts, the Government notified the report by Notification dated 31st May 2001. The Ministry of Social Justice published the recommendation of the Expert Committee in the Gazette on 30th June 2001. It was further alleged that while the committee agreed that the work can be performed by one who can see, read and write, the job (Probationary Officer “A”) has been identified as suitable for the blind or persons with low vision. But the Indian Banks Association pointed out all jobs of officers in Public Sector Banks cannot be performed by the visually handicapped persons and they suggested that only a few of jobs like officer (Marketing), Officer (Publicity ) can be performed by the visually handicapped persons.

Another affidavit on behalf of Union of India was also filed which states that *the post of Probationary Officer Grade “A” has been identified as*

A *suitable for the visually handicapped for the first time by a Notification dated 31st May 2001 and published in the Gazette dated 30th June 2002.*

On 2nd May 2002 this Court passed the following order:

B “To protect the interest of the petitioner it is directed that the time spent during these proceedings shall be excluded while calculating the upper age limit prescribed for appointment on any post to which the petitioner may be found eligible at the end...Looking to the importance of the matter we think it would be proper if the hearing is taken up by a three Judge Bench. We request the learned Solicitor General to assist the Court and in case it is not convenient for him to do so then any learned Additional Solicitor General may be instructed by him to assist the Court.....”

C Finally on 22nd December 2004 the written submission was filed on behalf of the Union of India in which it has been stated that any discrepancies observed in the list identified posts will be rectified during the review of the list proposed to be done shortly and proposal is under active consideration. It was further stated that the *writ petitioner being a visually impaired candidate has to either appear in the examination for selection under the reserved category or she can appear with the general candidates. It was further clarified that if she wants to appear as a general category candidate then she has to compete with the general category candidates only and she cannot be given any weightage as the same would amount to discrimination to others competing with her in the said category.*

D It further clarified the position that OM No. 36035/4/2003-Establishment dated 8.7.2003 provided that the vacancies reserved for any category need to be filled by persons belonging to that category and such vacancies are not open to others. *On the other hand, unreserved vacancies are open to all and reserved category candidates cannot be denied the right to compete for appointment against such vacancies, provided they are otherwise eligible.*

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F In view of this specific stand taken by the Union of India in their written submission and affidavits as detailed herein earlier, by which the Union of India has categorically stated that a visually impaired candidate would be entitled to write the examination and compete the same along with other general candidates as if she was a general candidate in the said examination

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and in the event he/she wants to compete the examination on reserved category in that case also he/she will be entitled to sit as a reserve candidate in the said examination when some percentage of the posts are earmarked for visually impaired candidates. It is needless to say that the Union of India and Bank Authorities have therefore admitted that the nature of duties of a Probationary Officer can be performed by a visually impaired candidate and some percentage of impaired candidates are entitled for being selected and appointed as Probationary Officers of the Bank either from the general category or from the reserved category.

In view of the specific orders passed by this Court pending hearing of the writ petition and considering the fact that this writ petition was pending for more than a period of four years, age restriction, so far as the writ petitioner is concerned, shall stand relaxed.

Accordingly, the writ application is disposed of in the following manner:

- (1) If the writ petitioner chooses to appear as a general candidate to sit and write any forthcoming examination as a Probationary Officer of the Bank, she will be entitled to do so.
- (2) If selected, she may be appointed as Probationary Officer subject to her satisfying the other terms and conditions for appointment in the said post.
- (3) If the writ petitioner writes the examination as a reserved candidate that is to say on the visually impaired seat, if there be any, and she succeeds in the said examination, she can be appointed on such reserved category in the event percentage of Probationary Officer's post is kept reserved for visually impaired candidate by the respondents. In the facts and circumstances of the case, there will be no order as to costs.

B.S.

Writ Petition disposed of.