



सत्यमेव जयते

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

Case No.137/1021/10-11

Dated:- 17.04.2014

In the matter of:

Shri Udai Raj Singh,
UDC, Personal No. 009178,
Section P-5/445,
Ordnance Clothing Factory,
Sahajahanpur,
Uttar Pradesh – 242 001.

..... Complainant

Versus

Ordnance Clothing Factory,
(Thru the General Manager),
Shahjahanpur,
Uttar Pradesh – 242 001.

..... Respondent

Date of hearing : 11.04.2011, 06.09.2011, 09.04.2014

Present :

11.04.2011

1. Shri Udai Raj Singh, Complainant.
2. Shri Atul Gupta, Jt GM, OCF, on behalf of respondent.

06.09.2011

1. Shri Uday Raj Singh, Complainant
2. Ms. Nivedita, Works Manager (Administration), OCF, on behalf of respondent.

09.04.2014

1. Shri Udai Raj Singh, complainant.
2. Shri Saurabh Singh, on behalf of respondent.

ORDER

The above named complainant, a person with 80% hearing impairment filed a complaint dated 27.07.2010 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 hereinafter referred to as the Act regarding promotion.

2. The complainant submitted that he was not promoted to the post of UDC against the vacancies reserved for persons with disabilities. He further submitted that roster was not being maintained properly by the Ordnance Clothing Factory, Shahjahanpur..

.....2/-

3. Section 47(2) of the Persons with Disabilities Act, 1995, inter-alia, provides :-

“No promotion shall be denied to a person merely on the ground of his disability provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

4. DoP&T introduced reservation for persons with disabilities in promotion in Group ‘C’ and ‘D’ posts vide their O.M. No.36035/8/89-Estt.(SCT) dated 20.11.1989 as per which there is reservation in promotion within Group ‘D’, Group ‘D’ to Group ‘C’ and within Group ‘C’ in three categories of disabilities, namely, Visually Handicapped (VH), Hearing Impaired (HH), and Orthopedically Handicapped (OH). The matter was, therefore, taken up under section 59 of the Act with the respondent vide letter dated 13.09.2010.

5. Joint General Manager, Ordnance Factory Board, Shahjahanpur vide letter dated 16.09.2010 submitted that the matter was examined and on scrutiny of the records it was observed that the complainant was initially appointed as LDC w.e.f. 06.05.1992 against PH quota. A detailed chart from 1996 to 2006 regarding promotion of the complainant was also submitted. However, the copy of reservation roster was forwarded vide letter dated 13.11.2010. The copy of Recruitment Rules was not submitted and the reservation roster was also not as per the instructions of DoP&T contained in their O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005. Further, it was also seen from the respondent’s reply dated 16.09.2010 that in the year 1999, the seniority number of complainant was not mentioned. In 2001, there were 32 vacancies and the complainant was at Sr. No. 43. He was not promoted because 3 other candidates were stated to have been promoted as they were senior to complainant.

6. Upon considering the replies dated 16.09.2010 and 13.11.2010 of the respondent, a hearing was scheduled for 09.2.2011, which was rescheduled on 11.04.2011.

7. Vide Record of Proceedings dated 20.04.2011, the respondent was directed to submit the following with a copy to the complainant by 12.05.2011:-

- (i) A copy of Recruitment Rules indicating whether the post of UDC is to be filled by promotion on selection basis or on non selection basis.
- (ii) A copy of instructions on whether zone of consideration is applicable for promotion to the post of UDC.
- (iii) Details of persons with disabilities in the post of LDC and in Group C posts who were senior to the complainant alongwith their disability certificates.

8. The respondent vide letter dated 12.05.2011 submitted that as per the Recruitment Rules, the post of UDC was a selection post vide SRO No.14(E), 1989. It was classified as non-selection post by an amendment in Recruitment Rules vide SRO No.149 dated 26.07.1991. The respondent also enclosed the copy of the Recruitment Rules. The respondent clarified that the principle of zone of

consideration is not applicable in the non-selection method of promotion and also submitted details of persons with disabilities in the post of LDC and in Group 'C' posts who were senior to the complainant alongwith their disability certificates.

9. Upon considering the reply dated 12.05.2011 of the respondent and respondent rejoinder dated 18.05.2011, a hearing was scheduled on 18.08.2011 which was further rescheduled on 06.09.2011. As the disability certificate of the complainant did not indicate the percentage of disability, vide Record of Proceedings (ROP) dated 26.09.2011, the respondent was advised to have the disability certificate of the complainant verified from the same medical authority which issued it i.e. CMO, Barabanki and his hearing disability be assessed by following the prescribed procedure. The respondent was directed that if his disability certificate was found to be authentic and he is certified to be a person with disability in terms of the provisions of the Act and prescribed procedure, action to consider him for promotion to the post of UDC as per Para 7 of the ROP dated 20.04.2011 be taken under intimation to this court.

10. The respondent vide letter dated 01.02.2012 and 22.11.2012 submitted that in compliance to the direction dated 26.09.2011, the disability certificate of the complainant was sent for verification to CMO, Barabanki and the complainant was directed to report to CMO, Barabanki. The CMO, Barabanki vide letter dated 10.07.2012 forwarded the PH certificate of the complainant after verification. But did not indicate whether the prescribed procedure was followed. The CMO, Barabanki was, therefore, asked to confirm whether the prescribed procedure was followed for medical examination of the complainant and to clearly indicate the hearing ability of applicant at present.

11. The complainant vide his letter dated 07.03.2013 informed that his disability certificate dated 15.12.2012 had been issued by the CMO, Barabanki after examination which was directly forwarded to the Administrative Officer, OCF, Shahjahanpur vide letter dated 20.12.2012. The said certificate was not provided to him despite oral request. Later he got the same on 09.02.2013. Vide letter dated 20.05.2013 he inter-alia informed that he had been promoted to the post of OS in the general category vide letter dated 06.04.2013 w.e.f. 01.04.2013.

12. Upon considering a number of letters of the parties, a hearing was scheduled on 09.04.2014.

13. During the hearing, the complainant reiterated his written submissions and confirmed that he has since been promoted to the grade of UDC from retrospective date i.e. 01.04.1998 and to the post of Office Superintendent, which should be ante-dated based on his back dated promotion to the post of UDC.

14. The representative of the respondent submitted written submissions dated 26.03.2014, which, inter-alia, state that the relevant DPCs for promotion to the post of UDC have since been reviewed. The complainant Shri Udai Raj Singh (HH) alongwith Shri B.K. Srivastava (HH) and Shri Dinesh Kumar Sharma (Blindness) have been promoted to the post of UDC w.e.f. 01.04.1998 after review of the relevant DPCs. Necessary orders for this purpose were issued vide Order No.576 dated 15.07.2013. The said promotions are subject to outcome of Court/CAT cases. The action to review the DPCs in the post of Assistant and Office Superintendent (OS) is also being taken to consider the

complainant and other persons with disabilities for promotion to the relevant post from retrospective date as per their eligibility. It would take about 3 months to review the DPCs. If found eligible and fit, the complainant alongwith other persons with disabilities would be promoted on notional basis. His inter-se seniority would be taken into account based on his ante dated promotions in various posts.

15. In the light of the submissions made by the respondent, the respondent is hereby directed to complete the process of review of the relevant DPCs within 3 months from the date of receipt of this order under intimation to this Court. The complainant and other similarly placed persons with disabilities be promoted to the next higher post based on such review DPCs with all consequential benefits as per rules.

16. The matter stands disposed off accordingly.

Sd/-

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