



सत्यमेव जयते

19

न्यायालय मुख्य आयुक्त दिव्यांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment
भारत सरकार/Government of India

Case No. 12638/1011/2021

Complainant:

Shri Kshitij Ahuja,
C 9, Rashmi Apartments,
Harsh Vihar,
Pitampura,
Delhi – 110 034.

R-28223

Versus

Respondent :

Software Technology Parks of India,
(Through the Director General),
1st Floor, Plate 'B',
Office Block-1,
East Kidwai Nagar,
New Delhi – 110 023

R-28224

Disability : 90% Hearing Impaired

Gist of Complaint:

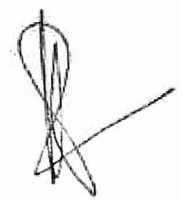
Shri Kshitij Ahuja, the complainant aged 36 years vide his complaint dated 03.03.2021 submitted that he had applied for the post of Member Technical Staff-E-III (Scientist 'D') against the Recruitment Advt. No.2(5)/I/STPI-HQ/2019-20 of Software Technology Parks of India in August 2020. In the advertisement it was mentioned that during selection preference will be given to candidates having hearing impairment and suitable relaxation will also be given. The complainant exceeds the experience requirement for the said post and has 58.98% marks against 60% required marks. His application has been screened without according 5% relaxation in marks which is in contravention to the respondent's own advertisement. This is a violation of RPwD Act, 2016. The complainant has requested to direct the Respondent to given 5% relaxation in marks for the said vacancy.

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2. The Respondent vide letter dated 24.03.2021 submitted that they had advertised 03 vacancies (UR-1, SC-1, OBC-1) to the post of Member Technical Staff (MTS) E-III (Scientist -'D') in Level-12 vide Employment Notice No.2(5)/STPI-HQ/2019-20 on 19.08.2020 inviting application from the eligible candidates meeting the advertised essential qualification and experience. The vacancies were reserved for PwD candidates. The complainant had also applied against the said employment notice. The complainant's application could not be shortlisted for further process as he was not meeting the requisite essential educational qualification criteria. He possesses 2nd Division in BE against the requirement of 1st Division. The eligibility of the candidates has been determined in terms of educational qualification, experience, age etc in accordance with the condition mentioned in the employment notice. The complainant himself has admitted that he possesses 2nd Division in BE with 58.98% marks against the requirement of 1st Division. The complainant has claimed that he did not find response to his emails inter-alia to the respondent organization. In this connection, the Respondent has stated that the complainant had filed a similar grievance online on CPGRAM on 21.02.2021 vide Registration No. MINIT/E/2021/00737. The reply against his grievance has already been sent to him by the Respondent vide email dated 01.03.2021. The Respondent further stated that they have appointed a Grievance Office vide Order dated 11.04.2011 who is looking after the complaints received from PwDs.

3. **Hearing** : An hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 05.07.2021.

4. The following persons were present during the hearing ;
- 1) Complainant: Shri Kshitij Ahuja in person
 - 2) Respondent: Shri Rakesh Gairola for Respondent



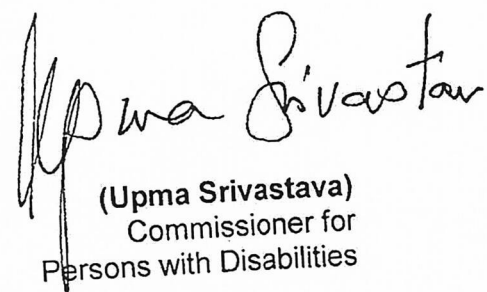
Observations & Recommendations

5. Complainant submits that the Respondent establishment conducted recruitment examination for the appointment of member technical staff – E-3 (Scientist D). As per the advertisement issued by the respondent, eligibility criteria for applying for the post was bachelor degree in engineering with first class marks (60%). Complainant scored 58.98% marks and in his bachelor degree course. His application was screened out and he was not given opportunity to appear in the examination. He claims that relaxation of 5% marks was not extended to him.
6. Respondent submits that total number of vacancies advertised were three. No vacancy was reserved for PwBD category. Since, the complainant did not score first class marks in his bachelor degree, therefore, his application was screened out. 5% relaxation was not given because there was no reservation for PwBD category.
7. Issue is whether relaxation can be given to the Complainant even if no vacancies were reserved for PwBD candidates.
8. Hon'ble Delhi High Court in MANEESH SHARMA v. LT. GOVERNOR & ORS.; W.P. (C) 747/2018 held that there is a clear-cut distinction between grant of reservation viz. grant of relaxation; both these aspects lie in separate domains. While reservation for physically handicapped candidates is statutorily mandated under the PWD Act, grant of any relaxation to such candidates would be for the employer to examine after taking into consideration the nature of duties required to be discharged on the post as also the number of candidates from the said category who may be found to be eligible for the said post. It may be possible that an establishment decides to reserve some vacancies for PwBD candidates in accordance with rules and guidelines even if no such vacancies are reserved in accordance with rules and guidance. Such establishments are not stopped from extending relaxation in eligibility criteria.



9. Another aspect related to relaxation is that there is no rule or guideline which lays down that relaxation in eligibility criteria shall be automatically granted to PwBD candidates. Hence, it is prerogative of the employer to decide the nature and quantum of relaxation. Such decision must be in accordance with the Recruitment Rules of the employer. If recruitment rules are silent on this aspect then such decision shall be taken after taking into consideration the nature of duties needed to be discharged on the post and number of PwBD candidates may be found eligible.
10. Respondent submitted that written examination has been conducted for the present recruitment process. Hence, this court concludes that it would not be fair to disturb the current recruitment cycle.
11. This court recommends that even though Respondent is not bound by statutory duty to provide relaxation in eligibility criteria, with objective of following the principles laid down in RPwD Act 2016 in spirit, Respondent may extend relaxation in eligibility criteria to PwBD candidates in recruitment process in future.
12. Further, this court recommends that if Recruitment Rules of the Respondent establishment provides for relaxation in eligibility criteria to PwBD candidates, Respondent shall extend such relaxation even if no vacancies are reserved for PwBD candidates.
13. The case is disposed off.

Dated: 02.08.2021


(Upma Srivastava)
Commissioner for
Persons with Disabilities