



सत्यमेव जयते

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

Case No. 6980/1014/2016

Dated: 14.11.2017

In the matter of:-

Ms. Rabab Fatima
C/o Mughees Fatima

R4766

Complainant

Staff Quarter No. 01, Near Abdullah Hall
Marris Road, Civil Lines, Aligarh - 202002

Versus

Aligarh Muslim University
(Through the Vice Chancellor)
Aligarh (U.P.)

R4767

Respondent

Date of Hearing: 16.10.2017

Present on 16.10.2017:

1. Complainant - absent
2. Shri Faisal Waris, Assistant Registrar, Shri Shahnawaz Alam, SO (Admn) on behalf of Respondent

ORDER

The above named complainant Ms. Rabab Fatima had filed a complaint dated 25.09.2015 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, hereinafter referred to as the Act regarding denial of appointment to persons with disabilities on reserved posts by the Aligarh Muslim University, Aligarh.

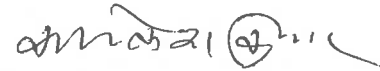
2. Complainant in her complaint submitted that she applied in Aligarh Muslim University, University against the vacancies reserved for various disabilities. Moreover, 3% posts reserved for persons with disabilities are advertised with a very slow pace. Finally appointments are not made due to citing one or other reason as the concerned persons with disabilities did not apply or do not possess required 40% disability. Resultantly, after issuing two advertisements, these posts are converted to General category as they think the persons with disabilities are burden on the society.

3. The matter was taken up with the respondent vide this Court's letter dated 28.09.2015 under Section 59 of the Act in vogue. After perusal of the reply of Respondent vide letter dated 03.11.2015 and complainant's rejoinder dated 22.05.2017, it was decided to hold a personal hearing in the matter on 16.10.2017 and further postponed on the above dates.

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4. During the hearing on 16.10.2017, the representative of the respondent informed that Ms. Rabab Fatima had applied for the post of Assistant (Admn.) under reserved category of VH against advertisement No. 4/2014 dated 01.12.2014, wherein the University had advertised two posts of Assistant (Admin.) (01 VH, 01 HH). Application of Ms. Rabab Fatima was rejected by the scrutiny committee, as she did not have required experience for the post. He further informed that Ms. Rabab Fatima had applied for the MTS post reserved for PwD and a common Trade/Skill/Practical Test for the aforementioned posts of MTS was held on 03.05.2017. The highest merit of the selected candidates on the basis of Trade/Skill/Practical Test was 95 marks and the lowest merit of the selected candidate was 88. Whereas Ms. Rabab Fatima had scored only 41 marks in the Trade/Skill/Practical Test.

5. After hearing Respondent, it was opined by this Court that there is no violation on the part of the respondent. Therefore, the case is disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner for
Persons with Disabilities



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

Case No. 7976/1023/2017

Date : 15 .11.2017
Dispatch No.

In the matter of :

R4758

Mrs. Marjorie Brito,
W/o Late Felix Francis Brito,
Brito Bagh,
Hoige Bazar,
Mangaluru,
Karnataka – 575 001

... Complainant

Versus

R4759

New Mangalore Port Trust,
(Through the Chairman)
Panambur,
D.K. District,
Mangalore,
Karnataka – 575 010

..... Respondent

Date of Hearing : 30.10.2017 and 19.09.2017

Present :

1. Shri Subhash Chandra Vashishth, Advocate on behalf of Complainant.
2. Shri Prem Kumar, Law Officer, on behalf of Respondent

ORDER

The above named complainant, had filed a complaint dated 20.04.2017 under Section 75(1) of the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the Act, against denial of medical facilities by the Respondent to her two children namely, Shri Anish Brito and Ms. Amitha Maria Brito who are suffering from 80% visual impairment .

2. The complaint submitted that her husband late Felix Francis Brito was an Executive Engineer at New Mangaluru Port Trust, Panambur. He joined the port on 13.03.1964 and retired on 30.06.1997. He expired on 01.03.2017. She has two children named Amitha and Anish who are visually impaired. Her children's names are included in the Pension Payment Order for Family Pension, but her children were denied Medical facilities by the Port.

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide this Court's letter dated 08.06.2017.

....2/-

4. The Chief Medical Officer (Stat.), New Mangalore Port Trust, Mangalore vide their letter no. 34/1/2017/PTH.9 dated 11.07.2017 submitted that as per Regulation 2(a) of New Mangalore Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit after retirement) Regulations, 1991, medical facility is available to :-

- i) Retired New Mangalore Port Trust employees and to their spouses.
- ii) Surviving spouse of the employees who die while in service after completion of 10 years of continuous service in New Mangalore Port Trust and is eligible for family pension and
- iii) To surviving spouses of retired employees who die after retirement provided he or she is not gainfully employed in the public/private undertaking and or covered by any medical benefit scheme of the undertaking either for himself or as dependent. A copy of the New Mangalore Port Trust Employees' (Contributory Outdoor and Indoor Medical Benefit after retirement) Regulations, 1991 is attached with their letter.

5. The Respondent submitted that Late Felix Francis Brito, the husband of the complainant Smt. Marjorie Brito, while he was in service in the Port and after retirement from Port Service availed medical facilities for self only and no name of eligible members/dependent family were included in the Medical Eligibility Card of the Port Trust Hospital. Copy of Medical Eligibility Card is enclosed along with their reply dated 11.07.2017. The fact is that the complainant and her dependent children were availing the medical facilities from the organisation where she was working, i.e. State Bank of India, the complainant has not brought this before notice of the Hon'ble Court. The complainant now intends to avail the medical facility for herself and her two disabled children from Port Trust Hospital. Before submitting her complaint to the Hon'ble Court of Chief Commissioner, she made her request to the Port vide representation dated 27.03.2017 to provide medical facilities for herself and her two differently abled children. Her request was examined by them with reference to the rule provision and she was informed vide letter dated 21.04.2017 that as per the existing New Mangalore Port Trust Employees (Contributory Outdoor and Indoor Medical Benefit after retirement) Regulations, 1991, there is no provision for extending medical facilities to the children of retired employees/differently abled children or retired employees. The facility can only be extended to the retired employee and his/her spouse under the provision above regulation.

6. The complainant vide her rejoinder dated 19.07.2017 submitted that she is a retired employee of State Bank of India. After her marriage and the birth of her children, the New Mangalore Port Trust (Respondent) asked her to exercise her option whether she would like to avail medical facilities for herself and her children from them or from State Bank of India. Since her job was a transferable one, and as her children were living with her and her husband's job was not transferable, she exercised her option to claim medical facilities from State Bank of India. The SBI runs a Dispensary in Mangalore where a single doctor and a compounder dispense limited common ailment medicines for its staff and retirees. Medicines required for all other ailments are not available and neither any diagnosis done. All diagnosis was done by outside private doctors and their fees as well as the cost of medicines was borne by the individual. During the year 2012

when the New Mangalore Port Trust brought out a Medical Eligibility Card of the Post Trust Hospital, the complainant's husband Late Felix Francis Brito joined the scheme by contributing a sum of Rs. 38,000/- to cover himself, complainant and her children. The duly filled application form along with individual snaps of all the members of family were submitted to the New Mangalore Port Trust. The New Mangalore Port Trust returned the application with an objection that as the complainant had opted medical reimbursement from her employer, i.e. SBI, they cannot avail of this facility. However, the sum of Rs.38,000/- was retained by the New Mangalore Port Trust. The sum of Rs.38,000/- contribution was paid for covering the entire family with the medical facilities. The complainant submitted that now her husband is no more. She is getting a paltry monthly family pension of Rs.6,180/- from the New Mangalore Port Trust. She is in no position to purchase the required medicines for her visually impaired children who are fully dependent on me. She further submitted that her children have been sanctioned Family Pension by the New Mangalore Port Trust in the year 2011. Her contention is that when her children are eligible for Family Pension, then, why her children were denied the medical facilities. She has also submitted that she has surrendered her right and that of her children for availing medical facilities from the State Bank of India.

7. Upon considering the replies of the Respondent dated 11.07.2017 and Complainant's rejoinder letter dated 19.07.2017, a hearing was scheduled on 19.09.2017 at 12:00 Hrs.

8. During the hearing, the Legal Counsel for the complainant submitted that the father of the two visually impaired children represented by the mother in the present complaint had during his life time opted for the New Mangalore Port Trust Employees (Contributory Outdoor and Indoor Medical Benefits after Retirement) Regulations, 1991 Scheme. He opted onetime payment of Rs.39,000/- to cover the medical facilities of his family including his children. Though subsequently his wife being a serving officer in State Bank of India (SBI) continue to take facilities from SBI. However, after her retirement, she gave up the benefits of medical facilities which she was getting from SBI and requested the Mangalore Port Trust to provide the same to herself and her children with disabilities. The complainant further submitted that the respondent department had issued a Medical Eligibility Card which contained the names of her three children with disabilities. This again was subsequently renewed in July 1993 much after the regulation came into effect after 1991. As per the complainant, the respondent organisation is ready to give her medical benefits and not to her disabled children despite the fact that both the disabled children are in receipt of family pension from the Mangalore Port Trust. The complainant also referred to provisions of CCS Rules as well as Benevolent Legislation of Persons with Disabilities Act, 1995 as well as the new Rights of Persons with Disabilities Act, 2016 under which Chapter 5 detailed about the Social Security, Health Care, Insurance Scheme and Rehabilitation etc. The complainant submitted that the Benevolent Legislation has to be interpreted in a way that it benefits and promotes the welfare

of the marginalized segments. The Benevolent Legislation such as this also overrides and / or are to be given preference. The respondent has not amended any of these Rules and Regulations reflecting the concerns of the Parliament as indicated in the Persons with Disabilities Act, 1995 and as well as Right of Persons with Disabilities Act, 2016. The complainant prays that the benefits of medical facilities be extended to the dependent disabled children by the Respondent organization without delay.

9. The Respondent vide their written submission vide letter No.34/1/2017/PTH.9 dated 05.10.2017 submitted that there is no violation of any rules or law including Rights of Persons with Disabilities Act 2016 in denial of medical facility to the children of the Complainant. The denial of medical facility is as per the rule applicable. The complainant has also not made in her complaint that the Respondent has discriminated her children in providing the medical facility to her children only on ground of disability. The Respondent submitted that the New Mangalore Port Trust Employees (Contributory Outdoor or Indoor Medical Benefits after Retirement) RegulationS, 1991 was framed by the Central Government and applicable to all the ex-employees of the Port in providing medical benefit. Since the said regulation has made entitlement of facility of the medical benefit only for the retired employee and his/her spouse, the said medical benefit cannot be extended to children of the retired employee. This regulation is applicable for all the ex-employees without any discrimination. The denial of medical facility to the children of complainant is as per the terms of the Regulation 1991 and there is no discrimination against the children of the complainant. The Respondent submitted that they have not discriminated against the complainant itself. In fact, the complainant who is working in State Bank of India and availing medical facility there from. When the complainant has approached the Respondent for extending the medical facility to her and children since the husband of the complainant is retired from the Port service. The Respondent has extended the medical facility to the complainant as per rules. However, since there is no provision for providing medical facility to the children under the Regulation 1991, the Respondent denied the medical facility to be extended to her children. They further submitted that under the Regulation 1991, there is no provision for relaxation of the provision by the Respondent. In absence of any such provision, Respondent is not competent to extend the medical facility. The Respondent submitted that the copy of the rejoinder dated 19.07.2017 of the complainant was not furnished to them, and therefore, the Respondent was deprived of their right to reply against the rejoinder filed by the complainant.

10. A copy of the rejoinder dated 19.07.2017 received from the complainant was sent the Respondent for submission of their comments.

11. The next date of hearing was scheduled on 30.10.2017 at 16:00 Hrs.

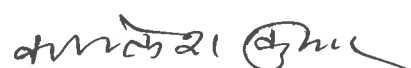
12. During the hearing the Learned Counsel for the Complainant reiterated his earlier submissions and submitted that the Complainant's two visually impaired children are enjoying the Family Pension, but they were denied the medical benefits by the Respondent. He submitted that the New Mangalore Port Trust Medical Eligibility Card No. 156 dated 20.09.1986 was renewed on 13.07.1993 with a fresh serial no. 163 which had the names of her Children Amitha, Anish and Aysha along with the name of Complainant's mother-in-law. The card was renewed again in 1993, two years after 1991 (Contributory Outdoor and Indoor Medical Benefits after Retirement) Regulations 1991 came. The fact that the Card was renewed in 1993 and had names of her children and mother-in-law is proof enough that her husband's eligible members/dependent family were included in the Medical Eligibility Card of the New Mangalore Port Trust Hospital entitling them to avail of Medical facilities at the New Mangalore Port Trust Hospital. Therefore, it is incorrect on the part of Respondent to say that the names of her children were not included for medical benefits. The New Mangalore Port Trust runs a dispensary in Mangaluru for two hours a day from 3.00 p.m. to 5.00 p.m. for its 40 branches with a limited budget of Rs.35,000/- a month where a doctor and a compounder dispense general medicines to the staff, pensioners and family pensioners. The Learned Counsel submitted that the children are dependent on the complainant and she has no one to assist her in looking after them.

13. The representative of Respondent submitted that the New Mangalore Port Trust Employees (Contributory Outdoor or Indoor Medical Benefits after Retirement) Regulations, 1991 was framed by the Central Government and applicable to all the Ex-employees of the Port in providing medical benefits. Since the said regulation has made entitlement of facility of the medical benefit only for the retired employees and his/her spouse, the said medical benefit cannot be extended to children of the retired employee. The regulation is applicable for all the ex-employees without any discrimination. The denial of medical facility to the children of Complainant is as per the terms of the Regulation 1991 and there is no discrimination against the children of the Complainant. The Respondent has not discriminated against the Complainant. In fact the complainant who was working in State Bank of India and was availing medical facility therefrom. When the complainant had approached the Respondent for extending the medical facility to her children since the husband of complainant is retired from the Port service, they extended the medical facility to the complainant as per rules. However, since there was no provision for providing medical facility to the children under the Regulation 1991, the Respondent denied the medical facility to her children. The Respondent submitted that under the Regulation 1991, there is no provision for relaxation of the provision by the Respondent. In absence of any such provision, Respondent is not competent to extend the medical facility.

14. After hearing both, Complainant and Respondent, being a matter concerning the children with disability, the Court directed the Respondent to take the matter as a special case with the

Ministry of Shipping and Transport and find out a viable option for considering and extending the medical benefits to children of employees who retired from service specifically in case of children with disabilities, who are wholly dependent entire life on their parents. The compliance report in this regard is to be submitted to this Court within three months from the date of receipt of this Order. The Court also directed the Respondent to explore the feasibility to give a respectable amount of money in the form of interim medical relief to the children of the Complainant till the time a final decision is being taken by your ministry and inform the same to this Court within 15 days of receipt of this Order.

15. The Court accordingly disposed off the case.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



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

Case No.: 3585/1021/2015

Dated: 15.11.2017
Dispatch No.....

In the matter of :

Shri Bhavesh Kumar, R4793
Type II/5, BSNL Quarter Complex,
Main Telephone Exchange Tura,
West Garo Hills Tura,
Meghalaya – 793 001

.....Complainant

Versus

The Bharat Sanchar Nigam Limited, R4794
(Through Chairman & Managing Director),
Harish Chandra Mathur Lane,
Janpath,
New Delhi – 110 001

.....Respondent

Date of Hearing : 22.05.2017 at 11:00 Hrs.

Present :

1. Shri Bhavesh Kumar, the complainant
2. Shri Santerpal, SDE (Civil) and Shri Parmanand, AGM (SCT), BSNL Corporate Office, Delhi, on behalf of Respondent.

ORDER

Whereas the above named complainant, a person with 45% locomotor disability, filed a complaint dated 16.01.2015 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 hereinafter referred to as the Act, regarding seat clearance for Persons with Disabilities in departmental examination of BSNL (Group A, B, C & D).

2. The Complainant submitted that BSNL vide its Examination Notice No.24-1/2014-Rectt dated 13.11.2014 had issued notification for limited Departmental Competitive Examination for promotion to the Grade of Sub Divisional Engineer (Telecom) under 33% quota to be held on 15.02.2015. In the notification no seat was reserved for persons with disabilities, while the seats were reserved for SC and ST.

3. The matter was taken up with the Respondent under Section 59 of the Act vide letter dated 06.05.2015.

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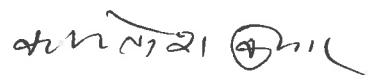
4. The Respondent vide its letter dated 15.07.2015 submitted that as per SDE(T) RRs, the eligibility to appear in the LDCE for promotion to SDE (T) cadre is three years regular service in JTO(T) cadre as on 1st July of the year in which vacancy pertain. As such reservation of persons with disabilities in the cadre of SDE(T) is not made as per existing provision in this regard. However, the matter is being re-examined in view of existing guidelines of DoP&T. They submitted that they have requested the SCT Cell to take up the issue accordingly.

5. Upon considering Respondent's reply dated 15.07.2015, a personal hearing in the matter as scheduled on 22.05.2017 at 11:00 Hrs.

6. During the hearing the Complainant reiterated his earlier submissions made in his original complaint that BSNL is not giving reservation in promotion in Group 'A' and Group 'B' posts for employees with disabilities.

7. The representative of Respondent vide letter dated 19.05.2017 submitted that the representation of the Complainant has been examined in BSNL Corporate Office. They submitted that earlier as per this Court's direction vide letter dated 06.05.2015, the Complainant was examined and accordingly he was informed the status of the case vide their office letter no. 28-I/2015-SCT (SG) dated 15.07.2015. It is submitted that as far as preparation and maintenance of Rosters in respect of persons with disabilities is concerned, the Chief General Managers of the respective BSNL Circles were instructed to prepare and maintain the said rosters as per DoP&T guidelines. The Respondent submitted that in respect of Group 'A', direct recruitment is done only for the post of DR-DGM and total 4 vacancies was available during the year 2015 and second attempt for recruitment is under way. The Respondent submitted that like any other government department, there is no reservation in promotion in Group 'A' and Group 'B' posts for employees with disabilities in BSNL.

8. The case is disposed off without any direction to the Respondent.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



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

Case No: 4001/1014/2015

Dated: 15.11.2017

In the matter of:-

Shri M. Prabhudas Kumar
S/o M. Govindu R4771
D-No.1-87/15/4, 4th Line
Opp. Gouthami Public School
Gopal Nagar-ONGOLE, Prakasam
Andhra Pradesh – 523001

Complainant

Versus

Staff Selection Commission
(Through the Chairman) R4772
Block No. 12, CGO Complex
New Delhi

Respondent

Date of Hearing: 18.10.2017

Present on 18.10.2017:

1. Complainant - absent
2. Shri Gopinath Nayak, Under Secretary on behalf of Respondent

ORDER

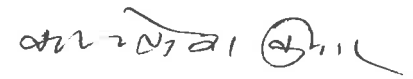
The above named complainant Shri M. Prabhudas Kumar, a person with 100% visually impaired had filed a complaint dated 12.03.2015 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, hereinafter referred to as the Act regarding non selection by SSC for the post of Multitasking Staff (Non-Technical – 2013).

2. Complainant in his complaint submitted that he is 100% visually impaired and belongs to OBC category. He qualified in the Paper I examination and called for certificates verification on 17.09.2013 in Chennai. Later, he also appeared in Paper II with the help of Scribe provided by the SSC. In that paper, he got Zero marks. When the result was declared on a website, his answer sheets were without his signature/LTI and the particulars such as name, roll number and ticket number as well as language were written incorrectly. He claims that he could not observe the mistakes committed by the Scribe provided by SSC and he got Zero marks. His complaint is self-explanatory

3. The matter was taken up with the respondent vide this Court's letter dated 07.05.2015 under Section 59 of the Act in vogue.

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4. In response, Under Secretary, Staff Selection Commission vide letter dated 29.05.2017 has inter-alia submitted that the candidate was awarded zero marks in Paper-II as he did not indicate the language in which he wanted to attempt Paper-II. It was clearly stated on page – 1 of the answer booklet that candidates will be awarded zero marks if they do not fill in the language in the box or if there is a mismatch in language filled in the box and the language in which question paper is attempted. He further submitted that on the issue of scribe, the Commission itself arranges scribes on the request of the VH candidates.
5. The Complainant vide rejoinder dated 06.05.2017 has submitted that mistake was happened with Scribe provided by Commission and as well as Invigilator because being a VH candidate he can only explain the matter. He further submitted that commonly the invigilators of the examination centres have to give the caution and observe the filling up of the Roll Number, Language etc. on the answer booklet while they are signing on the answer booklet. He further submitted that in the year 2014, the Hon'ble CAT of Andhra Pradesh had clearly issued the positive judgement in the similar case that the Commission has to observe the merit only except all these miscellaneous things like non filling up of Language Box etc.
6. After perusal of the reply of Respondent vide letter dated 29.05.2017 and complainant's rejoinder dated 06.05.2017, it was decided to hold a personal hearing in the matter on 18.10.2017.
7. During the hearing on 18.10.2017, complainant was absent. The representative of the respondent reiterated their earlier submissions. This court took a serious view of the absence of the complainant. Therefore, in the light of Rules 38 (4) of Right to Persons with Disabilities which stipulated that "where the aggrieved person or his agent fails to appear before the Chief Commissioner or the Commissioner on such days, the Chief Commissioner or the Commissioner may either dismiss the complaint on default or decide on merits".
8. Hence, the case is dismissed.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner for
Persons with Disabilities



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विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No.: 2037/1081/2014

Dated: 15.11.2017
Dispatch No.....

In the matter of :

Shri Surendra Prasad Shaw,
Main Road,
Mihijam, R4791
P.O. : Mihijam,
Dist : Jamtara,
Jharkhand, - 815 354

.....Complainant

Versus

Chittaranjan Locomotive Works,
(Thru the General Manager)
P.O. : Chittaranjan, R4792
Dist. : Burdwan,
West Bengal – 713 331

.....Respondent

Date of Hearing : 16.05.2017

Present :

1. Complainant – Absent
2. Shri B.N. Soren, Dy. CPO, Shri S. Biswas, SPO and Shri S.B.K. Sinha, CLA, On behalf of Respondent.

ORDER

The above named complainant, a person with 60% visual impairment, filed a complaint dated 19.05.2014 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 hereinafter referred to as the Act, regarding allotment of land.

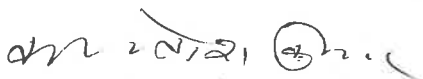
2. The complainant submitted that he had requested for allotment of 40 decimal land/stall in R-3 market of Chittaranjan Locomotive Works (CLW.) on concessional rate for setting up of business under Section 40 and Section 43 of Persons with Disabilities Act, 1995. A number of persons were allotted uncountable plot/stall in various markets of CLW violating the Persons with Disabilities Act, 1995.

3. The matter was taken up with the respondent under Section 59 of the Persons with Disabilities Act, 1995, vide letter dated 29.08.2014.

4. Upon non receipt of any communication from the Respondent, a personal hearing was scheduled on 16.05.2017 at 11:00 Hrs.

5. During the hearing, the Respondent vide their letter dated 11.05.2017 submitted that the grievance of the complainant is regarding appointment in Rly's (CLW/Chittaranjan), Ministry of Railways, on the ground of 'Displaced Person' for acquisition of land for the construction of Chittaranjan Locomotive Works/Chittaranjan. The acquisition of land was done during 1947-1949 as per Land Acquisition Act of 1984 and a part of the said land was also the land of adjoining state of West Bengal i.e., the then Bihar, now called as Jharkhand and the said land was acquired through Land Acquisition Commissioner of West Bengal and Bihar. As per the Land Acquisition Act, only the state Government is empowered to acquire the land. Only after acquisition of the said land, it was transferred to the Ministry of Railways, CLW by the State Government of West Bengal or Bihar. The compensation in question for such acquisition of land was paid to the concerned State Government who had in turn disbursed to the interested persons and the persons from whom the lands were acquired. There was no commitment from Railway Board or CLW to provide employment to the persons from whom the land was acquired at any point of time and under any rules in existence upto the year 1983. The Respondent submitted that there was no scheme and no rules in existence upto the year of 1980 or 1983 and no such commitment for such acquisition was given to the person(s) whose lands were acquired. Whatever the guidelines regarding such issue has been originated, i.e. only after 1980 and the acquisition which was made by the concerned State Government, i.e. during the period of 1947-1949. The compensation had already been paid to the effected persons by the concerned State Government. Therefore, the claim of rehabilitation at this distant date does not arise. The Railway Board vide letter no. E(NG)II/82/RC 1/95, dated 1.1.83 and E (NG) II/89/RC 2/38 dated 10.11.89 had issued a guidelines or instruction for absorption in Gr "C" and Gr "D" to the Railways of the members of families displaced as a result of acquisition of land for establishment of a project. At the relevant period of acquisition there was no scheme for considering the displaced persons for employment and accordingly the complainant has not right to claim employment. Furthermore, 69 years old records could not be available at this distant date. At the time of acquisition, there was no scheme for considering the displaced persons for employment, and accordingly the petitioner has no right to claim employment. In this regard a correspondence was made to Special Land Acquisition Office, Burdwan, West Bengal vide their Office L/No. GMA/Ruling/17 Pt.1, dated 18.11.2011, wherein it was clarified that the case of the applicant cannot be agreed to. The Respondent submitted that presently the matter of the complainant is sub-judice since a write petition was filed by the complainant before the Hon'ble High Court, Kolkata having WP No.28977(W) of 2015 and CLW/Administration is contesting the case before Hon'ble High Court/Kolkata on the ground of merit of the case and rules and policies applicable thereon issued time to time on the subject matter.

6. As the matter is sub-judice in the Hon'ble High Court/Kolkata, the Court disposed of the case without giving any direction to the Respondent.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

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

Case No.: 6771/1023/2016

Dated: 15.11.2017
Dispatch No.....

In the matter of :

Ms. Jaya Sinha,
Link Park,
Street No.2,
Link Road,
Near DSP Main Gate,
District : Burdwan,
West Bengal – 713 203
Email<sinha.jaya2@gmail.com>

.....Complainant

Versus

State Bank of India,
(Through the Chairman)
State Bank Bhavan,
Madam Cama Road,
Mumbai – 400 021

.....Respondent

Date of Hearing : 08.06.2017, 12.07.2017 and 11.08.2017

Present :

Complainant - Ms. Jaya Sinha, the Complainant exempted from personal appearance during the upcoming hearing.
Respondent - Shri Alok Kumar, Advocate on behalf of Respondent

ORDER

The above named complainant, a person with 75% locomotor disability has filed complaints dated 12.08.2016 and 16.08.2016 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, regarding harassment at workplace and Professional Tax deduction from her salary.

2. The Complainant submitted that she is presently posted at SMECCC, Durgapur Branch of State Bank of India. She has been regularly humiliated and threatened by one Mrs. Shobha Mittal, who is working as AGM in the same Branch of the Bank. Despite her disability, she never shirked from the work given to her. She has been discharging her duties with full devotion and dedication. She goes

....2/-

far off places to discharge her official duties. Several other senior managers of the Bank including Chief Manager of Bank have been humiliating the complainant by passing comments on her and making fun of her condition.

3. The matter was taken up with the Chairman, SBI vide this Court's letter dated 29.08.2016 followed by reminders dated 13.10.2016. The Dy. General Manager & CDO, State Bank of India vide letter no. PER/2090 dated 08.11.2016 stated that the complaint of the complainant was got investigated by a senior lady office of their Bank. She visited SME Centre, Durgapur where the complainant is posted and contacted the staff members posted there including the complainant for ascertaining the factual position. It is stated that all other officials submitted their statement in writing but the complainant refused to talk to the investigating official. After persuasion, the complainant's verbal statement was taken in presence and under the witness of some of the officials of their branch. Based upon the facts stated above and submissions of the officials posted at the SME Centre, it has been concluded by the investigating officials that the allegations of misbehavior/humiliation of the complainant against Mrs. Shobha Mittal could not be substantiated and thus have not been found justified. As far as deduction of Professional Tax from the Salary of the complainant is concerned, the Respondent submitted that this matter was not brought to the notice of the Bank by her for more than five years, which resulted in deductions from her salary on this account. However, the deductions were stopped immediately when the complainant informed it to the Bank and the amount deducted towards the Professional Tax has been simultaneously been deposited in Government Account as per rules.

4. A copy of the Respondent Bank's letter dated 08.11.2016 was sent to the complainant for her comments vide this Court's letter dated 30.12.2016.

5. The complainant vide her rejoinder dated 12.01.2017 has submitted that even if a person commit some fraud, he/she is given opportunity to defend her case. In her case, she was not given any letter for wrong posting. Mrs. Shobha Mittal even threatened and asked her to pay Rs.49,330/-. She further submitted that during the investigation, the Investigating Officer Ms. Amita Chatterjee humiliated her by raising questions on her disability. She was threatened and told that Rs.1.50 lakhs will be deducted from her salary. She submitted that she has documentary evidences to prove her points. She submitted that Smt. Shobha Mittal has never treated her like a human being.

6. Upon considering respondent's reply dated 08.11.2016 and complainant's letters dated 26.08.2016, 24.09.2016, 16.10.2016, 07.11.2016, 29.11.2016, 12.01.2017, 24.10.2016, 20.03.2017 and 27.03.2017, a hearing was scheduled on 08.06.2017 at 16:00 Hrs.

7. During the hearing on 08.06.2017, the complainant submitted that one Ms. Shobha Mittal, AGM has deducted an amount of Rs.49,330/- from complainant's salary without giving her any intimation. Ms. Mittal has threatened her that an amount of Rs. 1.50 lakh will be deducted from her salary in future. She submitted that the medical bills pertaining to treatment of her mother have also been withheld by the Bank for over five months, i.e. 04.07.2016 to 05.12.2016 without giving any reason. She has been marked absent in ARMS on 23.09.2016 by Ms. Mittal wherein the Chief Manager has made remarks that the complainant has left office on 23.09.2016 at 10.45 a.m. In spite of two reminders issued, CBS log out report has not been given to the complainant. The complainant has submitted that a Movement Register was maintained by the Bank in the branch only for the complainant. The Chief Manager deputed the complainant to go for official inspection by using her own vehicle instead of official car. The official car even if it was provided for attending the Court hearings on behalf of Bank, was not being provided while returning to the Bank. Additional work has been assigned in the new SME Delivery Model.

8. No representative from Respondent side was present during the hearing. The Court took serious view for not deputing any representative by Respondent for hearing despite sending the Notice of Hearing dated 09.05.2017 by Speed Post.

9. The case was then adjourned to 12.07.2017 at 16.30 Hrs.

10. During the hearing on 12.07.2017, the complainant reiterated her earlier submissions submitted during the hearing on 08.06.2017.

11. The Learned Counsel for the Respondent submitted that the complaint of the complainant was got investigated by a senior lady officer of the Bank, who visited SME Centre, Durgapur where the complainant is posted and contacted the staff members posted there including the complainant for ascertaining the factual position. All officials submitted their statement in writing but the complainant refused to talk to the investigating official. After persuasion, the complainant's verbal statement was taken in presence under the witness of some of the officials of their branch. Based upon the facts stated above and submissions of the officials posted at the SME Centre, it was concluded by the investigating officials that the allegations of misbehavior/humiliation of the complainant against Ms. Shobha Mittal could not be substantiated and thus were not found justified. As far as deduction of Professional Tax from the Salary of the complainant is concerned, the Respondent submitted that this matter was not brought to the notice of the Bank by the complainant for more than five years, which resulted in inadvertent deductions from her salary on this account. However, the deductions were stopped immediately when the complainant informed about this to the Bank and also that the amount deducted towards the Professional Tax has been simultaneously deposited in Government Account as per rules.

12. The court advised the Respondent Bank to have a sensitive approach towards the employees with disabilities and also to have its system improved accordingly to avoid recurrence of such cases in future. The Respondent is advised to repay the amount of Rs.49,330/- which has been deducted from the salary of the Complainant without any intimation, failing which this amount shall have to be returned to the Complainant with interest. A Compliance Report to this effect also needs to be sent to this Court in this regard. Further, on the request of the complainant, she has been exempted from appearing in person in the next hearing. The Respondent was also advised to clarify/justify under what terms and norms the deduction of Rs.49,330/- was made from the salary of the complainant when it was to be reflected in the salary slip, the generation of which is auto-system based. The Respondent was also made to submit their point-wise reply on the complaint of the complainant, which specifically alleged harassment/discrimination caused to her in the hands of certain officials of the Bank.

13. The hearing was then adjourned to 11.08.2017 at 15:00 Hrs.

14. During the hearing on 11.08.2017, the Learned Counsel for the Respondent failed to submit the requisite Compliance Report in respect of directions given to the Respondent vide this Court's Record of Proceedings dated 31.07.2017, but assured to this Court that the compliance shall be submitted very shortly.

15. Accordingly, this Court advised the Respondent to submit the Compliance Report to this Court by 21.08.2017 to take a final decision in the matter.

16. The Chief Manager (Law), State Bank of India vide his letter dated 21.08.2017 submitted that as far as the grievance of the complainant about the harassment at work place is concerned, an Independent Investigation by two senior officers of the Bank did not find any merit on the allegation

made by the complainant. Further, the complainant herself did not co-operate in the investigation and the officials/witnesses in the Branch did not support the allegation of the complainant. Thus the complaint was found to be baseless and unsubstantiated. Regarding the Professional Tax deduction from salary of the complainant, the Respondent submitted that the issue was investigated by two senior officials of the Bank and observed that an amount of Rs.49,330/- to be deposited as Perquisite Tax of the employees of SMECC, Durgapur for the month of October 2015 was instead erroneously deposited as Professional Tax by the complainant herself and she has tried to take advantage of her own wrong doings to allege Professional Tax deduction against the Senior Officer of the Bank. The Respondent further stated that as the amount could not be released immediately from the Government Account, the Assistant General Manager, SMECC deposited the perquisite tax by debit to suspense account after obtaining approval from Deputy General Manager. The Deputy General Manager while according approval, has put the condition that the amount should be adjusted within and by 30.11.2015. However, the entry was re-routed through suspense account repeatedly on 08.01.2016, 02.03.2016, 30.04.2016 and 10.06.2016. On 04.08.2016, the suspense entry was adjusted by the complainant herself on her own by debiting her own account no. 34187570666 out of her own will as it is evident from the voucher which has been written in her hand writing, debit confirmed by her and transaction made by her in the CBS system. Transaction detail from Core banking system shows PF No. 5902991 of the complainant. Therefore, no instructions was issued to the complainant to debit her own account. Thus, it is the complainant, who, with her ulterior motive and the reasons best know to the complainant herself, committed wrong and has alleged the commission of wrong doing by her to the Senior Officer of the Respondent Bank. Thus, the allegation made by the complainant is completely baseless. The complainant's allegation that Ms. Mittal has threatened her that an amount of Rs.1.50 lakhs will be deducted from her salary, the Respondent stated that the matter was investigated by the Senior Officer of the Bank and no evidence of any kind was found and the witnesses did not support the allegation. Even, the complainant also did not co-operate in the investigation. The medical bill pertaining to the

treatment of complainant's mother was paid after obtaining certain clarification from the Controlling Office (Zonal Office), which is the routine matter and is not an isolated matter as alleged by the complainant. The allegation that the complainant has been marked absent in HRMS on 23.09.2016 wherein the Chief Manager has made remarks that the complainant has left on 23.09.2016 at 10.45 a.m. and Ms. Shobha Mittal has marked absent in HRMS, was again found to be baseless as no absent was marked in HRMS on 23.09.2016. On the material dated, the complainant was deputed to training center for undergoing training. The allegation of the complainant that Movement Register was maintained by the Branch only for the complainant, the Respondent submitted that Movement Register is being maintained by SME Centre Durgapur as per provision of the Bank for recording of visits for Pre-sanction as well as Post-sanction inspection and NPA recovery drive of all the officials posted at the Centre, not for the complainant only. This falsifies the allegation of the complainant. The allegation of the complainant that the Chief Manager deposes her to go for the official inspection by using her own vehicle instead of official car, the Respondent submitted that as per the record, Bank's vehicle has been provided to all the officers for doing this kind of assignment of inspection etc. and the same was also provided to the complainant whenever the vehicle was available. Therefore this allegation of the complainant is baseless.

17. The court advised the Respondent Bank to have a sensitive approach towards complainant in particular and the employees with disabilities in general and also to have its system improved accordingly to avoid recurrence of such cases in future. The Respondent is further advised to repay the amount of Rs.49,330/- which was deducted from the salary of the Complainant without any intimation, failing which this amount shall have to be returned to the Complainant with interest.

18. The case is disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

Extra

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

Case No.4721/1041/2016

Dated 15.11.2017

In the matter of:

Shri G. Kamalakanniah, R4774
Sr. Clerk, Sr. DPO/O/MAS,
Southern Railway,
Headquarters, Chennai - 600003

.... Complainant

Versus

Railway Board, R4775
Through: Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi-110001

.... Respondent No.1

Southern Railway, R4776
Through: Chief Personnel Officer/Admn.,
Headquarters Office,
Personnel Branch, Chennai - 600003

.... Respondent No.2

Dates of Hearing: 17.11.2016, 29.11.2016, 07.02.2017, 11.04.2017 and 26.05.2017

Present:

17.11.2016 -

1. Complainant absent
2. Respondent No.1 and 2 absent

29.11.2016 - None of the parties appeared.

07.02.2017 -

1. Shri G. Kamlakanniah, complainant.
2. Shri T.D. Dinakar, Dy. CPO/RT and Shri Srinivasan, CSM/GAI/HQ, Southern Railway for respondent

11.04.2017 -

1. Shri G. Kamlakanniah, complainant.
2. Smt. Shanthi Nivasulu, Dy. CPO/L, Shri K. Srinivasan, Asst. Personnel Officer, HQ and Shri Ramalingam, Chief Office Supdt., Southern Railway (Respondent No.2)
3. None appeared for respondent No.1.

26.05.2017 -

1. Shri D.W. Samuel, Sr. Divisional Personal Officer, Shri K. Srinivasan, Asst. Personnel Officer and Shri S. Balakrishnan, Chief Law Assistant, Southern Railway, Chennai
2. None appeared for respondent No.1.
3. None appeared for complainant.

ORDER

The above named complainant, a person with 70% locomotor disability (Right Hand amputated) submitted a complaint dated 03.07.2015 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act', regarding denial of permission to take assistance of scribe in the departmental written exam conducted by respondent No.2 for selection to the post of Staff & Welfare Inspector and other departmental selection;

2. The complainant submitted that he had requested to the Chief Personnel Officer, Southern Railway, Chennai for permission to take assistance of scribe in the written exam for selection to the post of "Staff & Welfare Inspector" pursuant to the Office Memorandum No.16-110/2003-DD.III dated 26.02.2013 issued by Ministry of Social Justice & Empowerment, Department of Disability Affairs as well as letters/circulars No.P(R)113/P/PWD dated 15.09.2014 issued by respondent No.2, No.E(NG)I-2014/PM1/3 dated 01.09.2014 and No.E(NG)II/2006/RC-2/13 dated 18.02.2011 issued by respondent No.1 for providing various facilities and allowing scribes to persons with disabilities at the time of departmental examination. The complainant alleged that the Sr. DPO/MAS, Southern Railway vide letter No.(ADMN) 535/X/S&WI dated 02.07.2015 informed him, without assigning any reason, that he would not be permitted to take assistance of a scribe and additional one hour time to write the answers in the written examination for selection to the post of 'Staff & Welfare Inspector' and other departmental selection.

3. Under Section 59 of the Act, the matter was taken up with the respondent vide this Court's letter dated 11.08.2015.

4. Respondent No.2 vide letter No.P(GS)608/XII/S&WI/35%/Vol.IV dated 04.09.2015 submitted their reply that a selection was held for the post of Staff & Welfare Inspector in Pay Band Rs.9300-34800 with Grade Pay of Rs.4200/- against 35% quota for all departments. The complainant, Shri G. Kamalakanniah, Sr. Clerk, Sr. DPO/O/MAS had applied for the same. The complainant, vide his representation dated 11.06.2015, had requested for permission to engage a scribe to write the aforesaid departmental examination scheduled on 27.06.2015 which was later postponed to 04.07.2015. Para 2(ii) of Railway Board's letter dated 17.09.2007 specifically states that visually impaired candidates/those candidates whose writing speed is affected by cerebral palsy can avail the assistance of scribe. The Medical Certificate produced by the complainant indicates that he has 70% disability and can perform work by reading and writing. Hence, the representation of complainant could not be considered in terms of Railway Board's letter dated 17.09.2007 then available for scribe facility to persons with disabilities in recruitment/departmental selection. The respondent vide letter dated

02.07.2015 also informed the complainant that his case was not coming within the ambit of Railway Board's extant guidelines for entitlement of scribe. As referred by the complainant, Railway Board's letter No.E(NG)II-2006/RC-2/13 dated 18.10.2013 is for recruitment from open market and states that the criteria like educational qualification, marks secured, age or such other restriction for the scribe should not be fixed and instead, the invigilation system should be strengthened so that the candidates using scribe do not indulge in malpractices like copying and cheating during the examination. However, the letter dated 18.10.2013 is not specified in Railway Board's letter dated 01.09.2014 as extendable to Departmental selections. The respondent No.2 further intimated that on subsequent representation of complainant for the forthcoming OS/II/LDCE exam policy, clarifications were sought for from Railway Board in the light of their latest letter dated 29.07.2015 and action would be taken on receipt of their clarification, as the letter dated 29.07.2015 speaks about recruitment of persons with disabilities from open market – regarding.

5. The complainant, in his rejoinder dated 13.10.2015 to the reply dated 04.09.2015 of the respondent No.2, submitted that Institute of Rehabilitation Medicine, Chennai had issued him Medical Certificate through a duly constituted Medical Board showing his disability of OA i.e. one arm affected (BE Amputation) and is grouped under the category - "A. Locomotor or cerebral palsy", clearly covered under the provision of Para 2(ii) and Railway Board's letter No.E(NG) I-2014/PM1/13 dated 01.09.2014. In this connection, the complainant also referred Para 511(7)(iii)(c) of IRMM, 2000 [Indian Railway Medical Manual, 2000] according to which, "All the cases of orthopedically handicapped persons would be covered under the category of 'locomotor disability or cerebral palsy'" and submitted that instead of referring his representation to appropriate medical authorities for comment, appreciation of fact and eligibility criteria, the respondent No.2 denied his right to engage scribe during departmental examination. The respondent No.2 again denied his right to engage scribe on the pretext that scribes are permitted in open market direct recruitment as per Railway Board's letter No.E(NG) II-2006/RC-2/3 dated 18.10.2013. Railway Board has given detailed clarification in their letter dated 29.07.2015 in spite of that respondent No.2 denied his opportunities and sought clarification. Due to urgency, he approached to the State Commissioner for Persons with Disabilities who had directed to permit scribe in Office Superintendent limited departmental competitive examination. Complainant, as a person with disability, was eligible for promotion to the post of Staff Welfare Inspector (S&WI) in the first batch held on 05.07.2014 on relaxed standard at par with SC/ST. The complainant further intimated that even after instructions of Railway Board, respondent No.2 was not maintaining separate reservation roster and the points No.1, 34 and 67 were not

earmarked for selection to the post of Staff Welfare Inspector and Office Superintendent under LDCE quota and thereby deprived the opportunity to him.

6. This Court vide letter dated 24.11.2015 apprised the respondent No.1 that the Office Memorandum No.16-110/2013-DD.III dated 26.02.2013 issued by the Ministry of Social Justice and Empowerment, Government of India is applicable for both the departmental examinations and for open market competition as well as academic examination where writing speed is required. In the instant case, the 70% disability in the right hand of the complainant will adversely impact the writing speed and possibility of qualifying the test. The legitimate right of the complainant should not be violated. This Court advised the respondent No.1 that the request of complainant be considered and instructions to the Southern Railway (respondent No.2) as well as all concerned be issued to implement the aforesaid guidelines in letter and spirit for providing persons with disabilities a level playing field and to accommodate the specific needs on case to case basis. Respondent No.1 was also advised to inform the action taken in this regard.

7. Since no reply was received from the respondent No.1, despite lapse of sufficient time, and considering upon the facts mentioned above, the case was listed for personal hearing on 24.10.2016.

8. During the hearing on 24.10.2016, the complainant reiterated his grievance and added that the Madras University and other Open Universities are providing the facilities of Scribe and Compensatory Time to persons with disabilities.

9. None appeared on behalf of the respondents, nor was any intimation received about their inability to attend the hearing on 24.10.2016 despite the fact that the Notice of Hearing was sent to them on 30.09.2016 by Speed Post. This Court noted seriously the utter disregard shown by the respondent. However, the case was listed for hearing on 17.11.2016.

10. Since none of the parties appeared during the hearings on 17.11.2016 and 29.11.2016, the case was rescheduled for hearing on 07.02.2017.

11. During the hearing on 07.02.2017, the complainant reiterated his complaint.

12. The representative of the respondent No.2 relied upon the reply vide letter dated 04.09.2015 and submitted among other documents, a copy of the letter No.P(GS)608/XII/S&WI/35%/Vol.IV dated 03.02.2017 according to which persons with one arm muscular weakness disability were allowed to avail the assistance of Scribe during recruitment of Persons with Disabilities from Open Market in terms of Railway Board's letter No.E(NG)II/2006/RC-2/13 dated 29.07.2015 and that facility was extended

for departmental selections vide Railway Board's letter No.E(NG)I/2014/PM1/3 dated 29.10.2015 which states that 'the instructions contained in Board's letter of even number dated 01.09.2014 (RBE No.93/2014) may be read along with letter No.E(NG)II/2006/RC-2/13 dated 29.07.2015 and 18.10.2013 in case of departmental examination also'. Further, as the departmental written examination for selection to the post of Staff and Welfare Inspectors was held on 04.07.2015 and panel published on 10.09.2015, the employee could not be permitted for taking the assistance of Scribe as per existing rules notified on that date. Therefore, the representative of respondent No.2 sought time to file a detailed reply.

13. In view of the above, the respondent No.2 was directed to file their reply before this Court within 15 days from the date of receipt of this Record of Proceedings with a copy to the complainant to submit his rejoinder/comments, if any, one week prior to the next date of hearing. The next date of hearing was fixed on 11.04.2017.

14. During the hearing on 11.04.2017, none appeared on behalf of the respondent No.1, nor was any intimation received about their inability to attend the hearing despite the fact that the Record of Proceedings dated 14.03.2017 for the previous hearing scheduled on 07.02.2017 was sent by Speed Post. The Court noted with serious concern, the utter disregard shown by the respondent No.1 by neither intimating their inability to attend the hearing nor caring to send their versions of the case.

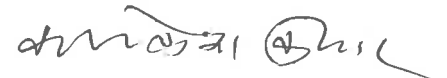
15. The representative appearing for the respondent No.2 filed reply vide letter No.P(GS)608/XII/S&WI/35%/Vol.IV dated 04.04.2017 and submitted that though the Railway Board vide letter No.E(NG)I-2014/PM1/13 dated 01.09.2014 had clarified that the instructions contained in their letters No.E(NG)II/2006/RC-2/13 dated 17.09.2007, 18.02.2011, 27.04.2012, 25.09.2013 and 19.12.2013 may be made applicable in case of departmental examination also, wherever circumstances so warrant, but the same were not relevant to the case of complainant. Since Para(ii) of Railway Board's letter dated 17.09.2007 provided permission for engaging Scribe only for visually impaired/cerebral palsy candidates for both open market recruitment and departmental selections, the complainant with one arm muscular weakness was not coming within the ambit of Boards extant guidelines for entitlement of scribe. The contention of the employee that even after receipt of specific clarification from Railway Board vide letter dated 29.07.2013, Southern Railway was denying him the opportunity of selection to the post of Staff & Welfare Inspector, was not based on facts as that was restricted to open market. A reply was given to complainant on 02.07.2015. Railway Board vide letter dated 29.07.2013/2015 instructed that Persons with one arm muscular weakness disability were allowed to avail the assistance of Scribe but the same were for recruitment from open market. Therefore, clarification was sought from Railway Board regarding the

Railway Board vide letter No.E(NG)I/2014/PM1/3 dated 29.10.2015 had extended the facility of providing assistance of scribe and/or compensatory time in departmental selection also.

21. The respondent No.1, vide letter dated 22.05.2017, tendered their unconditional apology that there was no such intention to disregard this Court in any manner. They, vide their letter dated 22.12.2016, instructed the respondent No.2 to examine the representation of the complainant, in the light of Board's policy, in the instant case as the complainant works under respondent No.2 who is the competent authority for his grievance redressal.

22. After hearing the parties and perusal of the facts submitted by them, this Court observed that respondent No.2 had received no instructions from their administrative ministry i.e. Railway Board (Respondent No.1) to provide the assistance of scribe and/or compensatory time to the persons with one arm muscular weakness disability in the departmental selections also. Therefore, respondent No.2 could not provide the said facility to the complainant. The instructions could only be received vide Railway Board's letter No.E(NG)I/2014/PM1/3 dated 29.10.2015. The departmental exam was held on 04.07.2015. This Court is of the view that the respondents are needed to be more sensitive towards persons with disabilities, so that the complainant as well as other employees with disabilities may not be deprived of their right to avail the facilities provided in the guidelines for conducting written examination for persons with disabilities issued by the Ministry of Social Justice and Empowerment vide Office Memorandum No.16-110/2003-DD.III dated 26.02.2013.

23. The case is accordingly disposed of.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner for
Persons with Disabilities



सत्यमेव जयते

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

Case No. 6420/1024/2016

Dated : 16 .11.2017
Dispatch No.....

R4949
Shri Mayank B. Patel,
A/173, Silver Leaf Bungalows,
Behind Bharat Petrol Pump,
Near Revashray,
Sona Talav Crossing,
Waghodia Dabhoi Ring Road,
Vadodara – 390 025
Email <samvedna2010@yahoo.in>

.....Complainant

R4750
The Divisional Railway Manager (Estt.),
Western Railway,
Pratapnagar,
Vadodara,
Gujarat -390004

.....Respondent No. 1

R4751
The Divisional Railway Manager,
Western Railway,
Pratap Nagar,
Vadodara,
Gujarat -390004

.....Respondent No. 2

R4752
Sr. Divisional Electrical Engineer (TRS),
Western Railway,
Electric Loco Shed,
Nava Yard,
Vadodara – 390 004

.....Respondent No. 3

R4753
The Additional Divisional Railway Manager,
Western Railway,
Pratap Nagar,
Vadodara,
Gujarat -390004

.....Respondent No. 4

Date of Hearing : 14.06.2017

Present :

1. Shri Mayank B. Patel, complainant along with Shri Sagar Patel.
2. Shri U.H. Trivedi, Sr. DPO, BRC and Shri S.M. Patil, CLA-BRC, on behalf of Respondents

ORDER

The above named complainant, a person with 40% locomotor disability, filed complaint dated 26.05.2016 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, regarding remarks in APARs which resulted in non granting of MACP.2/-

2. The complainant submitted that he is working as Office Superintendent in Western Railway, Vadodara since 1981. He is also working as a Trustee and Secretary of NGO named Samvedna. He was promoted to Hd. Typist on 31.01.1995. Though he was promoted as Hd. Typist, he was never been paid salary for the post of Hd. Typist by REO. He was reverted back as Sr. Typist on 05.07.1995. He joined as Sr. Typist under Sr. Divisional Electrical Engineer (TRS). After a lapse of 15 years, all the three live posts of Typists were surrendered. He is aggrieved by the Railway Administration in the matter of his APARs which deprived him of his MACP. He was due for promotion since 2010. In spite of his representation, he did not get the fair justice in the matter.

3. The matter was taken up with the respondents under Section 59 of the Act vide letter dated 18.07.2016.

4. The DRM(E) BRC vide letters dated 21.09.2016 and 18.10.2016 informed this Court that MACP will be granted to the complainant within a week's time. The DRM (E) BRC vide letter dated 27.10.2016 has again informed that the pay fixation of the complainant will be done as per his option if he opts within a month's time as per rule and if he does not submit his pay fixation, it will be done without his option. The DRM(E)BRC vide letter dated 15.12.2016 vide his letter dated 15.12.2016 has informed this Court that the pay fixation was done in favour of the complainant as per the option received from him.

5. The complainant vide his rejoinder dated 26.01.2017 submitted that the contents of the respondent's letter dated 27.10.2016 is completely wrong. He submitted that the benefit of MACP as stated in respondent's letter dated 25.10.2016 that he was granted MACP w.e.f. 07.04.2013 is correct, but as per laid down rules in the matter of MACP, the benefit of MACP is due w.e.f. 07.04.2010 and not from 07.04.2013 as given to him. He further submitted that for giving him benefit of MACP w.e.f. 07.04.2010, his APARs for the year 2007-08, it is 'Good', for 2008-09, it is 'Average' and for 2009-10, it is 'Average'. The status of last 3 years is 'two averages and one good'. Based on this, he submitted that he may be given his right. He was declared 'unsuitable' for MACP four times. He further submitted that he was deprived of his legitimate right for MACP w.e.f. 07.04.2010.

6. Upon considering replies of respondent no. 1 dated 21.09.2016 , 18.10.2016, 27.10.2016, 15.12.2016 and complainant's rejoinder letter dated 26.01.2017, a hearing was scheduled on 14.06.2017 at 16:00 Hrs.

7. The complainant vide his written submission dated 13.06.2017 submitted that his ACR/APAR for the year 2014-15 were graded as 'BELOW AVERAGE'. This was communicated by Railways to him after lapse of one year vide letter no. E/Conf./246/MB/2015 dated 29.09.2016. He gave a

representation to competent authority on 13.10.2016. With reference to his representation dated 13.10.2016, the DRM (E) BRC vide confidential letter no. E/Conf/246/Estt./2016 dated 09.06.2017 advised him that adverse remarks in confidential report for the period ending 31.10.2016 is as under ;

"Adverse remarks is /are ~~stand good~~/ Expunged and grading changed to Good"

The complainant submitted that he had submitted his representation against adverse remarks for the year 2014-15 and not for the year 2015-16 as mentioned in the subject of the said letter. His contention in this regard is that he had submitted his representation against adverse remarks on 13.10.2016. On the other hand DRM(E) BRC replied to his representation on 09.06.2017 and they took seven and half months to finalize his representation. His remarks in APAR for the year 2014-15 were adverse and he was graded as 'Below Average'. His APARs for the year 2008-09 and 2009-10 have been graded as 'Average" by Sr. DEE (TRS) ELS-BRCY. An employee does not get a chance to improve his workability as the remarks in their APARs are not communicated to the employees by the Railways. He submitted that in the foregoing years, he was not given an opportunity to represent his 'Average' graded APARs and moreover the vital document APAR in question was also manipulated/tempered intentionally. In view of the grave mistakes and negligence of not following any instructions, guidelines, directives, rules and regulations of Railway Board, the said APARs be treated as cancelled and he should be awarded his legitimate right of MACPs from the year 2010 and not from the year 2013.

8. The representative of Respondent no. 1 vide their written submission dated 13.06.2017 submitted that the complainant is presently working as Chief Typist in Scale Rs.9300-34800+4600(GP)(MACP) in E/TFC Section. He was due for Illrd stage MACP benefit in scale Rs. Rs.9300-34800+4600(GP)(GP) W.E.F. 28.06.2010, but was not granted Illrd MACPs benefit as his APAR grading marks of 03 years was below 08 marks. In terms of Railway Board's letter dated 07.06.2010 for granting MACP benefit in GP 4600, 8 marks out of 15 is required. As his APAR for the year 2009, 2010 & 2012 were average, he was not granted MACP benefit as his total marks were less than 8 marks. The details of his APAR grading for the year 2008 to 2013 are as under :

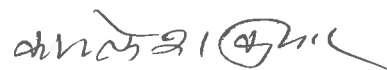
Year	Grading of CRs
2008	Good
2009	Average
2010	Average
2011	Good
2012	Average
2013	Good

The grading of APAR for the year 2008-09, 2009-10 was average given by competent authority

and is not required to put up to competent authority for review as per the extant rule as Average grading is not considered as adverse. Hence is not intimated specifically to concerned employee. As his APAR grading marks totaled to 8, in the year 2013, by considering APARs of 2011, 2012 & 2013, he was granted MACP benefit w.e.f. 07.04.2013, after counting 30 years of service from his date of appointment.

9. After hearing both the parties, the Court came to the conclusion that there is no violation of any provisions of Rights of Persons with Disabilities Act, 2016. However, the Respondents were advised to be more sensitive towards the employees with disabilities and ensure that the rights of employees with disabilities are not infringed.

10. The case is disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
For Persons with Disabilities



सत्यमेव जयते

d/c

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

Case No.: 8300/1041/2017

Dated 20.11.2017

In the matter of:

Shri Hemant Makkar,
145, Sukhdev Nagar,
Panipat-132103 (Haryana)
Email – hemantmakkar92@gmail.com

.... Complainant

Versus

Staff Selection Commission,
(Through: The Secretary)
Block No.12, CGO Complex,
Lodhi Road, New Delhi-110003
Email – deenbandhusingh@yahoo.co.in

.... Respondent

Date of hearing: 17.10.2017

Present:

1. Shri Hemant Makkar, Complainant and Dr. Anil Aneja, Vice President, AICB for the complainant
2. Shri A.K. Dadhich, Under Secretary, for the respondent

ORDER

The above named complainant, a person with 75% visual impairment filed complaint dated 06.07.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the 'Act', regarding not allowing him to meet the scribe one day before the examination, provided by Staff Selection Commission, to write Combined Graduate Level Examination-2017 (Tier-I) held on 06.08.2017 [Roll No.2201419986].

2. The complainant submitted that the respondent provides scribe just before the start of exam as a result it is not possible to establish coordination with scribe. There is a provision to meet the scribe one day before the date of examination, but the respondent shows cold shoulder to his request and provide the scribe few minutes before the examination.

3. Clause IV of the guidelines issued vide Office Memorandum No.16-110/2003-DD.III dated 26.02.2013 provides as under:-

“IV. The candidate should have the discretion of opting for his own scribe/reader/lab assistant or request the Examination Body for the same. The

examining body may also identify the scribe/reader/lab assistant to make panels at the District/Division/State level as per the requirements of the examination. In such instances the candidates should be allowed to meet the scribe a day before the examination so that the candidates get a chance to check and verify whether the scribe is suitable or not.”

4. In the light of the above, this Court, vide letter dated 01.08.2017, took up the matter with the respondent under Section 75 of the Act.

5. The respondent vide letter dated 04.08.2017 submitted their reply and inter-alia intimated that SSC does not allow the candidate to bring his/her own scribe in the written test conducted by them. Instead, they provide its own scribes having adequate educational level to ensure fair play, transparency and a level playing field. Besides, the Commission does not also allow the candidates to meet the scribes one day before the examination, as such candidate can misuse this facility which could adversely impact the transparency and integrity of the examination because it has the potential to disrupt the level playing field for other candidates in this category. SSC also provides sufficient number of scribes to the examination centres in case of emergency they can be changed/replaced.

6. The complainant vide her rejoinder dated 08.08.2017 reiterated his complaint and added that the examination panel had not allowed him to meet the scribe even few hours before the examination so that he could acquaint him to the paper pattern and how to narrate the question at the time of examination. As a result he could not establish coordination with the scribe. The complainant has also submitted that he has low vision and needed sketch pen to write the examination but the SSC Officers were very insensitive towards his problem. Due to their insensitivity, he could not be able to write his exam to the best of his ability.

7. Upon considering the aforesaid reply of the respondent and rejoinder/comments of the Complainant, a personal hearing was scheduled on 17.10.2017.

8. During the hearing, the representative of the complainant submitted that the guidelines for conducting written examination for persons with disabilities which were issued by the Ministry of Social Justice and Empowerment are the statutory directions to all the recruitment agencies, Academics/Examination Bodies of the Government to ensure implementation of these guidelines. The respondent never complied with these statutory directions issued by Government and have been violating the guidelines depriving of the legitimate rights of candidates with disabilities. The representative of the respondent further submitted that in the instant case, the respondent has committed an offence, by not allowing the complainant to meet the scribe one day before the

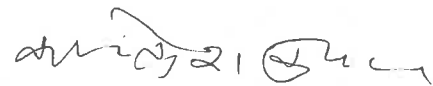
examination, which is punishable under Section 89 of the Act. Section 89 of the Act provides as under:-

“89. Any person who contravenes any of the provisions of this Act, or of any rule made there under shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.”

9. After hearing both the parties and on the basis of the documents provided by the parties, it is observed that the respondent is not implementing the guidelines for conducting written examination for persons with disabilities issued by the Ministry of Social Justice and Empowerment vide Office Memorandum No.16-110/2003-DD.III dated 26.02.2013 and has violated the Clause IV of the said guidelines and has discriminated the legitimate right of the complainant by not allowing him to meet the scribe, provided by the respondent, one day before the examination to write the Combined Graduate Level Examination-2017 (Tier-I) held on 06.08.2017. The respondent is advised to implement the aforesaid guidelines and allow the complainant to meet the scribe, being provided by the respondent, one day before the examination in forthcoming examinations conducted by the respondent.

10. A copy of this Order be also forwarded to the Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions to issue necessary instructions to the respondent for implementation of the aforesaid guidelines issued by the Ministry of Social Justice & Empowerment.

11. The case is accordingly disposed of.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

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

Case No. 2970/1014/2014

Dated: 20th Nov., 2017

In the matter of:-

Shri Vijaya Bhaskar Reddy P
3/995, YMR Colony, Proddatur
YSR Dist., Andhra Pradesh - 516360
<pvbr777@gmail.com>

R4811

Complainant

Versus

Staff Selection Commission
Through the Secretary
Block No. 12, CGO Complex
Lodhi Road, New Delhi

R4812

Respondent No. 1

Department of Personnel & Training
Through the Secretary
Ministry of Personnel, Public Grievance & Pensions
North Block, New Delhi

R4813

Respondent No. 2

Department of Empowerment of Persons
with Disabilities (Divyangjan)
Through the Secretary
5th Floor, Pt. Deendayal Antyodaya Bhawan
CGO Complex, Lodhi Road, New Delhi

R4814

Respondent No. 3

Date of Hearing: 06.04.2017

Present on 06.04.2017:

1. Complainant - absent
2. Shri Mohan Lal Hirwal, Director and Shri A.K. Dadhich, Under Secretary on behalf of Respondent No. 01. Shri Sanjay Kumar, Selection Officer on behalf of Respondent No. 02.
- Respondent No. 03 - absent

ORDER

The above named complainant Shri Vijaya Bhaskar Reddy P, a person with 40% visually impairment had filed a complaint dated 16.10.2014 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, hereinafter referred to as the Act regarding non implementation of provisions of Persons with Disabilities Act, 1995 by the SSC.

2. Complainant in his complaint submitted that SSC had published an advertisement for the 16141 vacancies including 3458 vacancies in Group 'B' and 12683 vacancies in Group 'C' posts through Combined Graduate Level re-exam 2013. He further submitted that in the advertisement, out of 3458 vacancies of Group 'B' posts, 42 vacancies were reserved for OH, 38 for HH and only 15 vacancies were reserved for VH respectively. He further submitted that in Group 'C' posts out of 12683 vacancies, 199 vacancies reserved for OH, 105 for HH and only 44 vacancies for VH which was total injustice with VH persons. He has requested to direct the SSC and all Civil Services cadre controlling authorities to reserve vacancies according to the PwD Act, 1995 i.e. at least 34 vacancies in case of Group 'B' and at least 126 vacancies in case of Group 'C' for VH persons

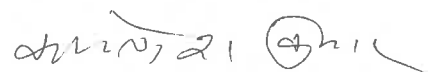
3. The matter was taken up with the respondent vide this Court's letter dated 11.12.2014 under Section 59 of the Act in vogue.

4. In response, Respondent No. 1 i.e. Under Secretary, (P&P-I), SSC, New Delhi vide letter dated 03.02.2015 had submitted that SSC makes recruitment to Group 'B' Non-Gazetted and Group 'C' non Technical posts in various departments/Ministries of Govt. of India. The SSC is only a recruiting agency and vacancies for different recruitments and posts are sent by the indenting departments/Ministries. While sending their requisitions it is the responsibility of the indenting department to indicate category-wise vacancies for different categories of candidates like SC/ST/OBC/PH and Ex-servicemen.

5. After perusal of the reply of SSC, the hearing was scheduled on 06.04.2017 and representatives of the SSC and DOP&T had attended the hearing. After hearing the parties, this Court observed that on receipt of reply of DOP&T, the matter will be decided.

6. In response, Under Secretary, DoP&T vide letter dated 01.05.2017 has apprised that the comments of SSC have been examined and their Department agrees with the views of SSC that category wise vacancies are indented by Ministries/Departments in accordance with reservation roster and if there are any disputes on the question of number of vacancies to be earmarked for persons with disabilities, this issue has to be taken up with concerned indenting departments/ministry. He further submitted that Rights of Persons with Disabilities Act, 2016 has been notified and their Department is in process of issuing new instructions on the applicability of reservation for PwD in due course of time.

7. In view of the above, DOP&T is in process of issuing new instructions on the applicability of reservation for persons with disabilities as per Rights of Persons with Disabilities Act, 2016. The case is disposed of.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner for
Persons with Disabilities



सत्यमेव जयते

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

Dated: 22nd Nov., 2017

Case No. 5034/1011/2015

In the matter of :

Shri S.K. Rungta
General Secretary
National Federation of the Blind
Plot No. 21, Sector - VI
Pushp Vihar, New Delhi.

RS213

... Complainant

Versus

Ministry of Culture
Through the Secretary
Room No. 501, 'C' wing
Shastri Bhawan, New Delhi

RS214

... Respondent

Dates of hearing: 24.05.2017, 02.06.2017 & 19.09.2017

Present on 19.09.2017

1. Complainant absent
2. Shri B. Sharma and Shri Rajesh Saha on behalf of the Respondent.

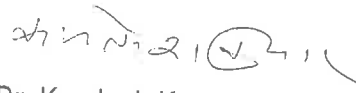
ORDER

Shri S.K. Rungta, General Secretary, National Federation of the Blind, New Delhi filed a complaint dated 17.08.2015 before the Court of the Chief Commissioner for Persons with Disabilities (CCPD) under Section 59 of the Persons with Disabilities Act, 1995 against 33 Ministries/Departments of Central Government to rectify the number of filling up of backlog vacancies for persons suffering from blindness and low vision.

2. The Court of CCPD wrote a letter dated 30.09.2015 to the Department of Personnel & Training (DoP&T) as they were holding meetings with Government Departments. to monitor the progress for filling up of 1% vacancies meant for VH for persons with disabilities in compliance with the Orders of the Hon'ble Supreme Court. In case the vacancies meant for VH are not filled up equal to 1% earmarked out of the total backlog vacancies of 3% for persons with disabilities, the reasons thereof, if any, was to be indicated by the respective Departments as well as steps being taken/proposed to be taken in consonance with the provisions of the Persons with Disabilities Act, 1995. DoP&T, a nodal agency for the purpose, was also requested to send a copy of the advertisements of vacancies issued/to be issued in this regard to the office of the CCPD for hosting on the web-portal www.ccdisabilities.nic.in in compliance with the orders of the Hon'ble Supreme Court so that the office of the CCPD continue to associate in the monitoring of the progress of the desired implementation.

...2....

3. CCPD took up the matter vide letter dated 20.11.2015 with 33 Ministries/Departments of Central Government to maintain separate 100 point reservation roster registers in the specified format for determining and effecting reservation for the persons with disabilities. It was requested to forward a copy of reservation roster and copies of the advertisements issued/to be issued for filling up of the backlog vacancies.
4. This Court also organized One day Workshop on 28th February, 2017 at ISTM, New Delhi on Maintaining of Roster System on 3% reservation for Persons with Disabilities under the PwD Act, 1995 and all the Ministries/Departments of the Central Government were requested to direct their official/nominee to attend the workshop.
5. After perusal of the replies dated 24.02.2016 and 28.03.2016 of the respondent in the instant matter, the hearing was fixed on 24.05.2017 and directed respondent to provide the required documents.
6. During the hearing on 19.09.2017, the representative of the respondent submitted that they are maintaining 100 point reservation roster as per the DOP&T's instructions/guidelines.
7. The case is disposed off by this Court with a direction to respondent to submit the requisite certification from Liaison Officer within 15 days from the date of receipt of this order and also to:-
- (i) Maintain the Reservation Roster w.e.f. 01.01.1996 as per DoP&T's instructions.
 - (ii) Compute the backlog vacancies and fill the vacancies by conducting Special Recruitment Drive in a time framed manner.
 - (iii) Ensure that the advertisement should be made as per para 25 of DoP&T's O.M. No. 36035/3/2004-Estt.(Res.) dated 29.12.2005 and subsequent OMs issued by DoP&T from time to time in this regard and as per the mandate under Section 34 (i) of the Rights of Persons with Disabilities Act, 2016.


 (Dr. Kamlesh Kumar Pandey)
 Chief Commissioner for
 Persons with Disabilities



सत्यमेव जयते

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

Case No.: 7556/1023/2017

Dated: 28.11.2017
Dispatch No.....

In the matter of :

Shri Surinder Kumar Gaur,
R/o WZ-85, Shadipur,
New Delhi – 110 008

..... Complainant

Versus

Mother Dairy Fruit & Vegetable Pvt Ltd,
(The Managing Director)
A-3, Sector-1,
Noida,
Uttar Pradesh-201 301 (India)

..... Respondent

Date of Hearing : 09.06.2017

Present :

1. Shri Surinder Kumar Gaur, Complainant
2. Shri Gaurav Bansal, Manager (Legal) along with Shri Ranjan Jha, Advocate , On behalf of Respondent

ORDER

The above named complainant, a person with disability filed a complaint vide email dated 01.01.2017 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 hereinafter referred to as the Act, regarding harassment by management of Mother Dairy Fruit and Vegetables Pvt. Ltd.

2. The complainant submitted that earlier he had filed a case in this Court which was registered this under case no. 4985/1023/2015. The case was closed vide this Court's letter dated 19.12.2016 as he had challenged the matter in the Hon'ble High Court of Delhi and as his grievance was pending before the Labour Court. During that period the Mother Dairy dismissed the complainant from his services. The complainant submitted that the Mother Dairy Fruit and Vegetable Pvt. Ltd had been formed with permission and approvals of the Central Government vide letter no. 18-4/99-Admn. iv dated 13.12.1999 issued by the Ministry of Agriculture. The complainant referred to the Delhi High Court Judgment dated 15.02.2011 in W.P. (Civil)16309 of 2006 in the Case of Adarsh Kumar Khanna versus Union of India & Ord. He submitted that the Hon'ble High Court held that Mother Dairy Fruit and Vegetable Pvt. Ltd being the subsidiary of National Dairy Development Board and has been formed in exercise of powers under Section 43 of the NDDB Act.

....2/-

3. Upon considering the complainant's email dated 01.01.2017, a personal hearing was scheduled on 09.06.2017.

4. During the hearing, the complainant submitted that the management of Mother Dairy terminated him on 16.10.2015 on the basis of his disability. He should be reinstated in service by the Mother Dairy along with backlog service benefits as it will take 10 years or so for the case to be decided by the Central Government Industrial Tribunal. Looking at his 60% disability, the Chief Commissioner for Persons with Disabilities may take a favourable decision in his case. The management of Mother Dairy is giving wrong information to Chief Commissioner for Persons with Disabilities and they are opting delay tactics as well as misleading the Court. The Court should take immediate action against the management of Mother Dairy. The Mother Dairy should reimburse the expenses incurred by him for his official travel to Hyderabad. Since 27.01.2015, he was neither given wages nor he was reimbursed the Travelling Allowance incurred for his travel to Hyderabad.

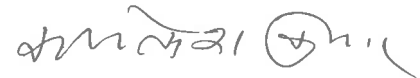
5. The representatives of Respondent vide their written reply dated 01.06.2017 submitted that the complaints dated 04.08.2015, 31.10.2015 and 11.06.2016 filed by the Complainant against the Respondent have been adjudicated vide Order dated 19.12.2016 and the same has attained finality. Therefore, the same issues leveled in the complaints cannot be legally allowed to be raised by the Complainant again and again. It has been held by Courts that for review of an Order or for maintaining a successive complaint on the same cause of action, what is necessary is "substantive change" and not mere "cosmetic change" or "peripheral change" in the erstwhile circumstances and that the change ought to be such which would have "impact on the previous decision". The Respondent submitted that there has been no change in circumstance, whether substantive or cosmetic which can have an impact on the previous decision since passing of the Order dated 19.12.2016 by this Ld. Court. In absence of any substantive change in circumstances, successive complaint would amount to request for reviewing previous Order, which is not permissible in law. It is denied that the letter containing Order dated 19.12.2016 issued by this Court has been passed without proper enquiry, as alleged and without considering the rejoinder and in arbitrary, unlawful manner as alleged by the Complainant. In fact, the para 3 of Order dated 19.12.2016 has been passed after duly considering rejoinder filed by the Complainant. It is clear that the Complainant has fallen to such a level that in case of prayers made in his complaints, however baseless, are not allowed by this Court, the Complainant can use derogatory terms such as arbitrary, unlawful etc. against the Order passed by Chief Commissioner of this Court. The Respondent is a private limited company incorporated under Companies Act, 1956 and is not a corporation established by or under a Central, Provincial or State Act or an authority or body owned or controlled or aided by the Government or a local authority or a Government Company within the meaning of Section 2(k) of the Persons with Disabilities (Equal Opportunities, Protection

of Rights and Full Participation) Act, 1995 ("the Act"). Therefore, it is respectfully submitted that the Respondent is not amenable to the jurisdiction of this Ld. Court constituted under the aforesaid Act and thus the provisions of the said Act are not applicable on Respondent. The reference made by Complainant on the decision dated 15.02.2011 passed by Hon'ble Delhi High Court in the case of Shri Adarsh Kumar Khanna vs Union of India & Ors. [W.P.(C) No.16309/2006] is erroneous and misplaced as the same Hon'ble Court vide Order dated 01.05.2013 while adjudicating Review petition No. 177/2011 against order dated 15.02.2011 has allowed the review filed by the Respondent challenging the said Order and has directed for hearing the writ petition afresh. However, in view of settlement arrived, the writ petition was disposed of by the Hon'ble Delhi High Court as compromised. Therefore, as of date, Order dated 15.02.2011 is no long an enforceable and binding judicial present. Notwithstanding the aforesaid legal objection that this Ld. Court has no jurisdiction in the subject matter, on merits, it is submitted that all the allegations, averments and contentions leveled by Complainant in his complaints dated 04.08.2015, 31.10.2015 and 11.06.2016 are baseless and false and filed with an oblique motive. It is denied that the Complainant has been victimized or deprived of his rights in any manner whatsoever as alleged by the Complainant. On the contrary, as per records, Complainant had committed serious misconduct during the time of his employment with Respondent for which charge sheets were issued and disciplinary proceedings were initiated against him. It is vehemently denied that Respondent has either harassed or penalised Complainant in any manner whatsoever for his active participation in union activities as alleged. It is stated that in the above backdrop and due to his non-performance of duties and due to his disability, Respondent was left with no option other than terminating his services without casting any stigma and further granting him compensation to the tune of Rs.11,19,618/- (Rupees Eleven Lacs Nineteen Thousand Six Hundred and Eighteen only) vide order / letter dated 16.10.2015 which was in addition to the payment of one month salary in lieu of notice amounting to Rs.60,882/-. The Respondent reiterated that complaints filed by Complainant before this Court are malafide and very filing of the complaints by Complainant herein is a glaring example of Forum Shopping and are nothing but examples of abuse of process of this Ld. Court. While invoking the jurisdiction of this Ld Court, Complainant had suppressed the material information of pendency of this cases which were filed by him before other for a, viz, Hon'ble Delhi High Court as well as before Central Government Industrial Tribunal, Karkardooma Courts on the same grounds, seeking the same reliefs and on the same cause of action as the complaints herein. Thus the complainant is clearly guilty of suppression of material information from this Hon'ble Court and of forum shopping. On being informed about the grievance of termination of Complainant pending before the Central Government Industrial Tribunal, Karkardooma Courts in I.D. No.12 of 2016 (wherein next date of hearing was 05.07.2017), the Hon'ble Delhi High Court while hearing the Writ petition bearing No.W.P. No.1045 of 2016 titled as S.K. Gaur vs Union of India & Ors. filed by Complainant has directed the dismissal of the writ petition as withdrawn vide Order dated 27.03.2017. It is well settled that the Labour Courts are

legally equipped to consider whether the provisions of Persons with Disabilities, Act, if at all, have been violated by the management while considering a reference relating to termination of employment of workman. The Respondent submitted that as the issue of validity and legality of termination of services of the Complainant is already pending before Labour Court/Tribunal of competent jurisdiction (in which case pleadings are complete and case is listed for framing of issues/workman evidence) based on the same cause of action as alleged in the complaints filed before this Court, no useful purpose would be served in carrying any parallel proceeding conducted by this Ld. Court as the same shall have the effect of undermining the judiciary authority. The same is opposed to the public policy of India embodied in the doctrine of res judicata and principles analogous thereto, intended to eliminate multiplicity of proceedings and potentially conflicting decisions and to preserve the integrity of the proceedings before the Courts of India.

6. After hearing the parties, the Court took the view that since the case is pending before the Central Government Industrial Tribunal, Karkardooma, no intervention is deemed fit in the matter at present on behalf of this Court.

7. The case is disposed of accordingly.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities



सत्यमेव जयते

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

संख्या 6976/1092/2016

दिनांक: 30.11.2017

श्री संदीप अग्रवाल
<srishyammarketing@gmail.com>

RS065

... वादी

बनाम

अध्यक्ष एवं प्रबन्ध निदेशक,
पंजाब नेशनल बैंक,
7, भिखाजी कामा पेलेस,
नई दिल्ली

RS066

... प्रतिवादी सं. 01

अध्यक्ष एवं प्रबन्ध निदेशक,
एन.एच.एफ.डी.सी.,
अगस्त क्रान्ति मार्ग,
ब्लॉक-ए, निपसीसीडी कैम्पस,
हौज खास, नई दिल्ली-110016

RS067

... प्रतिवादी सं. 02

सुनवाई की तिथि - 30.10.2017

उपस्थित- श्री सुभाष चन्द्र वशिष्ठ, अधिवक्ता वादी की ओर से
- श्री राकेश अग्रवाल, सहायक प्रबन्धक(योजना) प्रतिवादी की सं.02 की तरफ से
- प्रतिवादी सं. 01 की तरफ से कोई उपस्थित नहीं हुए

आदेश

श्री संदीप अग्रवाल, 50 प्रतिशत श्रवण दिव्यांग ने निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी) अधिनियम, 1995 के अन्तर्गत शिकायत दिनांक 15.09.2016 जोकि बैंक द्वारा ऋण आवेदन स्वीकार नहीं करने से संबंधित है, इस न्यायालय में दायर की ।

2. अधिनियम की धारा 59 के अन्तर्गत मामले को इस न्यायालय के पत्र दिनांक 05.10.2016 द्वारा प्रतिवादी के साथ उठाया गया ।

3. महाप्रबंधक, पंजाब नेशनल बैंक ने अपने पत्र दिनांक 18.10.2016 द्वारा इस न्यायालय को सूचित किया कि नेशनल हैण्डिकैप्ड फाइनेंस कॉर्पोरेशन के साथ बैंक के एमओयू के अनुसार, इस योजना के अंतर्गत केवल उन्हीं गतिविधियों के लिए ऋण प्रदान कर सकते हैं जो सीजीटीएसएमई के अंतर्गत कवर हों । प्रार्थी ट्रेडिंग गतिविधियों के लिए ऋण चाहता है और यह गतिविधि ऋण गारंटी योजना के अंतर्गत कवर नहीं है। इस योजना के अंतर्गत ऋण देना संभव नहीं है फिर भी शिकायतकर्ता किसी भी शाखा प्रबंधक अथवा मंडल प्रमुख से भेंट कर विस्तृत चर्चा कर सकते हैं।

4. नेशनल हैण्डिकैप्ड फाइनेंस एण्ड डिवैल्पमेन्ट कॉर्पोरेशन ने अपने पत्र सं. 4405 दिनांक 02.11.2016 में अपने टिप्पण इस न्यायालय में प्रस्तुत किए ।

5. इस न्यायालय के पत्र दिनांक 19.12.2016 द्वारा प्रतिवादियों से प्राप्त पत्रों की प्रतियाँ उनके टिप्पण हेतु भेजी गई ।

पृष्ठ 1/2

6. वादी ने अपने पत्र दिनांक 22.12.2016 द्वारा न्यायालय को अवगत कराया कि एन.एच.एफ.डी.सी. ने पत्र दिनांक 02.11.2016 द्वारा स्पष्ट कर दिया कि पंजाब नेशनल बैंक से विकलांगजन को रियायती दर पर ऋण उपलब्ध करवाने के लिए अनुबंध किया है, साथ ही एन.एच.एफ.डी.सी. बोर्ड की 83वीं मीटिंग में उक्त बारे में निर्णय लिया गया कि :-

“सभी सरकारी और गैर सरकारी बैंकों सहित सभी संघठन जिन से एन.एच.एफ.डी.सी. ने अनुबंध किया है, जिसके तहत पुनः वित्पूर्ती योजना उन सभी सरकारी और गैर सरकारी बैंकों और सभी संघठन, ऋण गारंटी योजना के तहत विकलांगजन के कल्याण हेतु प्रति यूनिट अधिकतम ऋण सुविधा प्रदान किया जाये और ऐसे सभी गतिविधियों जो ऋण गारंटी योजना के अंतर्गत न आते हैं, उन सभी गतिविधियों को भी सम्मिलित किया जाये”

एन.एच.एफ.डी.सी. बोर्ड उपरोक्त निर्णय के सम्बन्ध में सभी संबंधित बैंकों को रियायती ब्याज दर पर एन.एच.एफ.डी.सी. ऋण अधिकतम 25 लाख तक विकलांगजन को मुहैया करवाने को कहा और उन सभी गतिविधियों जो ऋण गारंटी योजना के अंतर्गत न आती हो, को भी सम्मिलित कर एन.एच.एफ.डी.सी. ऋण प्रदान करने को कहा है। उपरोक्त निर्णय एन.एच.एफ.डी.सी. ने पत्र दिनांक 26.08.2015 द्वारा पंजाब नेशनल बैंक को सूचित किया है। पंजाब नेशनल बैंक को सूचित करने के बावजूद, बैंक द्वारा उन्हें ऋण के लिए इंकार किया गया कि एन.एच.एफ.डी.सी. ऋण गारंटी योजना के तहत केवल उत्पादन क्षेत्र को ही दिया जायेगा और ट्रेडिंग गतिविधियों के लिए नहीं दिया जायेगा। एन.एच.एफ.डी.सी. के उपरोक्त निर्णय की जानकारी बैंक ने न्यायालय से साझा नहीं की है।

7. अन्ततः बैंक के पत्र दिनांक 18.10.2016 एवं वादी के पत्र दिनांक 12.12.2016 के जांचोपरान्त मामले में दिनांक 18.09.2017 के लिए सुनवाई निर्धारित की गई।

8. सुनवाई की नियत तिथि को एन.एच.एफ.डी.सी. ने अपने पत्र दिनांक 18.09.2017 एवं मौखिक रूप से पुनः अपना पक्ष रखा। जबकि प्रतिवादी की तरफ से उपस्थित अधिवक्ता ने मामले में सकारात्मक तथ्यों का उल्लेख किया।

9. मामले में सुनवाई के उपरान्त अनुवर्ती कार्यवाही के रूप में कार्यवाहियों के रिकार्ड दिनांक 17.10.2017 प्रतिवादी सं. 01 को मामले में विस्तृत जवाब प्रस्तुत करने का आदेश देते हुए निर्गत किए गए। मामले में अगली सुनवाई दिनांक 30.10.2017 के लिए निर्धारित की गई।

10. प्रतिवादी सं. 01 की तरफ से सुनवाई के दौरान कोई भी उपस्थित नहीं हुआ। हालांकि बाद में जवाब इस न्यायालय को प्रेषित किया गया। वादी के अधिवक्ता ने उल्लेख किया कि एन.एच.एफ.डी.सी. विभिन्न योजनाओं के लिए ऋण प्रदान करता है जैसे कि जनरल स्टोर का संचालन करने इत्यादि के लिए।

11. एन.एच.एफ.डी.सी. के प्रतिनिधि ने सुनवाई के दौरान कहा कि उनके द्वारा बैंक के साथ किए गए करार के अनुसार केवल उत्पादन एवं सेवाएं सम्बन्धी क्रियाकलापों हेतु ऋण प्रदान किया जाता है। इसके अतिरिक्त एन.एच.एफ.डी.सी. द्वारा तेलंगाना में राज्य चैनेलाईजिंग एजेन्सी बनाने का कार्य प्रगति पर है।

12. उपरोक्त तथ्यों एवं ब्यानों के आधार पर मामले को उक्त निर्देश के साथ बन्द किया जाता है कि एन.एच.एफ.डी.सी. शीघ्रताशीघ्र 60 दिन के भीतर तेलंगाना राज्य में चैनेलाईजिंग एजेन्सी संबंधी मुद्दे को अन्तिम रूप देकर वादी के ऋण आवेदन को उक्त एजेन्सी के द्वारा विचार करें। एन.एच.एफ.डी.सी. द्वारा संबंधित योजना की एक प्रति भी इस न्यायालय को प्राप्त करायी जाए।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन