



न्यायालय मुख्य आयुक्त निःशक्तजन
In the Court of the 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. 859/1011/12-13

Dated: 23.11.2012

In the matter of:
Suo-motu

Versus

Ministry of Social Justice & Empowerment,
Department of Disability Affairs,
Through : Secretary,
Shastri Bhawan, New Delhi.

..... Respondent

Date of Hearing : 20.11.2012

Present :-

- | | | |
|------------------------------|-----|------------------------------|
| 1. Shri K.V.S. Rao, Director | ... | On behalf of Respondent |
| 2. Non appeared. | ... | On behalf of the Complainant |

O R D E R

1. Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, provides as under:-

“Every appropriate Government shall (a) identify posts in the establishments which can be reserved for the persons with disability; (b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.”

2. The list of identified posts for persons with disabilities under Section 32 of the said Act was last issued vide Ministry of Social Justice and Empowerment's Notification Nos.16-70/2004-DD-III dated 18.1.2007 for Group A and B posts and dated 15.3.2007 for Group C and D posts respectively. Going by the mandate of Section 32 of the said Act, issuance of a revised/updated list of identified posts in Group A and B fell due on 17.1.2010 and in Group C and D on 14.3.2010. Thus, the Department of Disability Affairs, Ministry of Social Justice & Empowerment, Government of India, had not complied with the mandate of Section 32 of the said Act nor did they respond to the Chief Commissioner's letter dated 11.7.2012

3. This Court vide letter No.9-10/CCD/2008/R3920 dated 11th July, 2012 followed by letter dated 29.08.2012 had suggested to the Ministry of Social Justice & Empowerment as follows :-

- (i) It would be expedient to set up Committees well before the expiry of three years from the date of issuance of last notifications for identification of posts with a mandate, inter alia to complete the task in defined time frame.
- (ii) Compliance with all the provisions of the Act including the provision contained in Section 32 thereof must be ensured with utmost seriousness.

- (iii) Since the issuance of notification of revised/updated list of identified posts was long over due, Ministry of Social Justice & Empowerment, Govt. of India should notify the same within one month.

4. The Department of Disability Affairs, Ministry of Social Justice & Empowerment vide letter No.16-15/2010-DDIII dated 11.9.2012 submitted that the report of the Expert Committee constituted to identify/review the posts to be reserved in Group 'A', 'B', 'C' & 'D' posts for persons with disabilities was received in January, 2012. While examining the said report, it was felt necessary to seek certain inputs from Member-Secretary of the Committee and a few National Institutes. Their comments have since been received last week. Though the Department assured that it would endeavour to finalize the matter at the earliest, no definitive time frame within which the notification of revised/updated list of identified posts would be issued in compliance with the mandate of Section 32 of the Act was given.

5. Department of Disability Affairs, Ministry of Social Justice & Empowerment, Government of India vide Notice of Complaint to Show Cause & Hearing dated 17.9.2012 was directed to explain as to why it should not issue notification containing revised/updated list of identified posts in compliance with Section 32 of the said Act latest by 15.10.2012. Else, the respondent/his/her representative was directed to appear on 1.11.2012 at 3.00 p.m. to present the case. The hearing was, however, adjourned to 20.11.2012 at 11.00 A.M. on the request of the Department of Disability Affairs.

6. The representative of the respondent submitted that the matter relating to the revised list of identified posts alongwith draft Notification has been submitted to the Hon'ble Minister for her approval. It would be notified immediately after it is approved by the Hon'ble Minister and is translated into Hindi. He, however, did not specify any time frame within which the revised list of identified posts would be notified.

7. On a meticulous examination of the submissions of the respondent contained in D.O. letter dated 11th September, 2012 together with the submissions made in the course of hearing, this Court observes as follows:-

- (i) That Section 32 of the Persons with Disabilities Act casts an obligation on the appropriate Government, the Respondent Department in the instant case, to review and notify lists/revised lists of identified posts at periodical intervals not exceeding three years keeping in mind the developments which have happened in the filed of science and technology.
- (ii) That there has been a distinct non-compliance with the provisions of Section 32 by the respondent Department on account of disproportionate delay in reviewing and notifying a revised and up-dated list of identified posts. Incidentally, the list of identified posts was last notified by the respondent Department in the year 2007 which means that the revised and up-dated list should have been notified in the year 2010.

- (iii) That the delay in reviewing and notifying the list of identified posts is likely to prejudicially affect the legitimate entitlements and benefits conferred on persons with disabilities by Section 33 of the Persons with Disabilities Act since only those posts can be reserved which have been identified.
- (iv) That this Court further observes that there has been a recurring non-compliance of Section 32 by the respondent Department evidenced by the fact that post the enactment of Persons with Disabilities Act, the first revised and up-dated list of identified posts which should have been notified in the year 2004 was notified in the year 2007. It goes without saying that the first list of identified posts was notified by the respondent Department post enactment of the PWD Act in the year 2001.
- (v) That a perusal of the Notice of Complaint to Show Cause and Hearing dated 17.9.2012 would reveal how the respondent Department kept on ignoring the advice of this Court communicated to it from time to time.

8. In view of the foregoing, this Court is pleased to direct respondent to notify the revised/up-dated list of identified posts within 30 days from the date of receipt of this order and also to ensure that the provisions of Section 32 of the Persons with Disabilities Act are complied with in letter and spirit. Action taken may be intimated to this Court.

9. A copy of this Order may be posted on the Website of this Court as soon as may be.

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