



न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.1366/1024/2014

Dated:-12.09.2014

In the matter of:

Shri Naresh Kumar,
National Informatics Centre,
Department of Information Technology,
A-Block, CGO Complex,
Lodi Road,
New Delhi-110003.

..... Complainant

Versus

National Informatics Centre,
(Thru the Director General),
A-Block, CGO Complex,
Lodi Road,
New Delhi-110003.

.... Respondent

Date of hearing : 30.07.2014

Present :

1. Shri Naresh Kumar , Complainant alongwith Shri A.K. Bhalla.
2. S/Sri M.M. Sudan, Advocate, G.N. Kalia, JD & Rakesh Negi, Assistant on behalf of the respondent.

ORDER

The above named complainant, a person with 40% locomotor disability filed a complaint dated October, 2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding concealment of vital facts by the representatives of National Informatics Centre (NIC) during the hearing on 13.09.2011.

2. The complainant submitted that as per the information received by him through RTI, there is no transfer policy in NIC, which is in contradiction of the statement given by the representatives of NIC during the hearing. He also submitted that from the information received by him through RTI application dated 18.04.2011, it is revealed that the transfer requests of four Section Officers were not pending since 1998, 2001 and 2005 which again contradicts with the facts mentioned in para 8 and 10 of the above referred ROP as given by the NIC officials during the hearing. The complainant further submitted that one Shri B.B. Tripathy, Section Officer posted at NIC, Assam State Unit whose transfer was approved for NIC, Headquarter, New Delhi neither requested for his transfer from NIC, Delhi nor joined at NIC, Delhi, so far. As per the complainant, that fact has been concealed by the

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representatives of NIC during the hearing held on 13.09.2011. The complainant also cited the example of four other employees, i.e. Smt. Ambika Krishnan, Smt. Anju Syal, Shri U.K. Verma and Shri Prem Kumar Khoba, whose transfer orders were cancelled and who were retained at New Delhi on their promotion in the year 2006, which representatives of the respondent concealed from the court.

3. The matter was taken up with the respondent vide this Court's letter dated 03.12.2013.

4. The respondent vide their written reply dated 17.01.2014 submitted that the present case was not maintainable and barred by principle of res-judicata, as the complainant on the same grounds and pleadings had approached to this Court by preferring Case No.189/1028./11-12; approached the Central Administrative Tribunal and Hon'ble High Court of Delhi by filing OA No.1300/2012 and Writ Petition No. 6020/2013 respectively. The points raised by the complainant in the present case were considered by the Hon'ble High Court of Delhi. Therefore, the Writ Petition No. 6020/2013 filed by the complainant was dismissed by the Hon'ble High Court vide order dated 23.09.2103. The respondent in their revised written reply quoted the Hon'ble Tribunal's Order dated 31.01.2013 and Hon'ble High Court of Delhi's Order dated 23.09.2013. The same are reproduced below:-

Central Administrative Tribunal, Principal Bench, New Delhi.

"5. We have heard the learned counsel for the Applicant, Shri Nitin Bhatia and the learned counsel for the Respondents, Shri M.M. Sudan. The Applicant himself was also present in the court along with his counsel. First of all, we observe that according to the Annexure A-2 Certificate dated 04.10.1986, the Physical Disability of the Applicant is limited to "Crush Injury Right Hand with Traumatic imputation Right Ring Finger through Proximal Phalynx with Flexiom contracture of middle and little fingers" and "there is partial loss of hand functions." In other words, the Applicant's Right Ring Finger has been amputated due to that. Otherwise he is not suffering any other physical deformity and handicappedness. The Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India has also, as stated above, taken up the Applicant's case with the Respondents. Applicant has been making complaints against the respondents with the Commissioner. Finally, the Commissioner, taking into consideration of examination of the case of Applicant, vide his order dated 12.10.2011 held as under:-

"The overall facts and circumstances of the case and the nature of degree of disability of the complainant held that the Applicant's case not worthy to be taken up with NIC to reconsider the decision of the competent authority and to retain him in Delhi at the stage of promotion."

6. In view of the above position, we do not find any merit in the contention of the Applicant that because of the aforesaid physical disability, he should have the protection of the Office Memorandum dated 10.05.1990 and 13.03.2002 issued by the Department of Personnel and Training. Accordingly, the OA is dismissed. There shall be no order to costs."

High Court of Delhi at New Delhi.

"Para 14. We have advised the petitioner that if this is his real problem it would be advisable for him to join at Shimla and take benefit of the promotion order and get himself examined by a doctor at Shimla when winter sets in the month of November in Shimla town; and if the doctor opines that due to the onset of winter the handicap of the petitioner is aggravated, to make

a representation to the competent authority to consider posting petitioner to a place which is not a hill station and preferably somewhere around Delhi.”

The panel of the DPC held in December, 2010 in which the name of the complainant was there had already expired in December, 2011. The new Departmental promotion Committee for DPC quota for the year 2012 met on 13th July, 2012 and gave its recommendations and accordingly the promotions were notified. Therefore, the complainant is not maintainable and liable to be dismissed.

5. A copy of respondent's reply dated 17.01.2014 and 13.02.2014 was forwarded to complainant vide letter dated 23.01.2014 and 13.03.2014 respectively for submitting the comments.

6. The complainant vide his rejoinder dated 10.02.2014 and 21.04.2014 respectively submitted that his present complaint dated 3.10.2013 may please be treated as a fresh case and Smt. Prasanna Mohanan, Joint Director, NIC and Shri N.S. Rawat, Deputy Director, NIC who made false statement and concealment facts during the hearing on 13.09.2011 be made party individually. The complainant further submitted that the reply filed by the respondents be rejected only on the basis that first, declaration has been made by Shri S.P. Sharma, being Deputy Director in the Department whereas the reply has been signed by the Joint Director which itself is a violation/abuse of the process of the Commission/Law hence the present reply may not be taken on record and proceedings against the respondents may be initiated ex-parte. That even the above said case has been filed by the complainant against the respondent by name i.e. on their individual capacity and the reply so made by the two officers which are not party in the above said matter which itself shows little regard/respect the respondents have for this Hon'ble Court. Moreover, no record has been made available in support of their contentions in their reply and even no authorization letter had been made by the respondents to file the reply on behalf of them.

7. Upon considering the written submissions of the respondent and the complainant, a hearing was scheduled on 30.07.2014.

8. Reiterating his written submissions, the complainant emphasized that the respondent has concealed important facts inasmuch as the respondent organization does not have any transfer policy although according to the complaint that they have one. The complainant further alleged that he was discriminated against as not a single Section Officer with disability is in Delhi. The complainant further submitted that the decision vide RoP dated 12.10.2011 was based on the false statement/false documents produced by the respondent (NIC).

9. Refuting the allegations of the complainant, the Ld. counsel of the respondent stated that there was absolutely no concealment on the part of the respondent organization. He further added that the matter was decided in favour of the respondent (both in original application and also in the Review Petition) both by the Central Administrative Tribunal as well as by the Delhi High Court. Thus, according to the Ld. Counsel of the respondent, the complainant has no locus standi in the matter nor can this Court adjudicate upon this. He also referred to an earlier decision of this Court in Case No.189/1028/11-12 dated 12.10.2011, wherein primarily, the decision of this Court was based on the two DoP&T's O.M. No. AB 14017/41/90-Estt. (RR) dated 10.05.1990 and No. A-B 14017/16/2002-Estt. (RR) dated 13.03.2002 and the nature and degree of the disability of the complainant.

10. It is observed from the present complaint dated October, 2013, received in this office on 03.10.2013 that the complainant filed the said complaint alleging false statement/vague statement/concealment of facts by the representatives of the respondent who appeared in the hearing on 12.09.2011 and sought the following reliefs:-

- “(i) To take the appropriate legal action against the above said respondents and may punish in accordance with rule/law.
- (ii) To pass any such/further order as may be deem fit and proper in the interest of this Court.”

11. It is further observed that although the complainant had already approached the Hon'ble Administrative Tribunal, Principal Bench by way of OA followed by Review Application and then approached the Hon'ble Delhi High Court, yet the same was not mentioned in his complaint. As a result, the complaint was processed and was taken up with the respondent-NIC. It was only after the respondent filed the reply that this Court came to know about the fact that the complainant had approached CAT and Hon'ble Delhi High Court, who rejected his application/petition. The complainant could have brought all the material facts to the notice of the Hon'ble Tribunal as well as the Hon'ble High Court.

12. After a meticulous consideration of the facts of the case, this Court is not convinced that there has been any concealment of any material fact which would have substantially and fundamentally influenced or altered the order of this Court in case No. 189/1028/11-12. Besides, any one of ordinary prudence would understand that if any fresh fact did at all arise in the matter, the complainant should have gone to the appropriate higher forum where the matter was adjudicated upon.

13. In the above view of the matter, this Court is unable to pass any direction on the reliefs sought by the complainant.

14. The matter stands disposed off accordingly.

Sd/-

(P. K. Pincha)
Chief Commissioner
for Persons with Disabilities