



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

केस सं० 8773/1022/2017

दिनांक: 26.06.2018

के मामले में:-

R-9591

श्री जय प्रकाश

झुग्गी नं० 244, ब्लॉक -जे।।।

जे०जे० कॉलोनी, वजीरपुर
दिल्ली

-वादी

बनाम

उत्तर रेलवे

(द्वारा: मण्डल रेल प्रबन्धक(कार्मिक)

दिल्ली मण्डल, ईस्टेट एन्ट्री रोड
नई दिल्ली

R-9592

- प्रतिवादी

सुनवाई की तिथि: 07.05.2018

उपस्थित -

श्री जय प्रकाश - स्वयं (वादी की तरफ से)
प्रतिवादी की ओर से कोई उपस्थित नहीं हुए

13.06.2018

श्री ब्रह्म सिंह नागर - वादी की ओर से
प्रतिवादी की ओर से कोई उपस्थित नहीं हुए

आदेश

श्री जय प्रकाश, 100 प्रतिशत दृष्टि दिव्यांग ने स्थानांतरण से संबंधित शिकायत दिनांक 25.10.2017 दिव्यांगजन अधिकार अधिनियम, 2016(जिसे इसके बाद अधिनियम कहा जाएगा) के अंतर्गत इस न्यायालय में दायर की।

2. मामले को अधिनियम की धारा 75 के अंतर्गत इस न्यायालय के पत्र दिनांक 13.12.2017 द्वारा प्रतिवादी के साथ उठाया गया। प्रतिवादी को स्मरण पत्र दिनांक 06.02.2018 भी भेजा गया।

3. चूंकि प्रतिवादी से कोई उत्तर प्राप्त नहीं होने की स्थिति के मददेनजर मामले में दिनांक 07.05.2018 को व्यक्तिगत सुनवाई निर्धारित की गयी।

4. मंडल कार्मिक अधिकारी, उत्तर रेलवे ने पत्र दिनांक 17.04.2018 द्वारा अगवत किया कि श्री जयप्रकाश पुत्र श्री लाल बहादुर, ऑफिस खलासी मुरादाबाद मण्डल उ०रे० ने दिल्ली मण्डल उ०रे० में स्वयं के अनुरोध(दिव्यांगता के आधार पर) अन्तर मण्डलीय स्थानांतरण हेतु आवेदन प्राप्त हुआ है जिसे सक्षम प्राधिकारी ने पदों की रिक्तियाँ नहीं होने के कारण अस्वीकार कर दिया गया था। वर्तमान में कार्यालय खलासी संवर्ग की स्वीकृत पद संख्या 90 है, जिसके विपरीत मंडल पर 07 विकलांगजन कर्मचारी(05 श्रवण दिव्यांग, 02 नेत्रहीन दिव्यांग) कार्यरत है। इस कारण उक्त कर्मचारी को दिल्ली मण्डल में समाहित नहीं किया जा सकता है तथा भविष्य में यदि कोई पद रिक्त होगा तो उक्त कर्मचारी के आवेदन पर अग्रिम कार्यवाही की जायेगी।

पृष्ठ 1/2

5. दिनांक 07.05.2018 को सुनवाई के दौरान वादी स्वयं प्रस्तुत हुए और अपनी मूल शिकायत को यथावत दोहराया । प्रतिवादी की तरफ से कोई उपस्थित नहीं हुए जिसे मुख्य आयुक्त ने कानून के उल्लंघन के संदर्भित गंभीरता से लिया । प्रतिवादी को मामले में विस्तृत जवाब अगली सुनवाई से एक सप्ताह पूर्व न्यायालय को भेजने हेतु निर्देशित किया । मामले में अगली सुनवाई दिनांक 13.06.2018 को पुनः निर्धारित की गयी । प्रतिवादी को अवगत किया कि सुनवाई के समय अनुपस्थित होने की स्थिति में अधिनियम की धारा 77 के अंतर्गत कार्रवाई की जा सकती है अथवा शिकायत की सुनवाई एवं निपटारा उपलब्ध दस्तावेजों के आधार पर किया जा सकता है।
6. उपरोक्त सूचना के बावजूद दिनांक 13.06.2018 को सुनवाई के दौरान प्रतिवादी की तरफ से कोई उपस्थित नहीं हुआ और न ही कोई जवाब न्यायालय को प्रेषित किया ।
7. दोनों पक्षों द्वारा प्रस्तुत दस्तावेजों के जांचोपरान्त मामले में प्रतिवादी को आदेशित किया जाता है कि वादी का स्थानांतरण उनके वांछित स्थान पर तीन महीने के अन्दर कर अनुपालना रिपोर्ट इस न्यायालय को प्रेषित की जाएं ।
8. तदानुसार मामले को यहीं बन्द किया जाता है ।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No.: 8121/1040/2017

Dated 28.06.2018

In the matter of:

✓ Shri Shrishambhu
Trade – F/Man,
No.OTAG/GM/06002 Fatigueman,
1 Technical Training Regiment,
PIN 901124, C/o 56 APO

.... Complainant

Versus

Admin. Officer,
Headquarters,
1 Signal Training Centre,
Cantt. Jabalpur-482001 (M.P.)

.... Respondent

Date of hearing: 21.02.2018

Present:

1. Shri Shambhu, the complainant
2. None appeared for respondent

O R D E R

The above named complainant, a person with 50% locomotor disability (Left lower limb) and Fatigue Man posted in 1 Technical Training Regiment (1TTR), 1 Signal Training Centre (1STC), Jabalpur (Headquarters) filed a complaint dated 10.06.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the 'Act', regarding non-grant of leave by the respondent for appearing in the practical examination [M.Sc.-Geography] conducted by the Nalanda Open University.

2. The complainant submitted that while posted at OTA Gaya had got NOC from OTA Gaya to pursue higher studies [M.Sc. – Geography] and successfully attempted the written examination from Nalanda Open University. The practical examinations were commenced from 05.06.2017 to 10.06.2017. Ultimately, he was transferred from Gaya to Jabalpur and he reported at Jabalpur on 02.06.2017. On 03.06.2017 during joining interview he, along with application and other evidences, requested the Admn. Officer, 1STC, HQ Jabalpur for leave to appear in the practical examinations. He received no response regarding his leave from the Officer and, therefore, he could not appear in the practical examinations. The complainant further submitted that he lost time, money,

dignity as well as eight days leave for theoretical exams due to the monopolist administrative constraints of respondent. He had written the exam for 'Gold Medal'.

3. Under Section 75 of the Act, the matter was taken up with the respondent for submission of comments, vide this Court's letter dated 30.06.2017.

4. Col. OIC Civil Adm, 1STC, Headquarters, C/o 56 APO (for respondent) filed the reply vide letter No.1012-Civ Adm/Complaint/ dated 04.08.2017. The respondent submitted a vague reply that on the verbal request the complainant was allowed by the office to proceed to attend the practical exam as per his requirement.

5. In his rejoinder dated 28.09.2017 the complainant refuted the reply dated 04.08.2017 of respondent and reiterated that during joining interview he had submitted hand written application along with leave form, exams Admit Card and Practical Exams Schedule copy to the Admin Officer, which were later returned to him by the Office. The complainant pointed out that how Admin Officer could allow him to leave for exams on verbal request where signature is must for taking leave. The complainant also intimated that he was posted from Group 'C' to Group 'C' and as per OM No.21011/2/80-Estt(c) dated 19.05.1983 and OM No.AB 14017/5/83-Estt.(RR) dated 07.05.1984, any employee if posted in same category cannot put under probation period again & again. He stated to be harassed by the respondent to put him under probation again while he had already completed his probation period at OTA Gaya. He further intimated that he was liable to appear in all papers (Theory & Practical) but he was harassed and/or being harassed by the respondent. He requested this Court that he may be posted back to his previous Unit.

6. Upon considering the aforesaid reply of the respondent and the rejoinder filed by the complainant, the case was scheduled for hearing on 23.11.2017 and Notice of Hearing dated 30.10.2017 was issued by Speed Post to the parties to appear for hearing. A photocopy of the complainant's rejoinder dated 28.09.2017 was also attached with the Notice of Hearing for submission of comment by the respondent to be submitted to this Court one week prior to the date of hearing. However, later the hearing was rescheduled to 20.12.2017 and vide Notice of Hearing dated 16.11.2017, and the parties were advised to appear for hearing accordingly.

7. In response to the Notice of Hearing dated 16.11.2017, the respondent vide letter dated 04.12.2017 submitted that they had not received the Notice of Hearing dated 30.10.2017 and the Headquarter 1 Signal Training Centre was not aware of the grievance of the individual. The respondent requested to make available a copy of the notice of hearing dated 30.10.2017 and defer the hearing to be rescheduled upto 1st week of February, 2018.

8. The case was again rescheduled for hearing on 21.02.2018 and the Notice of Hearing dated 11.01.2018 was issued by Speed Post, along with a copy of the Notice of Hearing dated 30.10.2017 to the respondent as per their request.

9. During the hearing on 21.02.2018, neither anyone appeared for the respondent nor was any intimation/reply received from the respondent.

10. The complainant reiterated his complaint and added that he is being harassed by the respondent since the date he joined at the Headquarter Jabalpur. He implored that it would be a great relief to him if he could be transferred back to Gaya.

11. In the light of the facts mentioned above and the documents available on record, it appears that the complainant, who is an employee with disability, has been harassed by the respondent as the respondent has failed to provide reasonable accommodation to complainant as well as to submit their satisfactory reply to this Court. The respondent did not appear before this Court to clarify their stand. The respondent is advised to stop harassing the complainant forthwith. The respondent may also consider transferring the complainant back to Gaya if he so desires. A copy of this Order be also sent for necessary action to the Additional Directorate General of Manpower/mp-4 (Civ) (b), Adjutant General's Branch, IHQ of Ministry of Defence (Army), West Block-III, RK Puram, New Delhi.

12. The case is accordingly disposed of.



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



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 9044/1023/2017

29764

Dated : 29.06.2018

Dispatch No.

In the matter of :

Ms. Pragati Kesharwani,
D/o Shri Anil Kesharwani,
493/12-KA, Mausamganj,
Daliganj,
Lucknow
Uttar Pradesh – 226 020
Email<pragi.iitan@gmail.com

.....Complainant

Versus

Oil & Natural Gas Corporation Ltd,
(Through the Chairman & Managing Director),
Pandit Deen Dayal Upadhyay Urja Bhawan,
5-A, Nelson Mandela Marg,
Vasant Kunj,
New Delhi – 110 070

29765

.....Respondent

Date of Hearing : 12.06.2018

Present :

1. Ms. Pragati Kesharwani, the Complainant along with her Advocate Shri Kanhaiya Priyadarshi .
2. Shri Vikram Malhotra, Shri Rakesh Sinha, Advocate, Shri Neeraj Kumar and Shri Trilok Chand, on behalf of Respondent.

ORDER

The above named complainant, a person with 45% locomotor disability had filed a complaint dated 14.12.2017 under the Rights of Persons with Disabilities Act, 2016 against denial of her appointment to the post of Assistant Executive (Electronics) in Info-Comm, Deptt. of ONGC at its Hazira Plant, Surat after her joining.

2. The Complaint submitted that she had done B. Tech (Electronics) and also M. Tech with good marks from IIT BHU, Varanasi. She also qualified GATE-2015 with 36.77% marks. She again qualified GATE-2017 on 26.03.2017 with 426 score and All India Rank of 9748. She had also completed the internship at BHEL, Jhansi and Research Design and Standard Organisation, Lucknow. She had participated in several academic and technical events. She was thoroughly examined on strict medical norms by the University before being cleared to take education and training in the field of Electronics. On receipt of call letter dated 10.05.2017, the Complainant

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appeared before the interview board on 23.05.2017. The interview board of the ONGC after scrutinizing the medical certificate, interviewed the Complainant and she was awarded 12 marks out of 15 marks. The result was declared on 19.06.2017. The Complainant accepted the offer of appointment for the post of AEE (Electronics) through mail on 27.07.2017. She reported to Shri Rajan Asthana for joining Hazira Plant on 09.08.2017. The Complainant was asked to get another medical certificate from Dr. Malay Sarkar, a local medical officer of the Corporation. She was then asked to get a report from Dr. Dharmesh Bhupatani, an eye specialist and again asked the Complainant to bring report from Dr. Shobhana Mange, retina specialist. Shri Rajan Asthana told the complainant that her file is being sent to their Head Office at Dehradun for approval and asked the complainant to go back home and wait for further orders. On 12.10.2017 the complainant was shocked to receive an email from ONGC informing her that her appointment has been cancelled medical grounds. She was shattered. The disability for cancellation of appointment by ONGC had not been specified by them. She submitted that the cancellation of her appointment after joining tantamount to denial of legitimate rights.

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 31.01.2018.

4. The Respondent vide its reply dated 20.03.2018 has submitted that the result of AEE (Electronics) was declared on 19.06.2017 and the Complainant was also included in the selection list of candidates. They submitted that as per clause 6(m) of the advt. No.3/2017 (R&P), the appointment of selected candidates is subject to their passing the medical examination as per the standards and rules laid down under the Medical Examination of Employees Rules, 1996 of the organization of the Respondent No.2 and 3. The Complainant was shortlisted for interview based on her OH (OL) disability for which the Complainant had submitted here physical disability certificate certifying OH (OL) disability. The verification of the physical disability certificate is only done by the Recruitment Verification Team and the same is based and limited to only the disability mentioned therein the Physical Disability Certificate. The post of AEE (Electronics) had been identified as suitable for category of OL (i.e. One Leg) & HH (i.e. Hearing Impaired) and the Complainant in the present case had chosen to apply for the post of AEE (Electronics). The advt. clearly shows that the post of AEE (Electronics) is identified suitable for PwD-OH (OL) & HH only but not for disability of vision. The Respondent further submitted that it can be easily ascertained beyond any reasonable doubt that the Complainant on her own will had preferred to chose the post of AEE (Electronics) which otherwise is not meant for persons having visually disability since the post of AEE (Electronics) requires a good vision to qualify. Besides the above, as per the policy for the post of AEE (Electronics) a person/individual who wishes to apply for the said post must possess a good vision to qualify for the post. The acceptance of offer was made to the Complainant through email but the same does not result in the final appointment of the Complainant as the appointment was subjected to her passing the medical examination as per

standards and rules laid down under Medical Examination of Employees Rules, 1996 of the organization. On detailed examination of the Complainant by the Chief Medical Services, it was found that the Complainant does not meet the requisite medical criteria prescribed for vision for the post of AEE (Electronics). The medical examination of the Complainant was again done on 07.03.2018 at the Dr. Ram Manohar Lohia Hospital, New Delhi and during the course of the diagnosis the Complainant was found to be temporarily unfit on account of 'Old Inferior Retinal Detachment Right Eye'. The aforesaid was communicated to the Complainant vide letter dated 14.03.2018 and email dated 15.03.2018.

5. The Complainant vide her rejoinder dated 27.03.2018 had submitted that the ONGC authorities had asked her to go for fitness test at ONGC Hazira Plant, Surat. The In-Charge Medical Services, DCMO, Dr. Maloy Sarkar, by examining the applicant had recorded the following observations, although not confirming to the guidelines of Physical Examination for appointment on ONGC vide Para V(a) and Para V (a), yet since Miss. Pragati Kesharwani had been selected under the category of persons with Disability for the post of AEE (Electronics) and despite having such a longstanding eye condition, she has done well in academics, therefore, the instant case may be referred to higher authority for consideration. She submitted that the ONGC Headquarter sent a letter dated 14.03.2018 signed by Additional Chief Medical Officer (ACMO), ONGC, Dehradun where it had been mentioned that undersigned is temporarily unfit on account of old inferior retinal detachment of right eye. The Complainant had undergone testing of her eyes again at Indira Gandhi Eye Hospital, Lucknow and a report had been given on 14.03.2018. The perusal of the report dated 14.03.2018 of the Consultant Dr. Shireen Pandey indicated that left eye was normal but patient was advised yearly follow up for the same as the routine follow up.

The Complainant vide her another letter dated 19.04.2018 had submitted that after selection, the Complainant was thoroughly examined at the time of interview and had been declared successful, but at the time of medical examination, some ailment was found in the right eye for which the Medical Officer of ONGC, Surat examined the Complainant and has reported that there the Complainant can work on computers without any problem and this report of the Doctor was approved by the DCMO-Incharge Medical Services. She submitted that though she could have taken the benefit of her physical disability but ignoring this fact, had competed with other candidates who does not belong to the category of the Complainant and had succeeded in the open competition to get the call letter for medical examination from ONGC. She submitted that in the advertisement which was issued for the post of AEE (E), no such condition was mentioned as is being alleged by ONGC that the candidate who wishes to apply for AEE(E) post should possess good vision to qualify for the post. During the medical examination at Surat, no negative comments were made regarding her physical disability. She submitted that she can work like any other normal human being. The medical examination conducted on the Complainant by the Doctors appointed by ONGC had given the certificate that she is fit to work on computers. The

contention made by ONGC that the Complainant had failed in the medical examination was totally incorrect as on the basis of Standard Rules adopted throughout the country for medical examination, if any shortcoming is found, the applicant is given adequate time to get those shortcomings rectified and once it has been reports by the Team of Experts regarding right eye ailment of old inferior detachment, even after post operation there would be no improvement, but while undergone the first examination, it was made clear that while performing her duties as officer of ONGC for the post of AEE(E), this old inferior detachment in right yet will not come in easy while doing work on computers, as such the denial of reasonable opportunity to perform duties, had been taken away by ONGC authorities for the reasons best know to them. In the notification dated 29.07.2013 of Ministry of Social Justice and Empowerment, Deptt. of Disability Affairs, the old inferior detachment had not been mentioned and the reason behind not notifying old inferior detachment in right eye would be that a candidate have to see / visualize the things and not to act in such a way which may hamper the working of the Department, as such the applicant has every right to claim her appointment on the post of AEE (E).

6. After considering Respondent's reply dated 20.03.2018 and Complainant's rejoinders dated 27.03.2018 and 19.04.2018, a personal hearing was scheduled on 12.06.2018.

7. During the hearing the Complainant reiterated the submissions made in her original Complaint dated 14.12.2017 and letters dated 27.03.2018 and 19.04.2018.

8. During the hearing the Learned Counsel for Respondent reiterated the submissions made vide letter dated 20.03.2018.

9. On hearing both the Complainant and the Respondent the Court observed that there is violation of Rights of Persons with Disabilities Act, 2016 on the part of the Respondent by not allowing the Complainant to join in the post of AEE (Electronics) after offering her appointment letter. The Court directed the Respondent to facilitate the Complainant to join in the post of AEE (Electronics) at its Hazira Plant, Surat within six weeks from the date of issuance of the Order and submit the compliance report to this Court.

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



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No.: 8121/1040/2017

Dated 28.06.2018

In the matter of:

R-9802

Shri Shrishambhu
Trade – F/Man,
No.OTAG/GM/06002 Fatiguelman,
1 Technical Training Regiment,
PIN 901124, C/o 56 APO

.... Complainant

Versus

Admin. Officer,
Headquarters,
1 Signal Training Centre,
Cantt. Jabalpur-482001 (M.P.)

R-9803

.... Respondent

Date of hearing: 21.02.2018

Present:

1. Shri Shambhu, the complainant
2. None appeared for respondent

ORDER

The above named complainant, a person with 50% locomotor disability (Left lower limb) and Fatigue Man posted in 1 Technical Training Regiment (1TTR), 1 Signal Training Centre (1STC), Jabalpur (Headquarters) filed a complaint dated 10.06.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the 'Act', regarding non-grant of leave by the respondent for appearing in the practical examination [M.Sc.–Geography] conducted by the Nalanda Open University.

2. The complainant submitted that while posted at OTA Gaya had got NOC from OTA Gaya to pursue higher studies [M.Sc. – Geography] and successfully attempted the written examination from Nalanda Open University. The practical examinations were commenced from 05.06.2017 to 10.06.2017. Ultimately, he was transferred from Gaya to Jabalpur and he reported at Jabalpur on 02.06.2017. On 03.06.2017 during joining interview he, along with application and other evidences, requested the Admn. Officer, 1STC, HQ Jabalpur for leave to appear in the practical examinations. He received no response regarding his leave from the Officer and, therefore, he could not appear in the practical examinations. The complainant further submitted that he lost time, money,

dignity as well as eight days leave for theoretical exams due to the monopolist administrative constraints of respondent. He had written the exam for 'Gold Medal'.

3. Under Section 75 of the Act, the matter was taken up with the respondent for submission of comments, vide this Court's letter dated 30.06.2017.
4. Col. OIC Civil Adm, 1STC, Headquarters, C/o 56 APO (for respondent) filed the reply vide letter No.1012-Civ Adm/Complaint/ dated 04.08.2017. The respondent submitted a vague reply that on the verbal request the complainant was allowed by the office to proceed to attend the practical exam as per his requirement.
5. In his rejoinder dated 28.09.2017 the complainant refuted the reply dated 04.08.2017 of respondent and reiterated that during joining interview he had submitted hand written application along with leave form, exams Admit Card and Practical Exams Schedule copy to the Admin Officer, which were later returned to him by the Office. The complainant pointed out that how Admin Officer could allow him to leave for exams on verbal request where signature is must for taking leave. The complainant also intimated that he was posted from Group 'C' to Group 'C' and as per OM No.21011/2/80-Estt(c) dated 19.05.1983 and OM No.AB 14017/5/83-Estt.(RR) dated 07.05.1984, any employee if posted in same category cannot put under probation period again & again. He stated to be harassed by the respondent to put him under probation again while he had already completed his probation period at OTA Gaya. He further intimated that he was liable to appear in all papers (Theory & Practical) but he was harassed and/or being harassed by the respondent. He requested this Court that he may be posted back to his previous Unit.
6. Upon considering the aforesaid reply of the respondent and the rejoinder filed by the complainant, the case was scheduled for hearing on 23.11.2017 and Notice of Hearing dated 30.10.2017 was issued by Speed Post to the parties to appear for hearing. A photocopy of the complainant's rejoinder dated 28.09.2017 was also attached with the Notice of Hearing for submission of comment by the respondent to be submitted to this Court one week prior to the date of hearing. However, later the hearing was rescheduled to 20.12.2017 and vide Notice of Hearing dated 16.11.2017, and the parties were advised to appear for hearing accordingly.
7. In response to the Notice of Hearing dated 16.11.2017, the respondent vide letter dated 04.12.2017 submitted that they had not received the Notice of Hearing dated 30.10.2017 and the Headquarter 1 Signal Training Centre was not aware of the grievance of the individual. The respondent requested to make available a copy of the notice of hearing dated 30.10.2017 and defer the hearing to be rescheduled upto 1st week of February, 2018.

8. The case was again rescheduled for hearing on 21.02.2018 and the Notice of Hearing dated 11.01.2018 was issued by Speed Post, along with a copy of the Notice of Hearing dated 30.10.2017 to the respondent as per their request.

9. During the hearing on 21.02.2018, neither anyone appeared for the respondent nor was any intimation/reply received from the respondent.

10. The complainant reiterated his complaint and added that he is being harassed by the respondent since the date he joined at the Headquarter Jabalpur. He implored that it would be a great relief to him if he could be transferred back to Gaya.

11. In the light of the facts mentioned above and the documents available on record, it appears that the complainant, who is an employee with disability, has been harassed by the respondent as the respondent has failed to provide reasonable accommodation to complainant as well as to submit their satisfactory reply to this Court. The respondent did not appear before this Court to clarify their stand. The respondent is advised to stop harassing the complainant forthwith. The respondent may also consider transferring the complainant back to Gaya if he so desires. A copy of this Order be also sent for necessary action to the Additional Directorate General of Manpower/mp-4 (Civ) (b), Adjutant General's Branch, IHQ of Ministry of Defence (Army), West Block-III, RK Puram, New Delhi.

12. The case is accordingly disposed of.

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



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

केस सं० 8299/1022/2017

दिनांक: 27.06.2018

के मामले में:-

श्री राकेश कुमार ओझा
जोशी कालोनी, लकराखंडा
पो: माराफारी, थाना: सिटी थाना
बोकारो स्टील सिटी, झारखण्ड

R-9624

-वादी

बनाम

बैंक ऑफ इंडिया
(द्वारा: अध्यक्ष एवं प्रबन्ध निदेशक)
प्रधान कार्यालय
स्टार हाउस, "जी" ब्लॉक
बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा(ईस्ट)
मुंबई-400051

R-9625

- प्रतिवादी

सुनवाई की तिथि: 08.06.2018

उपस्थित - श्री राकेश कुमार ओझा - स्वयं (वादी की तरफ से)

सुश्री सी.आर. लथा, सहायक महाप्रबन्धक - प्रतिवादी की ओर से
श्री प्रदीप झा, अधिवक्ता - प्रतिवादी की ओर से

आदेश

श्री राकेश कुमार ओझा, 45 प्रतिशत दृष्टि दिव्यांग ने नियत स्थान पर पोस्टिंग न मिलने के कारण तथा पदोन्नति का लाभ न मिलने से संबंधित शिकायत दिनांक 07.07.2017 दिव्यांगजन अधिकार अधिनियम, 2016(जिसे इसके बाद अधिनियम कहा जाएगा) के अंतर्गत इस न्यायालय में दायर की।

2. मामले को अधिनियम की धारा 75 के अंतर्गत इस न्यायालय के पत्र दिनांक 08.11.2017 द्वारा प्रतिवादी के साथ उठाया गया।

3. महाप्रबन्धक(मानव संसाधन), बैंक ऑफ इंडिया ने अपने पत्र दिनांक 29.11.2017 द्वारा न्यायालय को सूचित किया कि श्री राकेश कुमार ओझा को उनकी लिपिकीय वर्ग से अधिकारी वर्ग की पदोन्नति पर, प्रशासनिक आवश्यकताओं के मद्देनजर सोलापुर अंचल में पदस्थापित किया गया है। पदोन्नति के लिए श्री ओझा का चयन लिपिक कैडर से अधिकारी वर्ग में प्रतीक्षा सूची के माध्यम से किया गया है। श्री ओझा द्वारा दिये जाने वाला प्राथमिकता क्षेत्र बोकारो है। पोस्टिंग जोन का निर्धारण समझौता ज्ञापन दिनांक 15.11.2014 पैरा 8 के अनुसार किया जाता है, जिसपर स्पष्ट रूप से उल्लेख है कि उम्मीदवार की योग्यता सूची पर उसका कुल अंक प्राप्तांक अनुसार और उसके द्वारा उल्लेखित वरियता क्षेत्र का क्रम नियुक्ति/पोस्टिंग के लिए पहले माना जाएगा। चूंकि बोकारो क्षेत्र में कोई रिक्तियाँ नहीं थी, इसलिए, बोकारो जोन के सभी 3 उम्मीदवारों का पदस्थापना विभिन्न अंचलों में किया गया है।

पृष्ठ 1/3

4. वादी ने प्रतिवादी के उपरोक्त उत्तर के प्रतिउत्तर में अपने पत्र दिनांक 27.12.2017 द्वारा अपना रिज्वाइन्डर न्यायालय को प्रेषित किया जिसमें उन्होंने निम्न उल्लेखित किया :-

- I. प्रधान कार्यालय ने अपने जवाब के द्वारा जो सूचना दी है कि उन्हें अधिकारी वर्ग में पदोन्नति उपरांत सोलापुर अंचल में पदस्थापित किया गया है, पूर्णत गलत है क्योंकि वह अभी भी लिपिकीय वर्ग में ही कार्य कर रहा है तथा वर्तमान में उनकी पदस्थापना लिपिकीय वर्ग में ही आंचलिक कार्यालय बोकारो में दिनांक 21.12.2017 से कर दी गयी है।
- II. उनके मूल शिकायत पत्र दिनांक 07.07.2017 के क्रम सं0 7 तथा 8 द्वारा न्यायालय को यह सूचना भी दी है कि उन्हें किसी तरह का कोई भी पदोन्नति का लाभ नहीं मिला है जबकि वह पहले भी उल्लेख कर चुके हैं कि सेवा शर्तों के अनुसार उन्हें उनकी पदोन्नति पर बोकारो अंचल में ही पदस्थापना मिलनी चाहिए थी।
- III. उक्त मामला केवल उनकी पोस्टिंग से संबंधित नहीं है बल्कि उन्हें पदोन्नति का लाभ भी नहीं मिला है। उनको पदोन्नति से केवल इसलिए वंचित नहीं किया जा सकता कि वह शारीरिक रूप से पूर्ण नहीं है।
- IV. उन्हें सोलापुर अंचल के अलावा कोई भी दूसरा विकल्प नहीं दिया गया। एक दृष्टि दिव्यांग कर्मचारी को उसके पदोन्नति उपरांत यदि 1600 कि0मी0 दूर पोस्टिंग किया जाये तो उसको कितनी परेशानी होगी।
- V. बोकारो अंचल में कोई सीट खाली नहीं है तो इसमें उनकी क्या गलती है। वह तो केवल अपनी पदोन्नति पर पोस्टिंग के लिए बैंक से प्रार्थना कर रहा है वो भी अपनी सेवा शर्तों के अनुसार।
- VI. उक्त पदोन्नति उनके कैरियर के लिए बहुत ही महत्वपूर्ण है चूंकि यदि इससे वंचित किया गया तो इसका सीधा असर उनके कैरियर पर पड़ेगा तथा वह अपने साथ जॉइन किए तथा अपने से बाद जॉइन किए अनेकों कर्मचारियों से जूनियर काउंट किया जाएगा। साथ ही आर्थिक रूप से भी यह पदोन्नति उनके लिए काफी महत्वपूर्ण है चूंकि उनके माता-पिता भी पूर्ण रूप से उनके ऊपर निर्भर करते हैं।

5. न्यायालय के पत्र दिनांक 20.02.2018 द्वारा वादी के उपरोक्त रिज्वाइन्डर को प्रतिवादी को उनके टिप्पण हेतु भेजा गया।

6. वादी के उपरोक्त संदर्भित रिज्वाइन्डर के प्रतिउत्तर में प्रतिवादी ने पत्र दिनांक 19.03.2018 द्वारा अपने पूर्व जवाब को दोहराया।

7. दोनों पक्षों के दस्तावेजों के अवलोकन उपरान्त मामले में दिनांक 08.06.2018 को व्यक्तिगत सुनवाई निर्धारित की गयी।

8. सुनवाई के दौरान वादी ने अपनी मूल शिकायत को यथावत दोहराया।

9. प्रतिवादी ने भी अपने पूर्व जवाब को यथावत दोहराते हुए सूचित किया कि वादी द्वारा स्वयं पदोन्नति को अस्वीकार किया गया है जिसका साक्ष्य प्रमाण भी प्रतिवादी द्वारा प्रस्तुत किया गया है। उनके पदस्थापना के संदर्भ में उन्होंने बताया कि चूंकि उनकी पदोन्नति प्रतीक्षा सूची में हुई थी न की प्रवीणता सूची में जिसके कारण पहले प्राप्तांक के आधार पर उच्च मैरिट कर्मचारियों की पदस्थाना की गयी और बाद में बोकारो में रिक्ति की अनुपलब्धता के कारण उनको उक्त स्थान पर पदस्थापित नहीं किया जा सका है।

10. उपरोक्त के परिप्रेक्ष्य में चूंकि वादी द्वारा उनकी पदस्थापना के संदर्भित स्वयं पदोन्नति को अस्वीकार किया गया है, इसलिए मामले में दिव्यांगजन अधिकार अधिनियम, 2016 के किसी प्रावधान का प्रथम दृष्टया कोई उल्लंघन नहीं पाया गया है, तथापि प्रतिवादी से मामले में सहानुभूतिपूर्वक कार्यवाही की अपेक्षा की जाती है कि वे दिव्यांगजन के कल्याण हेतु संभावित संभावनाओं को तलाश कर उन्हें दिव्यांगजन को उपलब्ध कराएं ताकि वे बैंक के कार्य को पूरी निष्ठा और तन्मयता से करने हेतु उत्साहित होते रहें ।

11. तदनुसार मामले को बन्द किया जाता है ।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No. 3051/1014/2014

Dated: 27.06.2018

In the matter of :

Shri Gaurav Kumar
S/o Shri Subhash Singh
Gram – Chhapauli, Mohalla Roshanpuri
Distt. Baghpat, Uttar Pradesh – 250617

Complainant

Versus

Railway Recruitment Cell
(Through: the Chairman)
Lajpat Nagar – 1, New Delhi – 110024

Respondent No. 1

Divisional Railway Hospital
(Through: the Chief Medical Superintendent)
Northern Railway, Moradabad

Respondent No. 2

Date of Hearing: 07.04.2017, 08.05.2017, 04.07.2017, 02.08.2017, 20.11.2017, 02.01.2018, 08.02.2018, 19.04.2018 and 19.06.2018

Present:

1. Shri Gaurav Kumar - Complainant
2. Dr. Rajvir Singh on behalf of Respondents

ORDER

The above named complainant namely Shri Gaurav Kumar filed a complaint dated nil before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities Act, 1995, hereinafter referred to as the 'Act' regarding appointment in a post of Group 'D'.

2. The complainant in his complaint submitted that after clearing written test and interview for Group 'D' posts in Northern Railway, he went to Moradabad for physical examination but concerned officer said that "you are not under PH category". He further submitted that he had applied under OH category, which was also mentioned in the Admit Card for written examination.

3. The matter was taken up with the respondent vide this Court's letter dated 24.12.2014 under Section 33 of the Persons with Disabilities Act, 1995.

4. In response, Chairman/RRC, Northern Railway vide letter dated 04.08.2015 has inter-alia submitted that the case of Shri Gaurav Kumar was sent for Document verification and medical examination to Moradabad Division after he cleared the written test for Group 'D' examination. After document verification candidate was directed to Chief Medical Superintendent/Moradabad and it has advised that candidate in question not comes in the category of handicapped under the provision of Indian Railway Medical Manual. Further as receipt of this court letter, the case was again referred to CMS/MB and it has again been advised by ACMS/MB vide his letter dated 26.04.2015 that candidate donot come in the category of PH as % of handicap is less than 40% under provision of Indian Railway Medical Manual.

5. Complainant vide rejoinder dated 05.10.2015 has inter-alia submitted that his medical test should be again conducted.

6. After perusal of the replies of the respondent and rejoinder submitted by complainant, personal hearing was scheduled on 07.04.2017. During the hearing the complainant reiterated his written submissions and informed that recently Safdarjung Hospital has published an advertisement in Navbharat Times dated 23.03.2018 for the posts of Pharmacist without providing reservation to his type of disability i.e. One Arm. Representative of the respondent reiterated their written submissions. The matter is heard by this Court and the respondent was directed to submit the following information before the next date of hearing.

7. During the hearing on 07.04.2017, the complainant submitted that after clearing written test and interview for Group 'D' in Northern Railway, he went to Moradabad for physical examination but the concerned officer informed him that he is not under PH category as his disability percentage is less than 4%. As per the Disability Certificate issued by the Office of the Chief Medical Officer, Baghpat, his disability percentage is 60%. After hearing the complainant, the Court asked the respondent that so far as the disability percentage of a person is concerned, it cannot be challenged. The Court further observed that the cases of Ministry of Railways are coming before them where it is noticed that Ministry of Railways are challenging the disability percentage of the complainant. It was decided that a Circular is to be issued to the Ministry of Railways that they cannot challenge the disability certificate of a person. The Chairman, Railway Recruitment Cell, New Delhi submitted that when they are in doubt about the disability percentage of a candidate, they refer his/her case for medical examination. Since the case of the complainant was doubtful, his case was referred for medical examination to the Chief Medical Superintendent, Moradabad Division. Since the Chief Medical Superintendent, Moradabad Division advised that the disability percentage of the complainant is less than 40%, the complainant was not selected. After hearing, the parties, this Court directed to the respondent to get examined the disability percentage of the complainant from Safdarjung Hospital, New Delhi.

8. After numbers of hearings, on 02.01.2018 during the hearing complainant has informed that as per the direction of this Court, he went to Safdarjung Hospital for examination of his disability percentage so many times. After going through the documents they have informed that they examine the matter of Group 'A' & 'B' posts only not 'C' & 'D' Group and Dr. RML Hospital takes the matter of Group 'C' & 'D' posts. Thereafter, case referred to Dr. RML Hospital on 12.01.2018.

9. In response, Additional Medical Superintendent, PGIMER Dr. RML Hospital vide letter dated 08.05.2018 has forwarded the report of the Medical Board, constituted by the Medical Superintendent to examine Shri Gaurav Kumar vide which it has been found that Shri Gaurav Kumar is a case of Left Hemiparasis and he has partial permanent physical disability of 32% in relation to left upper and lower limbs.

10. As per the Medical Report of PGIMER Dr. RML Hospital, complainant is a case of left hemiparasis. He has partial permanent physical disability of 32% in related to left upper and lower limbs. So, the case is dismissed accordingly.



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



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

केस सं० 8008/1023/2017

दिनांक: 26.06.2018

के मामले में:-

श्री सुखदेव शर्मा
मं० नं० 280-बी, रेलवे कालोनी
उत्तर रेलवे जगाधरी वर्कशॉप
जिला यमुनानगर, हरियाणा

-वादी

बनाम

उत्तर रेलवे
(द्वारा: महाप्रबन्धक)
कार्यालय महा प्रबन्धक
उत्तर रेलवे, बडौदा हाउस
नई दिल्ली

- प्रतिवादी सं० 01

रेलवे बोर्ड
(द्वारा : सचिव)
रेल भवन, रफीमार्ग
नई दिल्ली

- प्रतिवादी सं० 02

सुनवाई की तिथि: 16.03.2018

उपस्थित - श्री सुखदेव शर्मा - स्वयं (वादी की तरफ से)

श्री गणेश नारायण मीणा, वरिष्ठ लिपिक/आर.पी. - प्रतिवादी की ओर से

07.05.2018

श्री सुखदेव शर्मा - वादी की तरफ से

श्री विनोद कुमार, एपीओ, जगाधरी वर्कशॉप - प्रतिवादी सं० 01 की तरफ से

श्री चन्द्र भान, - प्रतिवादी की तरफ सं० 02 की तरफ से

श्री सुनील दत्त, ओएस/स्था./उ०रे० - प्रतिवादी की तरफ से

श्री लखवीर सिंह, सीएलए/जगाधरी वर्कशॉप- प्रतिवादी सं० 01 की तरफ से

13.06.2018

श्री सुखदेव शर्मा - वादी की तरफ से

श्री विनोद कुमार, एपीओ, जगाधरी वर्कशॉप - प्रतिवादी सं० 01 की तरफ से

श्री चन्द्र भान, - प्रतिवादी की तरफ सं० 02 की तरफ से

श्री सुनील दत्त, ओएस/स्था./उ०रे० - प्रतिवादी की तरफ से

आदेश

श्री सुखदेव शर्मा, 50 प्रतिशत अस्थि दिव्यांग ने 3 प्रतिशत आरक्षण के तहत नियमानुसार पदोन्नति का लाभ प्रदान नहीं करने से संबंधित शिकायत दिनांक 28.04.2017 दिव्यांगजन अधिकार अधिनियम, 2016(जिसे इसके बाद अधिनियम कहा जाएगा) के अंतर्गत इस न्यायालय में दायर की।

पृष्ठ 1/5

2. कार्मिक एवं प्रशिक्षण विभाग के कार्यालय ज्ञापन संख्या 36035/1/89-स्था.(एस.सी.टी.) दिनांक 20.11.1989 के अनुसार निःशक्त व्यक्तियों के लिए वर्ग 'ग' एवं 'घ' पदों में पदोन्नति में आरक्षण शुरू किया गया है । कार्मिक एवं प्रशिक्षण विभाग के कार्यालय ज्ञापन संख्या 36035/3/2004-स्था.(आरक्षण) दिनांक 29.12.2005 के अनुच्छेद 2(ii) के अनुसार समूह 'घ' और 'ग' पदों में, जिनमें सीधी भर्ती का अंश 75 प्रतिशत से अधिक नहीं हो, पदोन्नति के मामले में तीन प्रतिशत रिक्तियाँ, निःशक्तता से ग्रस्त व्यक्तियों के लिए आरक्षित रखी जाएँगी जिसमें से एक-एक प्रतिशत रिक्तियाँ (i) दृष्टिविहीनता अथवा कम दृष्टि (ii) बधिरता और (iii) चलने-फिरने की निःशक्तता अथवा प्रमस्तिष्कीय पक्षाघात (फालिज) से ग्रस्त व्यक्तियों के लिए, उन निःशक्तताओं के लिए उपयुक्त पहचाने गए पदों में आरक्षित होंगी ।

3. कार्मिक एवं प्रशिक्षण विभाग के कार्यालय ज्ञापन सं० 36035/3/2004-स्था.(आरक्षण) दिनांक 29.12.2005 के पैरा 15 (क) के अनुसार निःशक्तता से ग्रस्त व्यक्तियों के लिए आरक्षण निर्धारित करने/लागू करने के लिए सभी स्थापना, 100 बिन्दुओं वाला आरक्षण रोस्टर बनाएं। सीधे भर्ती के माध्यम से भरे जाने वाले समूह 'क' पदों के लिए, सीधे भर्ती के माध्यम से भरे जाने वाले समूह 'ख' पदों के लिए, सीधे भर्ती के माध्यम से भरे जाने वाले समूह 'ग' पदों के लिए, सीधे भर्ती के माध्यम से भरे जाने वाले समूह 'घ' पदों के लिए और पदोन्नति के माध्यम से भरे जाने वाले पदों के लिए अलग-अलग एक-एक आरक्षण रोस्टर होगा। कार्मिक और प्रशिक्षण विभाग ने अपने कार्यालय ज्ञापन सं० 36035/8/2003 - स्था. (आरक्षण) दिनांक 26.04.2006 में यह भी दोहराया है कि सभी स्थापनाओं के द्वारा उक्त कार्यालय ज्ञापन के प्रावधानों के अनुसार वर्ष 1996 से प्रारम्भ करते हुए आरक्षण रोस्टर रजिस्टर तैयार किए जाएं तथा उक्त कार्यालय ज्ञापन में निहित अनुदेशों के अनुसार निःशक्तता से ग्रस्त व्यक्तियों के लिए आरक्षण उद्दिष्ट किया जाए।

4. कार्मिक और प्रशिक्षण विभाग ने अपने कार्यालय ज्ञापन सं. 36035/6/2012-स्था.(आरक्षण) दिनांक 14.12.2012 द्वारा भी सभी मंत्रालयों/विभागों से वर्ष 1996 से आरक्षण रोस्टर रजिस्टर बनाने के लिए अनुरोध किया था । अनुदेशों के अनुसार यदि निर्धारित की गई कुछ अथवा सभी रिक्तियों भली-भाँति आरक्षण द्वारा नहीं भरी गई हैं और शरीर से सक्षम व्यक्तियों द्वारा भरी गई थी चाहे इस कारण से कि उपयुक्त समय पर आरक्षण के बिन्दु यथोचित रूप से निर्धारित नहीं किए गए थे अथवा विकलांगजन उपलब्ध नहीं हो सके, इस प्रकार प्रयुक्त न किया गया आरक्षण आगे ले जाया गया समझा जाएगा । मंत्रालय/विभाग यह सुनिश्चित करें विकलांगजनों को आरक्षण वर्तमान निर्देशों के अनुसार प्रदान किया गया है, जिससे कि आरक्षित रिक्तियों के बैकलॉग के सृजन की संभावना को कम से कम किया जा सके । यह भी सलाह दी जाती है कि विशेष भर्ती अभियान की प्रतीक्षा किए बिना नियमित भर्तियों के द्वारा बैकलॉग को दूर करने के लिए ठोस प्रयास करने चाहिए ।

5. अधिनियम की धारा 75 के तहत मामला प्रतिवादी के साथ पत्र दिनांक 23.06.2017 द्वारा उठाया गया और प्रतिवादी को मामले में टिप्पण तथा प्रोफार्मा में दिनांक 01.01.1996 से वर्ग 'ग' एवं 'घ' की पदोन्नति का ब्यौरा संपर्क अधिकारी के प्रमाण पत्र के साथ कि पदोन्नति के लिए आरक्षण रजिस्टर कार्मिक और प्रशिक्षण-विभाग के निर्देशानुसार बनाया गया है, न्यायालय को पत्र मिलने के 30 दिनों के भीतर भेजने हेतु सलाह दी गयी ।

6. महाप्रबन्धक(कार्मिक), उत्तर रेलवे ने अपने पत्र दिनांक 12.07.2017 द्वारा न्यायालय को सूचित किया कि Sh. Sukhdev Sharma Supdt.(Non Estt) JUDW prior to medical decaterization was working as Tech. III(C&W Fitter) in grade Rs. 3050-4590 and absorbed in the same grade Rs. 3050-4590 as Clerk(Non Estt) w.e.f. 26.09.2001 as per extant rules. As per Railway Board direction the instruction contained in Printed Serial No. 13129 & 13178 (Northern Railway Printed Serial Number), his old unit service will not be counted for the purpose of qualifying service for promotion. As per NRPS number 9186, two years minimum experience is required in the lower grade for consideration for promotion. Therefore, the request of Sh. Sukhdev Sharma, for promotion as Senior Clerk against PwD quota from the date of absorption as clerk w.e.f. 26.09.2001 is not covered by the rules because he had not completed minimum length of service i.e. 2 years service in particular in Clerk category as prescribed a condition for the promotion to higher grade. Therefore, the request of Sh. Suckdev Sharma cannot be agreed to. However, he has been promoted as Senior Clerk in grade R.s 4500-7000 on 31.05.2003 in LDCE quota.

7. वादी ने प्रतिवादी के उपरोक्त उत्तर के प्रतिउत्तर में निम्नलिखित क्रमवार टिप्पण के साथ रिज्वाइन्डर प्रस्तुत किया :-

- I. उक्त विवेचित दिनांक 12.07.2017 के पत्र के पैरा -1 में वर्णित तथ्य आवेदक को स्वीकार्य हैं, कि आवेदक कालिक वेतनमान(3050-4590) में दिनांक 10.11.1995 से कार्यरत था एवं आवेदक को चिकित्सा विकोटीकृत के उपरांत दिनांक 26.09.2001 से गैर स्थापना संवर्ग में 'लिपिक' पद पर सम वेतनमान (रू0 3050-4590) में ही आमेलित किया गया था ।
- II. विवेचित पत्र के पैरा-2 में वर्णित तथ्यों से आवेदक सहमत नहीं है, क्योंकि उत्तर रेलवे मुद्रित क्रम सं0 13129 व 13178 के निर्देश, केवल, अन्य यूनिटों से प्रार्थना के आधार पर स्थानांतरित होकर आने वाले कर्मचारियों के सम्बन्ध में हैं। यह आदेश चिकित्सीय विकोटीकृत कर्मचारियों पर प्रभावी नहीं होते हैं। जिनका शीर्षक स्वयं में सुस्पष्ट है । (counting of service in the old unit/cadre on request transfer for the purpose of qualifying service for promotion in new unit/cadre.) वैसे भी निर्देश प्रसारण दिनांक 21.03.2006 से प्रभावी हैं, जबकि आवेदक को विषय पूर्व अवधि से सम्बन्धित है।
- III. विवेचित पत्र के पैरा -3 में वर्णित तथ्य पूर्ण रूपेण स्वीकार्य हैं, उत्तर रेलवे मुद्रित क्रम सं0 9186 के निर्देशानुरूप पदोन्नति हेतु निकटतम निम्न वेतनमान में 02 वर्ष की न्यूनतम सेवा अवधि अपरिहार्य है। इस अवधि का उल्लेख-अभिप्राय वेतनामन(ग्रेड) से सम्बन्धित है, न कि पद विशेष पर की गयी सेवा के सम्बन्ध में । यहां यह भी स्पष्ट किया जाता है कि आवेदक द्वारा विकलांग /दिव्यांग कोटे के अंतर्गत वरिष्ठ लिपिक पद पर मांगी पदोन्नति हेतु प्रभावित दिनांक 26.09.2001 को आवेदक निम्न वेतनमान (रू 3050-4590) में 02 वर्ष से अधिक समय से कार्यरत था, इस वेतनमान में आवेदक की नियुक्ति दिनांक 10.11.1995 को हुई थी, यह सेवाकाल लगभग 05 वर्ष 10 माह का है। आवेदक को जगाधरी वर्कशॉप कार्मिक शाखा के पत्र सं. 220-ई/25-ई-।/847-ई/लिपिक/गैरस्थापना/ई-। दिनांक 16.02.2002 के अनुरूप भारतीय रेल स्थापना नियमावली संस्करण 1989 के नियम 1314(क) के अनुसार नान-ई संवर्ग में 'लिपिक' पद पर दिनांक 10.11.1995 से वरीयता प्रदान की गई थी । एवं पूर्व कार्यरत कर्मचारी क्रम सं0 10 व 11 के मध्य 10ए पर लगाया था ।

- IV. विवेचित पत्र के पैरा -4 में वर्णित तथ्य अमान्य हैं क्योंकि आवेदक, 'लिपिक' पद वेतनमान(रु 3050-4590) पर आमेसन दिनांक 26.09.2001 से पूर्व सम वेतनमान (रु0 3050-4590) के अंतर्गत दिनांक 10.11.1995 से कार्यरत था, जिसकी अवधि लगभग 05 वर्ष 10 माह होती है। यहां यह भी स्पष्ट करना चाहता हूं कि उच्च पद पर पदोन्नति हेतु निम्न वेतनमान में मात्र 02 वर्ष सेवा अवधि अपेक्षित है। न कि पद विशेष पर की गयी सेवा। इस तथ्य को उत्तर रेलवे मुद्रित क्रम सं0 9186 के पैरा-2(1) के निर्देश भली भांति स्पष्ट करते हैं। इस पैरा के अंतर्गत रेल प्रशासन स्वयं ही पैरा -03 के अंतर्गत उल्लेखित मुद्रित क्रम सं. 9186 के आदेशों की अवहेलना करता प्रतीत होता है। यहां पर 02 वर्ष की सेवा अवधि को विशेषतः लिपिक श्रेणी (पद विशेष) से जोड़ता है। जबकि आदेशों में पदोन्नति हेतु केवल, निकटतम निम्न वेतनमान में 02 वर्ष की न्यूनतम सेवा काल का उल्लेख है। और आवेदक का सेवाकाल मांगी गई पदोन्नति दिनांक तक न्यूनतम ग्रेड में लगभग 05 वर्ष 10 माह का है।
- V. विवेचित पत्र के पैरा -5 में वर्णित तथ्य पूर्ण रूपेण अमान्य हैं, क्योंकि चिकित्सीय विकोटीकृत कर्मचारियों की गत सेवा की गणना से सम्बन्धित IREM CHAPTER-XIII के नियम 1309.(Benefit of past service to be allowed: A disabled/medically decategorised Railway servant absorbed in alternative post, will for all purposes, have his past service treated as continuous with that in the laternativ epost.) के आदेश के आलोक में ही आवेदक को आरआरबी द्वारा आयोजित सीमित विभागीय प्रतियोगिता परीक्षा 13-1/3 प्रतिशत कोटा के अंतर्गत गत समग्र सेवा की गणना करते हुए वरि0लिपिक पद वेतनमान (4500-7000) में दिनांक 31.05.2005 को पदोन्नत किया गया था। जबकि इस परीक्षा के माध्यम से भी पदोन्नति हेतु 02 वर्ष की निम्नतर वेतनमान(3050-4590) में सेवा अवधि वांछित थी। इस बिन्दु पर आवेदक यह कहना चाहता है कि वरि0लिपिक पद पर पदोन्नत हेतु एक माध्यम सीमित विभागीय प्रतियोगिता परीक्षा कोटे के लिए निकटतम निम्न वेतनमान में पूर्व सेवाकाल की गणना उक्त कथित आइआरइएम के पैरा 1309 के अनुरूप की गई है। जबकि द्वितिय माध्यम दिव्यांग कोटे के अंतर्गत पदोन्नति हेतु किस जनयक के अंतर्गत पूर्व समग्र सेवा की गणना नहीं की जा सकती है।
8. दोनों पक्षों के जवाब के अवलोकन मद्देनजर मामले में दिनांक 16.30.2018 को व्यक्तिगत सुनवाई निर्धारित की गयी।
9. सुनवाई के दौरान दोनों प्रतिनिधियों की तरफ से कोई वरिष्ठ अधिकारी प्रस्तुत नहीं हुए। जबकि वादी प्रस्तुत होकर अपनी मूल शिकायत को दोहराया है।
10. मुख्य कारखाना प्रबन्धक, जगाधारी वर्कशाप ने पत्र सं0 732-ई/स-258/ई-। दिनांक 09. 03.2018 द्वारा न्यायालय को अवगत कराया कि श्री सुखदेव शर्मा कार्यालय अधी0 (गैर स्थापना) विभाग जगाधारी वर्कशाप को चिकित्सा के आधार पर विकोटीकृत होने से पूर्व टैक.।।।(सी व डब्लू फीटर) वेतनमान 950-1500 के पद पर कार्य कर रहे थे मुद्रित क्रम सं0 11816 के अनुसार कर्मचारी चिकित्सा के आधार पर विकोटीकृत हो जाने के बाद उन्हें समान वेतनमान और समान पद लिपिक(गैर स्थापना) वेतन 950-1500 में समाहित किया गया था मुद्रित क्रम सं0 11816 के अनुसार दिए गए दिशा निर्देशों चिकित्सा के आधार पर विकोटीकृत कर्मचारी को समान पद या उसके समकक्ष पद पर ही समाहित किया जाना है और कर्मचारी को विकोटीकृत होने से पूर्व/पद की वरीयता का लाभ भी दिया गया है तथा वर्तमान में कर्मचारी का कोई कनिष्ठ कर्मचारी इनसे ऊपर पदोन्नत नहीं किया गया है और कर्मचारी की विकोटीकृत होने पर विकलांगता 70 प्रतिशत थी जबकि वर्तमान वह ठीक होकर

50 प्रतिशत हो गई है। कर्मचारी को दिनांक 26.09.2001 से दिव्यांग कर्मचारी माना गया है इससे पूर्व में श्री सुखदेव शर्मा एक सामान्य कर्मचारी था । फलस्वरूप कर्मचारी को उच्च वेतनमान व उच्च पद पर समाहित करने कोई भी नियम नहीं है। अतः श्री सुखदेव शर्मा आत्मज श्री बी०डी० शर्मा लिपिक पद पर आमेसन की तारीख से वरि० लिपिक वेतनमान 1200-2010 में समाहित या विकलांग कोटे के अन्तर्गत पदोन्नत नहीं किया जा सकता क्योंकि कर्मचारी को वर्तमान नियमानुसार पहले ही पदोन्नति के सभी लाभ दे दिए जा चुकके हैं। अतः कर्मचारी को दिव्यांग कोटे के अन्तर्गत उच्च पद व उच्च पद वेतनमान में समाहित नहीं किया जा सकता है।

11. मामले में सुनवाई दिनांक 07.05.2018 के लिए स्थगित की गई । सभी पक्षों को निर्देश दिया जाता है कि स्वयं अथवा किसी समक्ष प्रतिनिधि (प्रतिवादी की ओर से समूह 'क' के स्तर से नीचे का अधिकारी नहीं) अथवा किसी अधिवक्ता, जो मामले की पूरी जानकारी रखता हो, सभी संबंधित दस्तावेजों के साथ न्यायालय में अपना पक्ष रखने के लिए उपस्थित हों ।

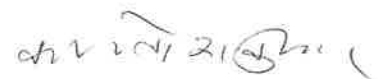
12. दिनांक 07.5.2018 को दोनों पक्षों को सुनने के बाद प्रतिवादी को निर्देशित किया गया कि मामले में अगली सुनवाई दिनांक 13.06.2018 से एक सप्ताह पहले पदोन्नति का ब्यौरा संपर्क अधिकारी क प्रमाण पत्र के साथ कि पदोन्नति के लिए आरक्षण रजिस्टर कार्मिक और प्रशिक्षण विभाग के निर्देशानुसार बनाया गया है, न्यायालय में भेजना सुनिश्चित करें ।

13. सुनवाई दिनांक 13.06.2018 को वादी ने कहा कि उनकी नियुक्ति दिव्यांग कोटे के तहत नहीं हुई थी, अतः उन्हें आरक्षण रोजर के अन्तर्गत पदोन्नति नहीं दी गयी । जब उन्होंने प्रधान कार्यालय में आवेदन किया तो उनका पुनः मेडिकल करवाया गया । उनका कहना था कि पदोन्नति हेतु उनकी समग्र सेवा अवधि को काउंट किया जाना चाहिए ।

14. जबकि प्रतिवादी ने अपने पूर्व जवाब को दोहराते हुए कहा कि दिव्यांगता के बाद वादी को समकक्ष वेतनमान में आमेलित किया गया और समय-समय पर नियमानुसार पदोन्नति दी गई । उन्होंने यह भी कहा कि पदोन्नति हेतु निम्न ग्रेड में कम से कम 02 वर्ष की सेवा पूर्ण होनी चाहिए ।

15. सभी पक्षों को सुनने के बाद मामले में प्रतिवादी द्वारा वादी का दिव्यांगता के आधार पर उत्पीड़न किया जाना प्रमाणित नहीं हो रहा है। तथापि वादी के 02 वर्ष की सेवा पूर्ण होने पर उनकी पदोन्नति के संदर्भ में नियमानुसार विचार किया जाए तथा आरक्षण रोजर इस न्यायालय में 45 दिन के भीतर भेजें ।

16. मामले को तदानुसार बन्द समझा जाएं ।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

केस सं० 8425/1023/2017

दिनांक: 26.06.2018

के मामले में:-

श्री प्रताप चन्द्र भाटिया
120/415, लाजपत नगर
कानपुर-208005
उत्तर प्रदेश

R.9592

-वादी

बनाम

आयुध उपस्कर निर्माणी
(द्वारा: वरिष्ठ महाप्रबन्धक)
कानपुर

R.9598

- प्रतिवादी

सुनवाई की तिथि: 03.05.2018

उपस्थित - श्री प्रताप चन्द्र भाटिया - स्वयं (वादी की तरफ से)

प्रतिवादी की ओर से कोई उपस्थित नहीं हुए

तिथि: 12.06.2018

श्री प्रताप चन्द्र भाटिया - स्वयं (वादी की तरफ से)

श्री रामजी गुप्ता, पी.एस./प्रशा. - प्रतिवादी की ओर से

आदेश

श्री प्रताप चन्द्र भाटिया, 60 प्रतिशत अस्थि दिव्यांग ने पदोन्नति प्रदान नहीं करने से संबंधित शिकायत दिनांक 28.07.2017 दिव्यांगजन अधिकार अधिनियम, 2016(जिसे इसके बाद अधिनियम कहा जाएगा) के अंतर्गत इस न्यायालय में दायर की ।

2. कार्मिक एवं प्रशिक्षण विभाग के कार्यालय ज्ञापन संख्या 36035/1/89-स्था.(एस.सी.टी.) दिनांक 20.11.1989 के अनुसार निःशक्त व्यक्तियों के लिए वर्ग 'ग' एवं 'घ' पदों में पदोन्नति में आरक्षण शुरू किया गया है । कार्मिक एवं प्रशिक्षण विभाग के कार्यालय ज्ञापन संख्या 36035/3/2004-स्था.(आरक्षण) दिनांक 29.12.2005 के अनुच्छेद 2(ii) के अनुसार समूह 'घ' और 'ग' पदों में, जिनमें सीधी भर्ती का अंश 75 प्रतिशत से अधिक नहीं हो, पदोन्नति के मामले में तीन प्रतिशत रिक्तियाँ, निःशक्तता से ग्रस्त व्यक्तियों के लिए आरक्षित रखी जाएँगी जिसमें से एक-एक प्रतिशत रिक्तियाँ (i) दृष्टिविहीनता अथवा कम दृष्टि (ii) बधिरता और (iii) चलने-फिरने की निःशक्तता अथवा प्रमस्तिष्कीय पक्षाघात (फालिज) से ग्रस्त व्यक्तियों के लिए, उन निःशक्तताओं के लिए उपयुक्त पहचाने गए पदों में आरक्षित होंगी ।

- 2 -

3. कार्मिक एवं प्रशिक्षण विभाग के कार्यालय ज्ञापन सं० 36035/3/2004-स्था.(आरक्षण) दिनांक 29.12.2005 के पैरा 15 (क) के अनुसार निःशक्तता से ग्रस्त व्यक्तियों के लिए आरक्षण निर्धारित करने/लागू करने के लिए सभी स्थापना, 100 बिन्दुओं वाला आरक्षण रोस्टर बनाएं। सीधे भर्ती के माध्यम से भरे जाने वाले समूह 'क' पदों के लिए, सीधे भर्ती के माध्यम से भरे जाने वाले समूह 'ख' पदों के लिए, सीधे भर्ती के माध्यम से भरे जाने वाले समूह 'ग' पदों के लिए, सीधे भर्ती के माध्यम से भरे जाने वाले समूह 'घ' पदों के लिए और पदोन्नति के माध्यम से भरे जाने वाले पदों के लिए अलग-अलग एक-एक आरक्षण रोस्टर होगा। कार्मिक और प्रशिक्षण विभाग ने अपने कार्यालय ज्ञापन सं० 36035/8/2003 - स्था. (आरक्षण) दिनांक 26.04.2006 में यह भी दोहराया है कि सभी स्थापनाओं के द्वारा उक्त कार्यालय ज्ञापन के प्रावधानों के अनुसार वर्ष 1996 से प्रारम्भ करते हुए आरक्षण रोस्टर रजिस्टर तैयार किए जाएं तथा उक्त कार्यालय ज्ञापन में निहित अनुदेशों के अनुसार निःशक्तता से ग्रस्त व्यक्तियों के लिए आरक्षण उद्दिष्ट किया जाए।

4. कार्मिक और प्रशिक्षण विभाग ने अपने कार्यालय ज्ञापन सं. 36035/6/2012-स्था.(आरक्षण) दिनांक 14.12.2012 द्वारा भी सभी मंत्रालयों/विभागों से वर्ष 1996 से आरक्षण रोस्टर रजिस्टर बनाने के लिए अनुरोध किया था। अनुदेशों के अनुसार यदि निर्धारित की गई कुछ अथवा सभी रिक्तियों भली-भांति आरक्षण द्वारा नहीं भरी गई हैं और शरीर से सक्षम व्यक्तियों द्वारा भरी गई थी चाहे इस कारण से कि उपयुक्त समय पर आरक्षण के बिन्दु यथोचित रूप से निर्धारित नहीं किए गए थे अथवा विकलांगजन उपलब्ध नहीं हो सके, इस प्रकार प्रयुक्त न किया गया आरक्षण आगे ले जाया गया समझा जाएगा। मंत्रालय/विभाग यह सुनिश्चित करें विकलांगजनों को आरक्षण वर्तमान निर्देशों के अनुसार प्रदान किया गया है, जिससे कि आरक्षित रिक्तियों के बैकलॉग के सृजन की संभावना को कम से कम किया जा सके। यह भी सलाह दी जाती है कि विशेष भर्ती अभियान की प्रतीक्षा किए बिना नियमित भर्तियों के द्वारा बैकलॉग को दूर करने के लिए ठोस प्रयास करने चाहिए।

5. अधिनियम की धारा 75 के तहत मामला प्रतिवादी के साथ पत्र दिनांक 21.12.2017 द्वारा उठाया गया और प्रतिवादी को मामले में टिप्पण तथा प्रोफार्मा में दिनांक 01.01.1996 से वर्ग 'क' और 'ख' 'ग' एवं 'घ' की पदोन्नति का ब्यौरा संपर्क अधिकारी के प्रमाण पत्र के साथ कि पदोन्नति के लिए आरक्षण रजिस्टर कार्मिक और प्रशिक्षण-विभाग के निर्देशानुसार बनाया गया है, न्यायालय को पत्र मिलने के 30 दिनों के भीतर भेजने हेतु सलाह दी गयी।

6. मामले को प्रतिवादी के साथ उठाये हुए पर्याप्त समय व्यतीत होने के बावजूद भी उनके टिप्पण प्राप्त नहीं हुए तो उन्हें एक स्मरण पत्र दिनांक 27.02.2018 प्रेषित किया गया।

7. और जब स्मरण पत्र भेजने के बावजूद भी प्रतिवादी की ओर से कोई जवाब प्राप्त नहीं हुआ

8. मामला तदानुसार सुना गया । सुनवाई के दौरान प्रतिवादी की तरफ से कोई उपस्थित नहीं हुए जबकि वादी ने सुनवाई के दौरान स्वयं प्रस्तुत होकर अपनी मूल शिकायत को यथावत दोहराया ।
9. महाप्रबन्धक, आयुध उपस्कर निर्माण ने पत्र सं० विज/एस०सी०/एस०टी० लाईजन सेल/पी०सी०बी०(०३/२०१८) दिनांक २१.०४.२०१८ द्वारा मामले में बिन्दुवार निम्न टिप्पण प्रस्तुत किए :-
 - I. निर्माणी में विकलांगजन के पदोन्नति से संबंधी रोस्टर तैयार किया गया है एवं तत्संबंधी पदोन्नति के नियमों का पालन करते हुए विकलांगजन को पदोन्नति का लाभ भी प्रदान किया जाता है श्री प्रताप चन्द्र भाटिया को श्रमिक/एस०एस० पदनाम से इलेक्ट्रिशियन/एस०एस० पदनाम में पदोन्नत किया गया है जिसे एसआरओ के अनुसार ८० प्रतिशत सीधी भर्ती एवं २० प्रतिशत पदोन्नति से पदों की पूर्ति की जाती है । २० प्रतिशत पद पदोन्नति/स्थानांतरण से भरे जाने के कारण विकलांग कोटा लू नहीं किया जाता है। अतः दिव्यांग कर्मचारी के साथ कोई भेदभाव नहीं किया गया है। जबकि श्री प्रताप चन्द्र भाटिया, वै०सं० १००९२० की पदोन्नति दिनांक ०१.०४.२०१८ से इलेक्ट्रिशियन/एच०एस०-। पदनाम में विकलांग कोटे के अन्तर्गत की गयी है।
 - II. श्री प्रताप चन्द्र भाटिया, वै०सं० १००९२० ने एसबीए/एसएस(स्वीच बोर्ड अटेडेन्ट/एसएस) पद की इलेक्ट्रिकल सक्षमता परीक्षा उत्तीर्ण की थी जिसका परिणाम निर्माणी आदेश सं० ११३ दिनांक २६.०४.२००५ द्वारा जारी किया गया था । विदित हो कि सेमी स्किल्ड ग्रेड में डी०जी०ओ०एफ० इलेक्ट्रिकल कंपीटेन्सी टेस्ट का आयोजन ओ०एफ०बी०, कोलकाता द्वारा भविष्य में उत्पन्न होने वाले रिक्ति एवं मांग दोनों उपलब्ध होने पर इलेक्ट्रिशियन/एस०एस० पद में पदोन्नति हेतु आवश्यक योग्यता प्रदर्शित करने हेतु परीक्षा में सम्मिलित होने मात्र के लिए किया जाता है । वस्तुतः कंपीटेन्सी टेस्ट में उत्तीर्णता इलेक्ट्रिकल समूह के पदों में समपदनामन के लिए योग्यता मात्र है । अतः निर्माणी में इच्छुक श्रमिक/एस०एस० कर्मचारियों के कंपीटेन्सी टेस्ट के आयोजन का निर्माणी आदेश रिक्ति की पूर्ति के लिए नहीं बल्कि रिक्ति पूर्ति हेतु आवश्यक योग्यता का निर्धारण करने के लिए होता है। कर्मचारी का समपदनामन अनुभाग की मांग के आधार पर होता है।
 - III. उल्लेखनीय है कि ओ०एफ०बी०, कोलकाता पत्र सं० ४८२/सीटीबी/पॉलिसी/ए/। दिनांक ०८.०९.२००५ के द्वारा एसबीए पद समाप्त कर दिया गया है एवं स्पष्ट किया गया है कि further induction by way of ER/Promotion in the trade of Wireman/SBA/Armature Winder/Cable Jointer in semi Skilled grade shall be stoppe with immediate effect except in the trade of Electrician/SS. Labour/SS(US) may also be promoted to electrician/SS on their passing DGOF Competency Test as per existing SRO.

परीक्षा में उत्तीर्ण किसी भी श्रमिक/एस0एस0 को एस0बी0ए0/एस0एस0 नहीं बनाया गया था। इस बीच ओ0एफ0बी0 कोलकाता पत्र सं0 482/सीटीबी/पॉलिसी/ए/। दिनांक 08.09.2005 द्वारा प्राप्त आदेश के उपरान्त निर्माणी में एस0बी0ए0 का इन्डकशन नहीं किया जा सकता था। केवल श्रमिक/एस0एस0 से इलेक्ट्रिशियन/एस0एस0 ही इलेक्ट्रिशियन/एस0एस0 की कंपीटेन्सी टेस्ट उत्तीर्ण करने के उपरान्त बनाया जा सकता है। यद्यपि एस0बी0ए0/एस0एस0 की सक्षमता परीक्षा उत्तीर्ण था, परन्तु एस0बी0ए0 पदनाम समाप्त किए जाने के कारण उसे बाद में भी एस0बी0ए0/एस0एस0 नहीं बनाया गया था। निर्माणी आदेश सं0 113 दिनांक 26.04.2005 द्वारा जारी परिणाम के अनुसार श्री प्रताप चन्द्र भाटिया के साथ अन्य श्रमिक/एस0एस0 क्रमशः श्री उमाशंकर सरोज, श्री राजेश कुमार एवं मो0 आरिफ ने सेमी स्किल्ड ग्रेड की सक्षमता परीक्षा उत्तीर्ण की थी, परन्तु किसी को भी पदोन्नति नहीं किया गया। निर्माणी आदेश 426, दिनांक 27.02.2008 के अनुसार उपरोक्त सभी को सक्षमता परीक्षा उत्तीर्ण करने के पश्चात दिनांक 27.02.2008 से इलेक्ट्रिशियन/एस0एस0 पदनाम में पदोन्नत किया गया था। अतः कर्मचारी का यह कथन कि उसके जूनियर कर्मचारी को पदोन्नति कर दिया गया, भी असत्य है क्योंकि निर्माणी में पदोन्नति संबंधी समस्त उपलब्ध निर्देशों का सम्यक रूप से पालन किया जाता है साथ ही कथित जूनियर कर्मचारियों के नाम न दिए जाने के कारण इस पर टिप्पणी भी नहीं दी जा सकती है।

- V. कर्मचारी को निर्माणी आदेश भाग सं0 -48 दिनांक 19.02.2007 के द्वारा इलेक्ट्रिशियन/एस0एस0 की सक्षमता परीक्षा उत्तीर्ण करने एवं नि0आ0 भाग-1, सं0 67 दिनांक 27.02.2008 द्वारा ट्रेड टेस्ट उत्तीर्ण होने के उपरान्त मांग एवं रिक्ति के आधार पर दिनांक 27.02.2008 को ही इलेक्ट्रिशियन/एस0एस0 बना दिया गया है। अतः श्री प्रताप चन्द्र भाटिया का यह कथन कि उनके साथ भेदभाव किया गया है, असत्य है।

श्री प्रताप चन्द्र भाटिया का सेवा-विवरण निम्न है:-

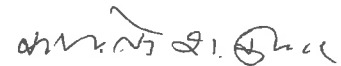
श्री प्रताप चन्द्र भाटिया, वै0सं0 100920 का सेवा विवरण	रिमार्क
श्रमिक/यू0एस0, 18.04.1983, रू0 196-232	नियुक्ति
श्रमिक/एस0एस0, 23.01.1995, रू0 800-1150	पदोन्नति
ए0सी0पी0-2, 18.04.2007, रू0 3050-4590	वित्तीय उन्नयन
इलेक्ट्रिशियन/एस0एस0, 27.02.2008, ए0सी0पी0-2, रू0 3050-4590	नि0आ0-67 दिनांक 27.02.2008 द्वारा इलेक्ट्रिशियन/एस0एस0 हेतु ट्रेड परीक्षा उत्तीर्ण होने के उपरान्त
इलेक्ट्रिशियन/एस0एस0 08.09.2010 रू0	एस0एस0/सी0पी0 (एनजीडिन)

एम0ए0सी0पी0-2, 5200-20200+2400	06.08.2010,	रू0	तृतीय एम0ए0सी0पी0
एम0ए0सी0पी0-3, 5200-20200+2800	04.03.2015,	रू0	पदोन्नति
इलेक्ट्रिशियन/एच0एस0-1, रू05200-20200+2800	01.04.2018		पदोन्नति

कर्मचारी को समस्त लाभ समय से एवं रिक्ति उपलब्ध होते ही प्रदान किया गया है एवं कर्मचारी को इलेक्ट्रिशियन/एस0एस0 पदनाम में पदोन्नत किया गया है।

10. सुनवाई के दौरान उपस्थित प्रतिवादी के प्रतिनिधि ने अपने लिखित उत्तर दिनांक 21.04.2018 को यथावत दोहराया। वादी ने भी मामले में कुछ नवीनतम सम्मिलित नहीं किया।

11. दोनों पक्षों को सुनने के बाद प्रथम दृष्टया यह प्रतीत होता है कि मामले में दिव्यांगजन अधिकार अधिनियम, 2016 के किसी प्रावधान का कोई उल्लंघन नहीं हुआ है। अतः इस मामले को यहीं बन्द किया जाता है।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No. 8021/1011/2017

Dated: 18.06.2018

In the matter of:-

Dr. Nitesh Kumar Tripathi

H.No. B – 241, B Block

Sant Nagar Burari, Delhi – 110084

<niteshtripathi85@gmail.com>

Complainant

Versus

Indian Institute of Technology Ropar

Through the Registrar

Nangal Road, Rupnagar, Punjab – 140001

Respondent

Date of Hearing: 11.06.2018

Present:

1. Complainant - absent
2. Shri N.C. Chauhan, Ex-Joint Registrar, IIT Delhi on behalf of Respondent.

ORDER

The above named complainant Dr. Nitesh Kumar Tripathi filed an e-mail dated 06.04.2017 under the Persons with Disabilities under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the Act regarding non implementation of provisions of Persons with Disabilities Act, 1995 by IIT, Ropar.

2. The complainant in his complaint submitted that IIT, Ropar has published an advertisement for Doctors and the advertisement is not showing exact number of seats reserved for persons with disabilities. He has requested this court to direct the respondent to provide various faculties like full exemption from the payment of application fee, extra time during examination, travel expenses to attend interview along with an escort, disabled friendly environment during the interview and to also conduct the Special Recruitment Drive for filling up the backlog vacancies for persons with disabilities.

3. The matter was taken up with the respondent vide letter dated 01.09.2017 under Section 75 of the Rights of Persons with Disabilities Act, 2016.

.....2.....

4. In response, Registrar, Indian Institute of Technology, Roper vide letter dated 24.10.2017 has inter-alia submitted that Dr. Nitesh Kumar Tripathi was shortlisted and called for interview for the post of Medical Officer and Dr. Tripathi being a candidate under PwD category requested for the following (i) Reimbursement of Travelling Allowance with escort (ii) Travel by taxi alongwith an escort (iii) to make boarding arrangement in the institute from the date of his arrival to the date of departure. IIT, Ropar has made all the above arrangements as per his request.

5. Complainant vide rejoinder dated 24.12.2017 has inter-alia submitted that after going through the reply of the respondent nothing has been answered as per the issues raised in his original complaint.

6. After considering the respondent's letter dated 24.10.2017 and complainant's e-mail dated 24.12.2017, it was decided to hold a personal hearing in the matter therefore, the case was listed on 11.06.2018.

7. During personal hearing complainant was absent and representative of the respondent has informed that the post of Medical Officer was open post and not reserved for any category. He further informed that an amount of Rs. 53,000/- has been paid to the complainant towards reimbursement of Travelling Allowance with escort, travel by taxi alongwith an escort and made boarding arrangement in the Institute from the date of his arrival to the date of departure.

8. In view of the above, case is closed accordingly.



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



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Cash No. 8482/1103/2017

Dated: 29 06.02018

In the matter of:

Shri Ramana Alla

ramanaalla@yahoo.com

Versus

Railway Board

(through: the Secretary)

Rail Bhawan, Rafi Marg

New Delhi

Date of Hearing : 08.06.2018

Present:

Shri Ramana Alla – self (on behalf of the complainant)

Shri V. Murali Dharan, Dy. Dir.-Estt(W). – on behalf of the Respondent

ORDER

The above named complainant, a person with 60% Locomotor Disability submitted a representation dated 20.07.2017 regarding amendment in Railway Servants(Pass) Rules, 1986 under the Rights of Persons with Disabilities Act, 2016 referred to as "the Act".

2. The matter was taken up with the Respondent vide this Court's letter dated 23.11.2018 under Section 75 of the Act.

3. Dir. Estt.(Welfare), Railway Board vide letter no. E(W)2018/PS5-2/1 dated 10.01.2018 has submitted their comments as under:-

- i. The statement made by the Complainant in para 2&3 of his Affidavit regarding facilities on Duty Passes is only partial and not complete. In terms of extant travel entitlement on Duty Passes(extracts at Annexure-I), in addition of an attendant in Sleeper Class, the Selection Grade Railway Officers are permitted to take family members also alongwith them. Whereas the Complainant has mentioned only about the attendant facility. Since the extant entitlement on Duty Passes already facilitates the Complainant to take his family member(s) alongwith him for assistance as required during travel, it is not desirable to involve a private person totally not related to railway working to avail the facilities extended to railway servants for performing Government duty. Hence, the extant facility provided under the statutory rules is considered sufficient.

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- ii. As far as the amendments suggested by the Complainant, it is brought out that:
- a) In the extant Pass Rules(extracts at Annexure-II), some types of "physical disabilities" have only been broadly classified as stated therein and there is no bar in extending the escort facility to the railway employees failing within the broad parameters of disabilities outlined in the rules, on the recommendation of DMO. The Pass Rules is not a Medical Manual to elaborately stipulate different kinds of disabilities, medical conditions, etc which exist as like the one pointed out by the Complainant.
 - b) Vide Advance Correction Slip(ACS) No. 76 issued to the aforesaid Pass Rules on 06.04.2017(extracts at Annexure-III), the proviso cited by the Complainant has already been relaxed to permit an escort on privilege passes in cases where the employee's spouse and other family member(s) are physically challenged or invalid or children below the age of 12 years. It was done to mitigate the hardships faced by physically challenged railway servants whose spouse is also physically challenged. The contention of the Complainant that it is difficult for his wife to assist him during train journey on his private visits is not acceptable and will not be a justified ground to further amend said proviso of the statutory rules.
 - c) As already brought out in para 1 above, the facility is considered sufficient and there is not justification to mend the provisions.
2. Railway servants are issued railway passes as a part of their statutory service conditions in accordance with the Railway Servants (Pass) Rules, 1986 (Second Edition – 1993), framed by President of India, exercising powers conferred on him under proviso to Article 309 of the Constitution of India. These rules do not deprive any physically challenged railway employee of reasonable pass facilities.
4. The above reply of the respondent was sent to the complainant for submission of his rejoinder vide letter dated 29.01.2018.
5. Vide letter dated 14.02.2018, the complainant submitted his rejoinder stating that:

Para-I:

There is nothing new in this submission made by the Ministry of Railways and they reaffirmed the Railway Servants(Pass) Rules, 1986 which are very well known to all the Railway servants. In the Pass Rules the practical approach for the utility of same by the disabled is missing. Hence, it is my humble request is to ask the Director of Establishment, Railway Board(Sri Sunil Kumar) to sit in a wheel chair and perform a 12 hours journey in

any train of his choice as per his eligibility of passes and class of travel If such a long time does not permit him to do so, just ask him to do the following -----Board the train in wheel chair, get on/off to the berth, once use the toilet and get down from the train in wheel chair. During Boarding and getting out of the train, his attendant as per Raiwlay Servants(Pass) Rules, 1986, can assist him. But during travel/journey time only family members as per Raiwlay Servants (Pass)Rules, 1986 (as the attendant is in osme other sleeper coach) are allowed to assist him. This may be difficult for him but he left with no option than to make him to understand the pain of disabled through this practical approach. He is sure at the end of journey, he gets to know the real need of the amendment suggested by him in his representation dated 20.07.2017

Para:II

Direcotr of Establishment, Welfare, in his submission has stated that there no bar in extending escort the facility to the railway employees falling within the parameters of the disabilities on the recommendation of DMO. It is the right time to amend the Railway Manuals with respect of categories of physical disabilities and ofr making a provision for escort facility to the railway employees as it is the case with non railway disabled travelers. The inclusion suggested by him in his representation may be reviewed and appropriate action may be taken to include the same into the category of disabilities in the Railway Medical Manuals & Railway Servants(Pass) Rules, 1986 Manuals.

6. Upon considering the submissions of both the parties, a personal hearing was scheduled in the matter on 08.06.2018.

7. During the hearing, the complainant has submitted a suggession letter submitting that he met with a road accident on duty and hospitalized for two years with spinal injury c5-c6 and resumed back to service on wheel-chair. His troubles have started from then. Office premises are not disabled friendly and he is not in a position to use his basic privileges because of disability.

- He raised a complaint against Ministry of Railways on 31.05.2014 for relaxation of pass rules to suit the present day requirements of disabled staff but the ministry denied to amend siting financial and other implications.
- Then he moved to RTI seeking the details of extra expenditure borne by IR for the facilities provided exclusively for disabled staff. For this IR has not given any concrete information.
- He approached CIC for not submitting information under RTI and the CIC asked IR to consider issuing fresh instructions to zonal offices for implementation of the rules pertaining to disabled employees. But as usual IR have not consider/done anything in the spirit of implementation of any welfare measures.
- Even today his office does not have ramps, lift etc but the office is having many disabled employees.

- A. He would like submit the details of concessions granted to different categories of persons on Indian Railways. The serial no. 1, he says Orthopedically handicapped/paraplegic persons who cannot travel without escort for any purpose ... have a percentage of concession of 50% in First AC and AC2-tier and One escort is also eligible ofr same element of concession. But Railway administration is not at all interested in extending a similar facility to its employees saying it becomes extra burden to its exchequer.
- B. He would like to put forward some important points extracted form the Rights of Persons with Disabilities Act, 2016 and other relevant information in support of him.
1. The first and far most principles for making the act for empowerment of persons with disabilities is---
 - a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of person;
 - b) Accessibility;
 2. In chapter II of the act, Rights and Entitlements its very clear
 - 3(1) The appropriate Governmet shall ensure tha the persons with disabilities enjoy the right to equality, life with dignity and respect ofr his or her integrity equally others.
 - 3(4) No person shall be deprived of his or her personal liberty only on the grouod of disability.
 3. 5(2) The appropriate Government shall endeavour that the persons with disabilities are-
 - a) Not obliged to live in nay articular living arrangement; and
 - b) Given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.

Railways in their reply dated 10.01.2018, the SG railway officers are permitted to take their families along with them. The point to be observed here is as per RailwayServants(Pass) Rules, 1986, his family comprises of 30 years aged wife, 6 years elder daughter and 5 years younger daughter and no other mlae member is a part of his family as per railway rules, He is aged 40 years with a body weight of around 80 kgs. He failed ot understand how his Railway family members can assist him during his travel for attending his nature calls, putting him on the berth, shifting to wheel chair etc.

This is just not a practically feasible thing and also it's a violation of Rights and Entitlements as specifiend in the Rights of Persons with Disabilities Act, 2016. If he take his family for on duty programme, he need three more berths for his family but he has given an escort in the same class of journey he need only one extra berth.

- C. In response to (ii)(a), the information provided is completely false and the the pass

concessions granted to different categories (other than Railway staff) are fully updated as there is court involvement in many cases. As per the current Pass Rules, 1986, no spinal injury sustained person like him comes into the definition of handicapped employee.

D. In response to (ii)(b), at last the railways have made an amendment to pass rules but it is applicable to a disabled employee whose spouse is also a disabled employee. But the case like him i.e. employee is disabled but spouse is not. By this way Railway has made an unsaid rule, that disabled employees should marry another disabled only to have a use of their basic privileges. This is a clear cut discrimination and it's a violation of RPwD Act and Right to equality under the act.

E. As per the Rights of Persons with Disabilities Act, 2016

22.(1) Every establishment shall maintain records of the persons with disabilities in relation to the matter of employment, facilities provided and other necessary information in compliance with the provisions of this Chapter in such form and manner as may be prescribed by the Central Government.

Railways is not having basic details like how many disabled employees, how many of them are using so called relaxed pass rule etc.

F. Special provisions of persons with disabilities with high support needs

38(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organization on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

(2) On receipt of an application under sub-section (1), the authority shall refer it to an Assessment Board consisting of such Members as may be prescribed by the Central Government.

G. As per RPwD Act, 75(1) The Chief Commissioner shall-

- a) Identify, suo motu or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with this Act and recommend necessary corrective steps;
- b) Inquire, suo motu or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

H. As per RPwD Act, 76, Whenever the Chief Commissioner makes a recommendation to an authority in pursuance of clause (b) of section 75, that authority shall take necessary action on it, and inform the Chief Commissioner of the action taken within three months from the date of receipt of the recommendation.

Suggested amendments:

1. Inclusion of Paraplegics/Quadriplegics/loss of function of both legs due to spinal cord injury or any other cases appropriately to cover under the definition of Railway Servants(Pass) Rules, 1986.
 2. Bifurcation of disabled employees into two broad categories i.e., 1. Who can travel without escort and 2. Who needs an escort to travel with the certification of DMO as per existing procedure rules.
 3. An escort shall be allowed during travel irrespective of the eligible family members included in pass or not for all kinds of passes like duty, privilege etc.
 4. A suitable amendment should also be brought to Rule 5, SCHEDULE I of pass rules in respect of Duty Passes.
 5. Surrender of three sets of privilege passes clause should be removed in case of permanent disabled employees as it is against spirit of equal opportunities.
8. The representatives of Respondent has reiterated his earlier reply submitted in the matter vide letter dated 10.01.2018.
9. The Respondent has directed that atleast an escort should also be availed to person with disabilities irrespective of his family members while travelling for duty or personal purposes as per RPwD Act, 2016. Necessary amendments must be done in Railway Servants (Pass) considering the complainant's suggestions given in his representations.
10. Accordingly the case is closed.



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



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 8892/1022/2017

Dated : 27.06.2018

Dispatch No.

In the matter of :

Smt. Rajni Dikshit, R-9589
Village Pahasour,
P.O. Badli,
Tehsil Jhajjar,
District Jhajjar,
Haryana – 124 105
Email<sandeepkumarsharma300@gmail.com,

..... Complainant

Versus

Kendriya Vidyalaya Sangathan,
(Through Commissioner),
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110 016

..... Respondent

Date of Hearing : 10.05.2018 and 31.05.2018

Present :

1. No one represented the Complainant.
2. Shri S.S. Chauhan, Asstt. Commissioner and Shri Bhui Singh, Asst. Section Officer (Retd.), on behalf of Respondent.

ORDER

The above named complainant, a person with 100% visual impairment had filed a complaint dated 26.10.2017 under the Rights of Persons with Disabilities Act, 2016 regarding denial to join in the post of Primary Teacher in Kendriya Vidyalaya Sangathan and posting near to her home town.

2. The Complainant submitted that Kendriya Vidyalaya Sangathan (KVS) had advertised for the recruitment of the primary teachers (PRTS) in its schools and she was one of the candidates who qualified the same. Since she was in family way, KVS did not allow her to join the said post. She submitted that in the point no. 2 of the advertisement it was stated that if the candidate is a woman, she should certify that she is not in a family way at the time of acceptance of the appointment. She was twelve weeks pregnant at that time. It was further stated that it is upto the candidate herself to seek exemption from joining the post for the duration till her confinement is over or if she desires to join, then she has to produce a certificate of fitness from CMO of Government Hospital that she is fit to carry out the assigned work in her present state. The

....2/-

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

Complainant submitted the fitness certificate of CMO to KVS, but still he was not allowed to join the post. Further she had been posted at Matanhail, which is very far away from her home and also being a new school, it does not have accommodation facility for teachers. Being a 100% visually impaired woman, she will find very difficult to reach her School. She preferred her posting in Jhajhar which is more close to her place of residence.

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 13.12.2017.

4. The Deputy Commissioner, KVS, vide letter no. 320RD/PRT(PF)/Admn/2017/KVS/GGN/10452 dated 22/28.12.017 submitted that while giving posting to all the 30 candidates of PH category appointed in Gurugram Region, every effort was made to post such candidates nearest to their home town subject to availability of the vacancy. In the case of Smt. Rajni Dikshit, as per the records, her native place is village Pahasour, P.O. Badli, Jhajjar, Haryana. Therefore, Smt. Dikshit had been posted at KVS Matanhail which is around 54 Kms away from her native place.

5. The Complainant vide her rejoinder dated 09.04.2018 had submitted that her case had not been dealt with in a proper manner. She had initially sought intervention because KVS had refused to allow her to join the post since she was in the family way at that time. She had submitted that their own circular and the offer of appointment letter had this provision that if a candidate is in the family way, then it is at her own discretion if she wants to join the post or not provided she submits a certificate from the Civil Surgeon that she is fit to join the service, but KVS did not allow her to join inspite of her submitting the required certificate from the Civil Surgeon. She submitted that she had also sought the intervention of this Court for her transfer. KVS had given her posting 58 Kms away from her home but there are schools of KVS in more closer proximity, e.g. Jhajjar, which is about 30 Kms away from her home. Therefore, she had requested this Court to help her transfer near to her home town. She further requested for compensation from KVS for the losses occurred to her due to their own failure to follow their own rules. The Complainant submitted that KVS did not allow her to join inspite of submitting a Certificate from the Civil Surgeon.

6. After considering Respondent's reply dated 22/28.12.2017 and Complainant's rejoinder dated 09.04.2018, a personal hearing was scheduled on 10.05.2018.

7. During the hearing, the representative of the Complainant submitted that his wife Smt. Rajni Dikshit is a 100% visually impaired person. She had applied for the post of Primary Teachers (PRTS) in the school of Kendriya Vidyalaya Sangthan (KVS) and she was selected for the same. She joined the post on 23.10.2017 and her appointment was cancelled by KVS on the

very next day, i.e. 24.10.2017. Since she was in family way, KVS did not allow her to join in the said post. He further submitted that in the point no. 2 of the advertisement it stated that if the candidate is a woman, she should certify that she is not in a family way at the time of acceptance of the appointment. She had pregnancy of twelve weeks standing or more. It further stated that it is upto the candidate herself to seek exemption from joining the post for the duration till her confinement is over or if she desires to join, then she has to produce a certificate of fitness from CMO of Govt. Hospital that she is fit to carry out the assigned work in her present state. The complainant submitted the fitness certificate of CMO to KVS, but still she was not allowed to join the post. Further she has been posted at Matanhail, which is very far away from her home town and also being a new school, it does not have accommodation facility for teachers. Being a 100% visually impaired woman, she will find it very difficult to reach her School as there is limited transport facility to reach the School. She prefers her posting in Jhajhar which is more close to her place of residence. He had requested this Court to direct the KVS to allow his wife to join the School and she may be given seniority and all other benefits effective from the date she joined, i.e. 23.10.2017.

8. The Court took serious view of the fact that no representative from the Respondent side was present during the hearing.

9. The next hearing was scheduled on 31.05.2018 at 11 a.m.

10. As the representative of the Complainant reached the Court late on the day of hearing, he could not take part in the personal hearing.

11. During the hearing the representatives of Respondent submitted that the Complainant may submit her Medical Certificate of fitness to join duty.

12. The Court directed the Respondent School to do the needful so that the Complainant can join duty at Jhajhar in Haryana at the earliest.



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



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 6747/1022/2016

Dated : 27.06.2018

Dispatch No.

In the matter of :

Shri Himmat Singh,
PGT (Chemistry),
Kendriya Vidyalaya No.2,
AFS Adampur,
Jalandhar,
Punjab – 144 103
Email<hmtkv2009@gmail.com>

..... Complainant

Versus

Kendriya Vidyalaya Sangathan,
(Through Commissionrer)
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110 016

..... Respondent

Date of Hearing : 17.04.2018

Present :

1. Shri Himmat Singh, the Complainant
2. Shri S.S. Chauhan, Asstt. Commissioner and Shri Bhuri Singh, Asst. Section Officer (Retd.), on behalf of Respondent.

ORDER

The above named complainant, a person with more than 40% locomotor disability had filed a complaint under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 hereinafter referred to as the Act, regarding his transfer near to his home town, i.e. Kendriya Vidyalaya Uttarlai Barmer, Rajasthan.

2. The Complaint submitted that he is working in Kendriya Vidyalaya No.2, AFS Adampur, Punjab as PGT (Chemistry). His native place is Kaliberi, Sursagar, Jodhpur (Rajasthan) which is 1000 kms away from Kendriya Vidyalaya Adampur where he is presently posted. He joined Kendriya Vidyalaya, Faridkot Cantt. in Punjab on 10.08.2009. He wants his transfer to his native place as he is away from his home town for more than seven years now. He further submitted that one post of PGT (Chemistry) is lying vacant at Kendriya Vidyalaya AFS Uttarlai Barmer which is 150 kms near to his home town. He had requested for his posting at Kendriya Vidyalaya Uttarlai Barmer (Raj).

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3. The matter was taken up with the respondent under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 vide letter dated 09.09.2016.

4. The Assistant Commissioner(Estt.), KVS vide his letter no. 11029/2016/KVS(HQ)/Estt.II/CCCPD/10537-38 dated 03.11.2016 had submitted that the Complainant a PGT (Chemistry) teacher of KV No.2, Adampur had been recently posted on promotion through LDE from KV Faridkot. The Complainant had joined the present KV No.2, Adampur as PGT (Chemistry) on 11.05.2016 in the current academic session only. Now transfer process for the year 2016-17 is over and therefore, his case would be given due consideration in the next session, i.e. 2017-18.

The Assistant Commissioner (Estt.), Kendriya Vidyalaya Sangathan vide his another letter no. 11029/2016/KVS(HQ)/E-II/CCCPD/661-62 dated 03.02.2017 had submitted that transfers are done as per the Kendriya Vidyalaya Sangathan's Transfer guidelines effective from 01.04.2011. KVS complies the DoP&T guidelines to the extent possible for the purpose of giving posting/transfer to persons with disabilities to their choice places/nearby to home town subject to availability of vacancy. The Respondent submitted that KVS had made provision by providing +50 transfer/displacement counts to determine the priority position for helping them in getting transfer of persons with disabilities to their choice of places and to safe guard them from displacement transfer. The complainant presently posted as PGT (Chemistry), KV No.2, Adampur had now requested for transfer to KV No.2, AFS, Jodhpur which is already blocked/proposed in a Court case filed by Shri Neka Ram Ganchi, PGT (Chemistry), KV Beawar under PwD category. The annual transfer for the year 2016-17 is over. The Respondent submitted that the case of Complainant would be given due consideration in the next session, i.e. 2017-18.

5. The Complainant vide his rejoinders dated 19.12.2016 and 24.11.2017 submitted that he had been trying for transfer to his native place for the last seven years. He submitted that Kendriya Vidyalaya 2 Adampur is 1000 Kms away from his native place where there is no direct train or bus and is located in extremely cold climatic condition. He submitted that he came to know through some reliable source that one post of PGT Chemistry is lying vacant at Kendriya Vidyalaya No.2 AFS Jodhpur. Therefore, he had requested to modify his place of posting from KV No.2, AFS Adampur, Jalandhar to Kendriya Vidyalaya No.2, AFS, Jodhpur.

...3/-

6. After considering Respondent's replies dated 03.11.2016, 03.02.2017 and Complainant's rejoinders dated 19.12.2016, 24.11.2017, a personal hearing was scheduled on 17.04.2018;

7. During the hearing the Complainant submitted that he had been trying for the last seven years for his transfer to his native place. He submitted that Kendriya Vidyalaya 2 Adampur is 1000 Kms away from his native place. There is no direct train or bus service and is located in extremely cold climatic condition. He submitted that he came to know through some reliable source that one post of PGT Chemistry is lying vacant at Kendriya Vidyalaya No.2 AFS Jodhpur. Therefore, the Complainant requested for his posting at Kendriya Vidyalaya No.2, AFS, Jodhpur.

8. The representatives of Respondent submitted that the Complainant a PGT (Chemistry) teacher of KV No.2, Adampur had been posted on promotion through LDE from KV Faridkot. He joined the present KV No.2, Adampur as PGT (Chemistry) on 11.05.2016. The representatives of Respondent submitted that the complainant had requested for transfer to KV No.2, AFS, Jodhpur which has been already blocked/proposed in a Court case.. They submitted that the Complainant's request for transfer would be given due consideration in the next session, i.e. 2017-18.

9. The Court directed the Respondent to consider the posting of the Complainant near to his native place considering the disability of the Complainant and difficulties faced by him while posted away from his home. The Respondent is advised to ensure that the rights of the persons with disabilities are not infringed.

10. The case is disposed off.

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



सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No. 6807/1150/2016

Dated 22.06.2018

In the matter of:

Shri Nitin Gupta,
D-39, Chattarpur enclave,
Delhi-110074
Email – nitin_4u22@yahoo.com

.... Complainant

Versus

Indira Gandhi National Open University,
[Through: Registrar]
IGNOU Road, Maidangarhi,
New Delhi-110068

.... Respondent

Date of hearing: 23.05.2018

Present:

1. Shri Yashish Chandra, Advocate for respondent
2. None appeared for complainant

O R D E R

The above named complainant, a person with 53% Hearing Impairment and student of B.Com [Enrolment No.083627820, Programme Code BCOM, Regional Centre Code 07] filed a complaint vide emails dated 18.08.2016, 19.08.2016 and 25.10.2016 regarding readmission in IGNOU (respondent).

2. The complainant submitted that his registration got expired under general category. Only two subjects are incomplete out of total subjects. But IGNOU is denying extension under disabled category

3. The matter was taken up with the respondent vide this Court's letter dated 05.12.2016 followed by reminders dated 29.03.2018 and 13.09.2017.

4. The respondent filed their reply on 03.11.2017 and submitted that the complainant sought admission in the university as a general candidate and informed about his disability only after completion of maximum duration in addition to two years of readmission. The learner produced the certificate of disability only on 05.10.2016. On production of the certificate, action was taken and duration of the B.Com program was extended for two years. The necessary corrections were made in record of the office and same was uploaded

Page 1 of 3

on the website of IGNOU. Complainant appeared in term end examination held in December 2016 and June 2017 but failed to secure the minimum pass marks in MTE-02.

5. This Court vide letter dated 20.11.2017 forwarded a copy of the respondent's reply dated 03.11.2017 to the complainant for submission of his rejoinder / comments followed by reminder date 05.01.2018.

6. The complainant filed his rejoinder / comment on 18.01.2018 and submitted that the respondent most of the time declared failed in Term End Examinations and when he applied for Reevaluation, he not only completed the exam but also obtained double marks in the same answer script, for example - Case of Consumer Studies (ACS-01), General Psychology (BPC-01) etc. In ACS-01, respondent had given 26 marks out of 100, but after reevaluation, 52 marks were given in the same answer script. The complainant believed that such could be the case with regard to the subject MTE-02. As per him, he did not receive any proof for Admission Category change and for Two more years extension under Persons with Disability category by the respondent till date. Due to this, his Term End Examination results were withheld for MTE-02 by the respondent twice and also his TMA marks for MTE-06 has been updated in the month of November last year (2017).

7. This Court vide letter dated 18.04.2018 forwarded the rejoinder /comment dated 18.01.2018 filed by complainant to the respondent for submission of their comments.

8. The respondent filed their reply vide email dated 11.05.2018 and submitted that the University had received a letter dated 05.09.2016 from International Vaish Federation, New Delhi, enclosing therein another representation of the complainant dated 01.09.2016 for further extension of the duration by another two years under Disabled category. In that representation too, he had not enclosed any Disability Certificate to prove his claim of Hearing impairment. On 20.09.2016 he had submitted another letter without any Disability Certificate. Therefore, he was informed telephonically on 22.09.2016 to furnish the Disability Certificate to process his request on priority. Again, vide their letter F.No. IG/SRD/ BCOM/ R-IV/366 dated 28.09.2016, complainant was advised to furnish the Disability Certificate issued by the Chief Medical Officer of the Govt. Hospital indicating the percentage of disability, so as to avail the benefit extended to the students under Disabled category. Finally, vide his letter dated 30.09.2016, the complainant student had submitted the Medical Certificate dated 28.09.16 issued by the Office of the Medical Superintendent, Pt.Madan Mohan Malaviya Hospital, New Delhi, which indicates 53% speech & hearing impairment. Accordingly, approval was sought from the competent authority for making necessary changes in the database from the 'General category' to 'Disabled category'. On receipt of the approval, necessary changes were made in the database and the duration was extended by another two years (commencing July 2016) under Disabled category. It was also informed to the student telephonically on

26.10.2016 at 3.56 PM as mentioned in the Affidavit filed by IGNOU before this Court. The status was also uploaded in the public domain on 31.10.2016. Since the information is available in the Public domain, he could very well download the same from the website. Moreover, the Re-admission rules printed on the reverse of the Re-admission Form clearly states that "Students can check their Re-admission status from the website (www.ignou.ac.in > STUDENTS ZONE > Admission > Registration Status > Check READMISSION Status>). Further, consequent upon updating the additional re-admission period by virtue of his being Disabled student, the complainant did appear in Dec.2016, June 2017 and Dec.2017 TEEs. As per the additional re-admission period of two years extended to the complainant, his last chance would be in June 2018 TEE. Besides, University Rules do not have a provision to extend the duration beyond June 2018.

9. Upon considering the facts submitted by the parties, the case was scheduled for hearing on 23.05.2018, and the Notice of Hearing dated 18.04.2018 was issued to the parties to appear before this Court on the date and time of hearing.

10. During the hearing on 23.05.2018, neither anyone appeared for the complainant nor was any intimation in this regard received in this Office from the complainant. The learned counsel for the respondent relied on the replies already filed on the record.

11. In view of the facts submitted by the parties and the documents available on record, it appears that sufficient opportunities have been provided to the complainant after receipt of the Disability Certificate dated 28.09.2016 by the respondent. Therefore, no direction can be passed to the respondent.

12. The case is accordingly disposed of.



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



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

केस सं० 8843/1022/2017

R-9475

दिनांक: 21.06.2018

के मामले में:-

श्री रवि दत्त

पुत्र श्री हेमराज शर्मा

ग्रा. व डा.-अंधोप, तह0-हथीन

जि.-पलवल, हरियाणा-121106

-वादी

बनाम

केन्द्रीय विद्यालय संगठन

(द्वारा: आयुक्त)

18, संस्थागत क्षेत्र

शहीद जीत सिंह मार्ग

नई दिल्ली-110016

R-9476

-प्रतिवादी

सुनवाई की तिथि: 14.06.2018

उपस्थित - श्री रवि दत्त - स्वयं (वादी की तरफ से)

श्री एस.एस. चौहान, सहायक आयुक्त - प्रतिवादी की ओर से

श्री बुरी सिंह, ए.एस.ओ.(आर.टी.) - प्रतिवादी की ओर से

आदेश

श्री रवि दत्त, 60 प्रतिशत अस्थि दिव्यांग ने तैनाती के दौरान भेदभाव किए जाने से संबंधित शिकायत दिनांक 07.11.2017 दिव्यांगजन अधिकार अधिनियम, 2016 के अंतर्गत इस न्यायालय में दायर की ।

2. मामले को अधिनियम की धारा 75 के अंतर्गत न्यायालय के पत्र दिनांक 17.12.2017 द्वारा प्रतिवादी के साथ उठाया गया । प्रतिवादी को स्मरण पत्र दिनांक 06.02.2018 भी भेजा गया ।

3. चूंकि प्रतिवादी से कोई उत्तर प्राप्त नहीं होने की स्थिति में न्यायालय के नोटिस दिनांक 24.05.2018 द्वारा मामले में दिनांक 14.06.2018 को व्यक्तिगत सुनवाई निर्धारित की गयी ।

4. सुनवाई के दौरान वादी ने कहा कि उन्होंने 17.11.2017 को केन्द्रीय विद्यालय को ज्वाइन किया था और उनकी सेवा अभी एक वर्ष की हुई है।

5. प्रतिवादी ने सुनवाई के दौरान कहा कि केन्द्रीय विद्यालय की पॉलिसी के अनुसार 50:50 प्रतिशत अनुपात के आधार पर विभागीय पदोन्नति अध्यापकों तथा सीधे भर्ती अध्यापकों को तैनाती प्रदान की जाती है । और चूंकि वादी की सेवा केवल एक वर्ष की हुई है, अतः उनका स्थानांतरण वर्तमान समय में नहीं किया जा सकता है लेकिन उनकी सेवा तीन वर्ष की होने के बाद वह वांछित स्थान पर पदस्थापना सम्बन्धित आवेदन सक्षम अधिकारी को प्रस्तुत कर सकता है जो नियमानुसार विचारणीय होगा ।

6. उपरोक्त के परिप्रेक्ष्य में मामलों में वादी के स्थानांतरण सम्बन्धित किसी प्रकार के उत्पीड़न का बोध नहीं हो रहा है, अतः मामले को यहीं बन्द किया जाता है। तदनुसार दोनों पक्ष अवगत होंगे ।

(हस्ताक्षर)

(डा. कमलेश कुमार पाण्डेय)

मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No.: 9144/1031/2018

Dated 18.06.2018

In the matter of:

Mrs. Mahima Sharma,
C-25, Shivaji Nagar,
Bhopal -461016 (Madhya Pradesh)
Email – mahimasharma73@gmail.com

.... Complainant

Versus

The Principal,
Billabong High International School
Bhadbhada Road, Beyond Bhadbhada,
Neelbad, Bhopal-462044 (MP)
Email – principal@bhopal.billabonghigh.org

.... Respondent No.1

Council for the Indian School Certificate Examinations,
[Through its Secretary]
P 35-36, Sector VI, Pushp Vihar,
Saket, New Delhi, Delhi 110017
Email – council@cisce.org

.... Respondent No.2

Date of hearing: 23.05.2018

Present:

1. Smt. Mahima Sharma, complainant and Shri Akshat Sharma
2. None appeared for respondents

ORDER

The above named complainant filed a complaint vide email dated 05.01.2018 under the Rights of Persons with Disabilities Act, 2016 [RPWD Act, 2016] regarding harassment and not providing the facilities as provided in the RPWD Act, 2016 to her son, Master Mahimn Sharma, a child with intellectual disability (Fragile X Syndrome) and student of Grade IX, Billabong High International School by respondent No.1.

2. The complainant submitted that her son Master Mahimn Sharma, who suffers from Fragile X Syndrome (Intellectual Disability), a student of Grade IX, Billabong High International School, Bhopal, cannot pursue his studies without the help of an educator. She had been requesting the Council for the Indian School Certificate Examinations (CISCE) [Respondent No.2] since one year to provide guidelines to their schools so that her son, Master Mahimn could get all the concessions, i.e. writer, compensatory time,

Page 1 of 7

special educator and many more as provided in the RPWD Act, 2016. He should be also exempted from the rule of getting minimum 33% in Grade IX, which he could not get without proper support. She has been asked by the school authority to withdraw her son from the school.

3. Section 16 and Section 17 of the Rights of Persons with Disabilities Act, 2016 provides as under:

“16. The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

- (i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;*
- (ii) make building, campus and various facilities accessible;*
- (iii) provide reasonable accommodation according to the individual's requirements;*
- (iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;*
- (v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;*
- (vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;*
- (vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;*
- (viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.*

17. The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:—

(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;

(b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education at all levels of school education;

(e) to establish adequate number of resource centres to support educational institutions at all levels of school education;

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign

language to supplement the use of one's own speech to fulfill the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;

(h) to provide scholarships in appropriate cases to students with benchmark disability;

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;

(j) to promote research to improve learning; and

(k) any other measures, as may be required.

4. Under Section 75 of the RPWD Act, 2016, the matter was taken up with the respondents on 05.01.2018 for submission of their comments in terms of Section 16 and Section 17 of RPWD Act, 2016.

5. The respondent No.1 vide their reply dated 17.01.2018 submitted that they have inclusion policy and caters to the social responsibility of letting children with special needs to be a part of the main stream school education. This is incorporated through special educators and allowance of additional time, use of a reader/writer, exemption from study of Hindi/French and any additional requirement from Preschool and Primary Grades till Grade 7. The school allows promotion of a child from Grade 8 to Grade 9 and Grade 9 to Grade 10 who obtains at least 33% marks in five subjects, including English on the cumulative average and has a minimum attendance of 75% of the working days in the session. Master Mahimn Sharma was allowed additional time and use of a helper (reader) in all the internal exams including that of Grade 8, as per psychological reports furnished by parents so that he could be able to complete his schooling years. But Master Mahimn Sharma was not able to meet the promotion criterion and accordingly he could not be promoted as per the guidelines of the Council. The respondent No.1 further submitted that all the access arrangements asked for, such as additional time, use of a Reader/Writer, exemption from study of Hindi/French and allied will be applied for by school and granted by the Council once the child comes in Grade 10 and as per psychological test report submitted to the CISCE, New Delhi. It will be enforced at the ICSE 2019 and subsequent exams but the pass criterion for Grade 10 will still remain, "a candidate is required to have obtained at least 33% marks in five subjects including English on the cumulative average and a minimum attendance of 75% of the working days including a pass Grade in SUPW for clearing Grade 10, ICSE examination and warrant a Pass Certificate'. The respondent No.1 solicited direction from this Court as well as CISCE (respondent No.2) if Mahimn

Sharma is exempted from the promotion criterion without any rider, the same exemption would be applied to promote Mahimn Sharma from Grade 9 to Grade 10 and process papers needed for him to sit for the ICSE 2019 examination.

6. In her rejoinder dated 29.01.2018 to the reply submitted by respondent No.1, the complainant submitted that the school has agreed to adhere to the guidelines and have consented to provide the necessary support. Mahimn who suffers from Fragile X Syndrom was able to continue his studies until Class VIII with the help of a special educator provided by the complainant. He was not able to appear for assessment for Class IX because the complainant was unable to find a Special Educator for her son and, therefore, he failed to secure 33% marks specified by Council to clear the assessment criteria. Master Mahimn was able to perform with the help of a special educator. The school was not able to provide a special educator. The complainant requested for the following –

- i) The criteria to secure 33% marks for normal children should not be for the children with intellectual disability.
- ii) The school asked the Council for an exemption in the case of Mahimn Sharma from this promotion criteria without any rider so that they would apply the same exemption to promote Mahimn from Grade 9 to Grade 10 and process papers needed for him to sit for the ICSE 2019 examination.
- iii) The school should make provision for special educator and other facilities in accordance with the RPWD Act, 2016 in order to help the needy children to pursue their education seamlessly.
- iv) The question paper for such students should be set separately keeping in consideration their intellect.

7. Since the reply from respondent No.2 was still awaited, a reminder dated 15.02.2018 was issued to the respondent No.2 forwarding therewith copies of the reply dated 17.01.2018 filed by the respondent No.1 and the rejoinder dated 29.01.2018 filed by the complainant for submission of their comments.

8. Respondent No.2 in their reply dated 06.03.2018 submitted that the Council is an autonomous unaided educational body registered as a Society under the Societies Registration Act, 1860 and conducts examinations for Classes X (ICSE) and XII (ISC) for the students of its affiliated schools as per the CISCE Rules for Affiliation and the Examination Regulations.

9. Respondent No.2 intimated about the Internal Examination, which has already discussed at para 5 above in the reply of Respondent No.1.

10. The Rule (c) of Part II of Chapter II of the Examination Regulations deals with the concessions available for the Candidate Suffering from Specific Learning Disabilities, which is as under:

1. In cases of candidates suffering from Dyslexia, Dysgraphia, Dyscalculia, Attention Deficit Hyperactivity Disorder (ADHD), certain concessions/support are admissible, depending on the nature and degree of the disability and on a case-to-case basis. The concessions/support available are:-

- (i) Exemption from the requirement of the study of a second language in cases that warrant such an exemption because of the severe nature of the learning disability of the candidate(s), certified by a competent authority approved by the State/Central Government and acceptable to the Council.*
- (ii) Allowance of additional time:*
- (iii) Use of a Reader / Reader-cum-Writer (Amanuensis)*
 - (a) The Question Paper may be read out, but not explained in any way to the candidate(s).*
 - (b) Arrangements must be made by the Head of the School concerned in consultation with the Convener and the Supervising Examiner for the candidate(s) who has/have been permitted the use of a/ Reader/Reader-cum-Writer, by the Council, to write the examination in a separate room adjacent to the main examination hall under the supervision of a Special Invigilator.*
- (iv) Where permitted, Casio fx-82 MS (Scientific Calculator) is to be used for Mathematical calculations only. Calculators of other makes with similar functions are also permitted.*
- (v) Use of a computer as a type-writer only.*

2. Special Difficulty Procedure

Disability, illness or other extra-ordinary circumstance: When a candidate suffers some injury or bereavement or dire unforeseen circumstance which may adversely affect his or her performance in the examination, the Special Difficulty Procedure is used. A form is forwarded to the Council by the Head of the candidate's school and the 6 candidate's examination answer script is then given special consideration by a Committee, before the issue of the results. The Council's Committee does not give a 'blanket' concession but treats every case on its merit, for experience has shown that candidates working under similar unusual stress are affected in widely different ways. For this reason the Special Difficulty Form provides for the performance of the affected candidate to be compared with that of his/her other classmates.

On request the Council will permit The omission of Map Work, Diagrams and Practicals by Colour Blind candidates and the Marking Scheme will be adjusted accordingly.

11. The respondent No.2 further intimated that the school (respondent No.1) had applied for special concessions for Master Mahimn Sharma on January 30, 2017. Respondent No.2 vide its letter dated February 8, 2017 asked the school for a detailed

psycho-educational evaluation report of the student from a qualified, experienced and Rehabilitation Council of India registered Clinical Psychologist/Special Educator, recognized by the State/Central Government specifying the areas of difficulty and the examination oriented necessary concession/support. However, no response was received from the school. On December 21, 2017 and December 27, 2017, the Council received emails from the parent of Master Mahimn Sharma requesting the Council to permit the school to promote him to Class X as he is a student with special needs. On seeking clarifications from the School, it was found that the child is not able to cope with even the Class IX Syllabus, as the Principal of the School vide his email dated 22.02.2018 had apprised that, "The progress report till date in all internal assessments is suggestive of the fact that he (Master Mahimn Sharma) will not be able to meet the 33% pass criterion in five subjects including English on the cumulative average despite having all concessions such as special educator and allowance of additional time, use of a Reader etc." The Examination Regulations of the Council has the provision to empower the students but does not permit the lowering of the pass criterion i.e. 33% for any student. Also, it does not permit preparation of separate sets of questions papers for the students who fall under the category of disabled persons. The respondent No.2 has also opined that the children suffering from any kind of disability cannot be taught in normal schools and they are required to have separate schools with distinctly trained teachers in Special Education.

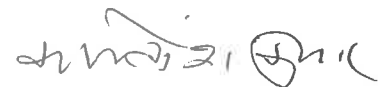
12. The complainant in her rejoinder dated 01.04.2018 to the reply filed by respondent No.2, submitted that how can the Council state that person with disability cannot be taught in normal schools when the RPWD Act, 2016 has the provision for inclusive education. It is really shocking and inhuman to discriminate and alienate the persons with disabilities and totally against the basic spirit of the RPWD Act, 2016. The complainant further reiterated her concern for the criteria of securing minimum 33% marks to pass for a person with disability and a child with normal IQ and said that it is not going to help the students with special needs in completing their studies. She explained that these children, which the school have a small percentage, need special attention, care and criteria to forge ahead and can cope in normal schools with the help of special provisions. Even then these children would not be in a position to appear for any stiff competitive exams or careers. The only hope for normalcy of these children is going to mainstream school and understanding approach towards them, will help them in future. It is the collective responsibility to ensure that these children are provided with facilities and aids that are conducive to their education. It has already been established that Mahimn needs support to study further. She hoped that Mahimn and many more children like him have the right to study in school of their choice and avail the facilities provided to them by the law. No child or parent deserves to go through this kind of ordeal.

13. Upon considering the facts submitted by the parties, the case was scheduled for hearing on 23.05.2018.

14. During the hearing on 23.05.2018, the complainant stated that no facility of special educator is provided to the children with disabilities by the school except the facility of additional time, reader/writer etc. and reiterated that children with intellectual disabilities be exempted from securing 33% passing marks. In reply to a question, she affirmed that Master Mahimn Sharma is studying in another school.

15. In the light of the facts submitted in the preceding paragraphs, the respondents are advised to comply with the provisions made under Section 16 and Section 17 of the RPWD Act, 2016 to promote and facilitate inclusive education and ensure that the children with disabilities are provided reasonable accommodation at levels of school education with the help of special educator needed for the children.

16. The case is accordingly disposed of.



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



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

केस सं० 8317/1092/2017

दिनांक: 19.06.2018

के मामले में:-

श्री अशोक कुमार शर्मा
ए-142, गली नं० 5
शस्त्री पार्क, नत्थुपूरा मोड
बुराडी, दिल्ली-110084

R-9374

-वादी

बनाम

कैनरा बैंक
(द्वारा: अध्यक्ष एवं प्रबन्ध निदेशक)
प्रधान कार्यालय
112, जे०सी० रोड
पो०बो० नं० 6648, बैंगलुरु

R-9375

- प्रतिवादी सं. 01

कैनरा बैंक
(द्वारा: शाखा प्रबन्धक)
शाखा सन्त नगर बुराडी, दिल्ली

- प्रतिवादी सं. 02

सुनवाई की तिथि: 24.05.2018

उपस्थित - वादी की तरफ से कोई उपस्थित नहीं हुए

श्री रजीत निधी, क्षेत्रीय प्रबन्धक, केन्द्रीय कार्यालय - प्रतिवादी की ओर से

श्री अरुण कुशवाहा, प्रबन्धक, शाखा बुराडी - प्रतिवादी सं० 02 की ओर से

आदेश

श्री अशोक कुमार शर्मा, 100 प्रतिशत दृष्टि दिव्यांग ने प्रबन्धक द्वारा लेन-देन एवं चेक बुक प्रदान नहीं करने से संबंधित शिकायत दिनांक रहित दिव्यांगजन अधिकार अधिनियम, 2016(जिसे इसके बाद अधिनियम कहा जाएगा) के अंतर्गत इस न्यायालय में दायर की ।

2. मामले को अधिनियम की धारा 75 के अंतर्गत इस न्यायालय के पत्र दिनांक 08.11.2017 द्वारा प्रतिवादियों के साथ उठाया गया । प्रतिवादी को स्मरण पत्र दिनांक 17.08.2017 भी भेजा गया ।

3. प्रबन्धक, कैनरा बैंक, शाखा सन्त नगर बुराडी दिल्ली ने अपने पत्र दिनांक 18.11.2017 के द्वारा इस न्यायालय को सूचित किया कि शिकायतकर्ता का खाता सं० 2925101008861 पहले ही ए०टी०एम० कार्ड सं. 5497592925117744 दिनांक 21.02.2014 को जारी किया जा चुका है जौकि वर्तमान में भी प्रभावी है तथा दिनांक 05.11.2017 को भी ए०टी०एम० द्वारा नकद निकासी की गयी है। उक्त खाते पर दिनांक 20.12.2010 को 10 पन्नों की चेक बुक जारी की गयी थी जिसमें 10 चेक अभी अनपेड है । दिनांक 21.02.2014 को भी 10 पन्नों की चेक बुक जारी की गयी थी जिसमें 5 चेक अब भी अनपेड है। तथा दिनांक 17.12.2016 को 20 पन्नों की चेक बुक जारी की गयी थी जिसमें 10 चेक अभी अनपेड है। दिनांक 29.08.2017 को शिकायतकर्ता ने चेक सं. 642991 द्वारा नकद निकासी की है।

पृष्ठ 1/2

4. प्रतिवादी के उपरोक्त उत्तर के प्रतिउत्तर में वादी ने अपने रिज्वाइन्डर दिनांक 03.01.2018 में वर्णित किया कि बैंक का जवाब अपूर्ण है। बैंक द्वारा जो चेक बुक दिया गया है उस पर नगद निकासी या किसी अन्य को देते समय बैंक किसी ग्राहक से अंगुठे के शिनाख्त के लिए बाध्य करता है। बैंक ने अपने पहले पत्र में स्पष्ट रूप से लिखा है कि निरक्षर दृष्टिहीन व्यक्ति के अंगुठे का शिनाख्त करवाना जरूरी है। इसके अतिरिक्त बैंक प्रबन्धक को भारतीय रिजर्व बैंक के दिशा-निर्देशों के सम्बन्ध में बताया गया तो प्रबन्धक अश्लिष्ट व्यवहार किया तथा भारतीय रिजर्व बैंक के दिशा-निर्देशों को मानने से इन्कार कर दिया।
5. तदानुसार मामले में दिनांक 24.05.2018 को एक व्यक्तिगत सुनवाई निर्धारित की गयी।
6. सुनवाई के दौरान वादी अनुपस्थित रहें और न ही उनका कोई प्रतिनिधि/अधिवक्ता न्यायालय में उपस्थित हुए। हालांकि उक्त संदर्भ में वादी ने अपने ईमेल दिनांक 15.05.2018 द्वारा निवेदन किया कि मामले में सुनवाई 11 जून 2018 के बाद की जाए क्योंकि वह पहले ही दिनांक 05.03.2018 को 20.05.2018 का गोरखपुर का यात्रा टिकट लिया है। वह दिनांक 24.05.2018 को सुनवाई में उपस्थित होने में असमर्थ है।
7. प्रतिवादी की तरफ से प्रस्तुत प्रतिनिधियों ने न्यायालय को अश्वस्त किया कि ए0टी0एम0 कार्ड, चेक बुक पहले ही वादी को जारी किए जा चुके हैं और नकद निकासी के समय शाखा प्रबन्धक स्वयं उनके चेकों को पास करवाने हेतु गवाह के रूप में कार्य करते हैं।
8. उपरोक्त के परिप्रेक्ष्य में बैंक को आदेशित किया जाता है भारतीय रिजर्व बैंक द्वारा समय-समय पर जारी सभी दिशा-निर्देशों का ज्यों का त्यों अनुपालन सुनिश्चित करें एवं दिव्यांगजन को बैंक द्वारा प्रदान की जाने वाली सभी सेवाएं अन्य/दूसरे सामान्य व्यक्तियों की भांति बिना किसी भेदभाव के प्रदान करें। सुनिश्चित करें कि दिव्यांगजन अपने संवैधानिक अधिकारों से वंचित न रह जाएं।
9. मामले को उपरोक्तानुसार यहीं बन्द किया जाता है।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

केस सं. 7387 / 1024 / 2017

दिनांक: 19.06.2018

के मामले में :-

श्री योगेश्वर महतो

झांझरा परियोजना, पो. लावदोहा

वाया उखड़ा

जिला पश्चिम वर्द्धमान

पश्चिम बंगाल-713382

-वादी

बनाम

ईस्टर्न कोल फिल्ड्स लिमिटेड

(द्वारा : अध्यक्ष-सह-प्रबन्ध निदेशक)

झलबगान सेंक्टोरिया, पश्चिम बंगाल-713333

-प्रतिवादी

सुनवाई की तिथि: 12.03.2018

उपस्थित:

श्री योगेश्वर महतो -स्वयं वादी की ओर से

श्री राजू सोनकर-वादी की ओर से

श्री हरीश कुमार खिन्ची, अधिवक्ता-वादी की ओर से

सुश्री स्वेता शर्मा, अधिवक्ता - प्रतिवादी की ओर से

श्री दिग्गज पाठक, अधिवक्ता-प्रतिवादी की ओर से

सुश्री संजना सेङ्डी-प्रतिवादी की ओर से

16.04.2018

श्री राजू सोनकर-वादी की ओर से

श्री हरीश कुमार खिन्ची, अधिवक्ता - वादी की ओर से

सुश्री स्वेता शर्मा, अधिवक्ता - प्रतिवादी की ओर से

श्री दिग्गज पाठक, अधिवक्ता-प्रतिवादी की ओर से

11.05.2018

श्री योगेश्वर महतो - स्वयं वादी की ओर से

श्री राजू सोनकर, अधिवक्ता- वादी की तरफ से

श्री हरीश कुमार खिन्ची, अधिवक्ता-वादी की तरफ से

श्री एस.पी. रॉय, कार्मिक प्रबन्धक - प्रतिवादी की तरफ से

श्री दिग्गज पाठक, अधिवक्ता-प्रतिवादी की तरफ से

31.05.2018

श्री हरीश कुमार खिन्ची, अधिवक्ता-वादी की ओर से

श्री राजू सोनकर, अधिवक्ता-वादी की ओर से

श्री सत्यप्रिय रॉय, कार्मिक प्रबन्धक - प्रतिवादी की ओर से

श्री दिग्गज पाठक, अधिवक्ता-प्रतिवादी की ओर से

सुश्री शशि बाला, अधिवक्ता-वादी की ओर से

आदेश

उपरोक्त वादी श्री योगेश्वर महतो, 80 प्रतिशत अस्थि दिव्यांग ने उनकी दिव्यांगता के आधार पर उनके पुत्र को नियुक्ति प्रदान नहीं करने से सम्बन्धित शिकायत निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण एवं पूर्ण भागीदारी) अधिनियम, 1995(जिसे इसके बाद में अधिनियम कहा जाएगा) के तहत इस न्यायालय में दायर की ।

- 2 -

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

2. मामले में कार्यवाही करते हुए न्यायालय द्वारा अधिनियम की धारा 95 के अंतर्गत मामले को प्रतिवादी के साथ उठाया गया ।
3. महाप्रबन्धक(कार्मिक एवं औ.सं.)ईस्टर्न कोलफील्ड्स ने प्रतिवादी की तरफ से अपने पत्र दिनांक 28.04.2017 द्वारा न्यायालय को निम्न सूचित किया कि :
 1. श्री योगेश्वर महतो, झांझरा इंकलाइन में स्विच बोर्ड अटेंडेंट के रूप में कार्यरत हैं। उनकी नियुक्ति 05.05.1987 को हुई थी तथा उनकी सेवानिवृत्ति 31.03.2022 को होनी है।
 2. उनकी नियुक्ति एक सक्षम व्यक्ति के रूप में हुई थी न कि पीडबल्यूडी एक्ट के तहत आरक्षण के तहत।
 3. सितंबर, 2014 से श्री महतो न्यूरोलॉजिकल समस्या से पीड़ित हैं। ईसीएल के अन्य कर्मियों की तरह वे भी सवेतन रोग अवकाश के हकदार हैं (यदि छुट्टी बकाया हो) । साथ ही यदि रोग अवकाश बकाया न हो तो उनके पास अर्जित अवकाश एवं आकस्मिक अवकाश भी लेने का विकल्प है। 140 दिनों तक अर्जित अवकाश तथा 110 दिनों तक रोग अवकाश संचित किए जाने का प्रावधान है।
 4. हृदय संबंधी बीमारी, कुष्ठ रोग, टीबी, कैंसर, लकवा, गुर्दे संबंधी बीमारी, एचआईवी एवं न्यूरोलॉजिकल डिसऑर्डर से पीड़ित कर्मियों के लिए कंपनी में छह महीने तक के लिए अर्धवेतन अवकाश का विशेष प्रावधान है। साथ ही उक्त रोग से उबरने के लिए छह महीनों के अर्धवेतन अवकाश का अतिरिक्त प्रावधान भी है। अतः किसी कर्मचारी के बीमार पड़ने पर उनकी सामाजिक सुरक्षा के लिए कंपनी में पर्याप्त प्रावधान हैं ।
 5. सेवा के दौरान पूर्ण रूप से सक्षम घोषित किए गए कर्मचारी के एक योग्य आश्रित को अनुकंपा नियोजन के तहत नौकरी दिये जाने का प्रावधान कंपनी में है। कर्मचारी को इसके लिए निर्धारित तरीके से आवेदन करना होता है तथा विधिवत गठित चिकित्सा बोर्ड के समक्ष सभी संबंधित दस्तावेजों के साथ चिकित्सीय जाँच हेतु प्रस्तुत होना होता है।
 6. इस मामले में याचिकाकर्ता के पास 80 प्रतिशत अक्षमता का प्रमाणपत्र है एवं वे अपने पुत्र को कंपनी में नियोजन दिलाना चाहते हैं। कंपनी में ऐसा कोई सेवा नियम नहीं है जिसके तहत इस याचना पर विचार किया जा सके ।
 7. पीडबल्यूडी अधिनियम के अंतर्गत दिव्यांग प्रमाणपत्र का उपयोग दिव्यांग व्यक्ति का 3 प्रतिशत क्षैतिज आरक्षण के तहत रोजगार देने के लिए किया जाता है। इस कंपनी में तथा दूसरे सार्वजनिक क्षेत्र के उपक्रमों एवं सरकारी विभागों में दिव्यांग कर्मी कई चिन्हित पदों पर कार्य कर रहे हैं। दिव्यांग प्रमाणपत्र किसी व्यक्ति को आरक्षित श्रेणियों में नौकरी प्राप्त करने में सहायता करता है न कि उसके पुत्र को नौकरी दिलाने में ।
 8. कंपनी में एक ऐसा भी प्रावधान है जिसके तहत यदि कोई भी कर्मचारी अपना नामित कार्य करने में असमर्थ हो तो उसके कार्य को बदला जा सकता है निर्धारित प्रक्रिया में आवेदन करने के पश्चात कार्य-औचित्य बोर्ड के माध्यम से ऐसा किया जा सकता है। उल्लेखनीय है कि इस संबंध में याचिकाकर्ता ने कोई प्रयास नहीं किया है।
4. प्रतिवादी के उपरोक्त उत्तर के प्रतिउत्तर में वादी ने अपने पत्रों क्रमशः दिनांक 09.09.2017, 06.10.2017 एवं 28.11.2017 द्वारा अपना रिज्वाइन्डर न्यायालय में प्रस्तुत किए ।
5. दोनों पक्षों द्वारा प्रस्तुत दस्तावेजों के जाचोंपरान्त मामले में दिनांक 12.03.018 को एक व्यक्तिगत सुनवाई निश्चित की गई एवं तदानुसार मामले को सुना गया और सुनवाई के दौरान दोनों पक्षों के अनुरोधानुसार मामले में सुनवाई दिनांक 16.04.2018 के लिए स्थगित की गई ।

6. मामले में दिनांक 16.04.2018 को सुनवाई के दौरान प्रतिवादी की तरफ से उपस्थित प्रतिनिधि अधिवक्ता ने बताया कि उन्होंने मामले से सम्बन्धित दस्तावेजों को ईस्टर्न कोल फिल्ड्स लिमिटेड, झांझरा में उचित निर्णय हेतु भेज रखा है। और जैसे ही वह दस्तावेज प्राप्त कर लेते हैं, इस न्यायालय को मामले में निर्णय हेतु प्रस्तुत करेंगे। प्रतिवादी को निर्देश दिया गया कि वह मेडिकल बोर्ड को निर्देश जारी करें कि वादी को चिकित्सा बोर्ड के समक्ष प्रस्तुत होने के लिए उचित समय एवं तिथि से अवगत कराएं।

7. जबकि वादी की तरफ से उपस्थित प्रतिनिधि अधिवक्ता ने वादी के दिव्यांगता प्रमाण पत्र की प्रति प्रस्तुत करते हुए कहा कि जब श्री योगेश्वर महतो को सक्षम चिकित्सा बोर्ड द्वारा दिव्यांगता प्रमाण पत्र जारी किया जा चुका है तो उनके फिट और अनफिट का मुद्दा ही खत्म हो जाता है।

8. दोनों पक्षों को सुनने के उपरान्त मामले में अगली सुनवाई दिनांक 11.05.2018 को निर्धारित की गई।

9. उपरोक्त सुनवाई के दौरान प्रतिवादी के अधिवक्ता ने मामले में शॉर्ट जवाब दिनांक 11.05.2018 न्यायालय में प्रस्तुत किया।

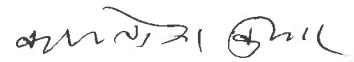
10. मामले में सुनवाई के दौरान वादी ने अपने पूर्व कथनों को दोहराया।

11. जबकि प्रतिवादी के प्रतिनिधि ने पत्र दिनांक 11.05.2018 द्वारा मामले में उल्लेखित किया कि वादी अपने पुत्र की क्षतिपूर्ति आधार पर नियुक्ति के लिए कम्पनी प्रबन्धन को बाध्य नहीं कर सकते हैं चूंकि उक्त प्रकार की नियुक्ति एक निर्धारित प्रक्रिया के तहत की जाती है।

12. वादी के प्रतिनिधि के अनुरोधानुसार मामले में अगली सुनवाई दिनांक 31/05/2018 को निर्धारित की गयी।

13. उपरोक्त सुनवाई के दौरान वादी के प्रतिनिधि ने मामले में विस्तृत जवाब दिनांक 31.05.2018 प्रस्तुत कर मामले के शीघ्र निपटान हेतु अनुरोध किया।

14. उपरोक्त के परिप्रेक्ष्य में प्रतिवादी कंपनी को आदेश दिया जाता है कि वादी के चिकित्सा परीक्षण हेतु विशेष चिकित्सा बोर्ड का गठन कर उन्हें उचित समय एवं तिथि सूचित की जाएं तथा उनके चिकित्सा परीक्षण उपरान्त उन्हें स्पष्ट करें कि उनके पुत्र की नियुक्ति उक्त संदर्भ में की जा सकती अथवा नहीं। मामले में अनुपालना रिपोर्ट इस न्यायालय को 45 दिन के भीतर भेजें।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 8513/1023/2017

Dated : 13 .06.2018

Dispatch No.

In the matter of :

R-9342

Shri Maheshwar Pandey,
L.D.C.,
Office of the Principal Controller of Communication Accounts,
Department of Telecommunication,
Telephone House, 2nd Floor,
8, Hare Street,
Kolkata – 700 001
Email <rav_son2005@yahoo.com>

.....Complainant

Versus

Office of the Principal Controller of Communication Accounts,
(Through Principal Controller of Communication Accounts)
Department of Telecommunications,
Telephone House, 2nd Floor,
8, Hare Street,
Kolkata – 700 001

R-9343

.....Respondent

Date of Hearing : 18.04.2018

Present :

1. Shri Mahashay Pandey, the brother of Complainant.
2. Shri Pradip Pramanik, Dy. CCA, O/o. PRCCA, DOT, Kolkata, on behalf of Respondent.

ORDER

The above named complainant, a person with 75% visual impairment had filed complaints dated 21.08.2017, 13.10.2017 and 23.10.2017 under the Rights of Persons with Disabilities Act, 2016 against harassment by higher officials at his workplace.

2. The Complainant submitted that he is presently working in the Office of Principle Controller and Communication Accounts, Kolkata He is suffering from eye disease called Retinitis Pigmentosa and is also suffering from night vision and colour blindness. He worked in the Accounts section for eight months. After that one Shri P. Pramanik transferred him to dispatch section. There is lot of work in the dispatch section with no Assistants to help him. He was issued a memo when one official letter was sent to a wrong address and was returned back by the postal authorities. Shri P. Pramanik and Shri A. Dasgupta, both Dy. CCAs have been working in the office at Kolkata for the last 8-10 years without any transfer.

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3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 03.11.2017.

4. The Pt. Controller of Communications Accounts, Kolkata vide his letter no. Pr.CCA/Kol/Comp/Confidential/2017-18 dated 07.12.2017 had submitted that no discrimination has been made while dealing with the complainant due to his disability and no derogatory remarks were made about his differently abled status by the officers he made complaint against. The complainant had not been deprived of any legitimate right. He was boldly asked to correct and improve only when he failed to carry out the job assigned to him. The complainant joined their office from O/o CCA Chhattisgarh under Rule-38 transfer. The complainant had been getting double the Transport Allowance as allowed for a disabled person. The complainant's request for changing the section was considered and he was transferred to Administration section from the Accounts section, where he was finding difficulty in working. The Respondent submitted that the complainant's allegation about officers being communal, anti non-Bengali is ridiculous and contradictory in nature.

5. The complainant vide his rejoinder through an email dated 14.12.2017 submitted that he did not make any allegations against any one. He was getting the Transport Allowance at double the normal rate when he was in Raipur Office of CCA whereas the Kolkata office took almost ten months to clear the formalities required for paying him the Transport Allowance. He denied that he had requested for change of his section as he was doing well there but he was intentionally and forcefully transferred to different sections within a span of six months. He submitted that he has no reason to make any false allegation against anyone.

6. After considering Respondent's reply dated 07.12.2017 and Complainant's reply dated 14.12.2017, a personal hearing was scheduled on 18.04.2018.

7. During the hearing the Complainant submitted that he has been transferred a number of time from one department to another without any reason. In the Dispatch Section where he is presently posted has lot of work and the management has not given any one to help him. As the load of work is more, and being alone in the Dispatch Section, there are chances of making mistakes. Once he dispatched a letter to a wrong address and he was served a memo by the management.

8. The Representative on behalf of Respondent submitted that when the Complainant failed to carry out the assigned job to him correctly, he was asked to correct and improve. This is a regular nature of action taken for any erring official. The Complainant was called for only one explanation in connection with his failure to send a very important confidential legal letter to the correct address as it was sent at wrong address but no punitive action was taken against him. He was advised to be more careful in dealing with his work to avoid recurrence of such type of lapses. The Complainant was never been forced to stay beyond office hours, rather considering his physical problem, Office considered his attendance leniently which is evident from the Biometric attendance available in the Office. The Transport Allowance has also been paid at enhanced rate from the beginning. The amount short paid for some period due to arithmetical mistake was drawn and paid immediately as arrear whenever it came into light.

9. After hearing both the Complainant and Respondent, the Court observed that there is no discrimination of the Complainant on the basis of his disability. However, considering the disability of the Complainant, the Court directed the Respondent to provide staff/s to help the Complainant as and when required to help him in discharging his day to day official work. The Court also advised the respondent to be more sensitive towards persons with disabilities and to ensure a conducive and accessible work environment for the complainant in specific and for the persons with disabilities, in general and provide him a level playing field, so that no rights, as provided under the Rights of Persons with Disabilities, Act, 2016, are infringed.

10. The case is disposed off.



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



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Notice of hearing u/s 77 of Rights of Persons with Disabilities Act, 2016

Case No: 7468/1021/2017
: 7469/1021/2017
In the matter of :

Dated : 14.06.2018
Dispatch No.

✓ Shri Ashok Kumar Banerjee,
315/2, Railway Colony,
Rani Bagh,
Shakurbasti,
Delhi - 110 034

R-9336

...Complainant 1

✓ Shri Satyender Kaushik,
WZ-71, Main Bazar,
Shadipur,
New Delhi - 110008

R-9337

...Complainant 2

Versus

✓ Office of the General Manager,
(Through General Manager),
Northern Railway,
Baroda House,
New Delhi - 110 001

R-9338

...Respondent 1

✓ Northern Railway Printing Press,
(Through Chief Printing Press & Sty),
Punjab Bagh,
Delhi - 110 035

R-9339

.....Respondent 2

Date of Hearing : 03.05.2018

Present :

1. Shri Ashok Kumar Benerjee and Shri Satyender Kaushik the Complainants along with Shri Mukesh Gupta.
2. Shri S.K. Singhal for Northern Railway and Shri Durgesh Rao, Advocate .

ORDER

Case No: 7468/1021/2017

In this case the complainant Shri Ashok Kumar Banerjee, a person with 40% locomotor disability had filed a complaint dated 11.01.2017 under the Rights of Persons with Disabilities Act, 2016 regarding denial of his promotion from Tech-II to the next post.

2. Shri Ashok Kumar Banerjee submitted that he is working as Technician-II in the Office of the Chief Printing & Sty. Supdt in Northern Railway at Punjab Bagh, New Delh. He falls under the

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zone of promotion and due to non preparation of Roster Point register w.e.f. 20.11.1989, he has been denied promotion to the next post. He represented number of times with his establishment, but the management took no action in this regard.

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 24.05.2017.

4. The Sr. Manager/Ptg. & Sty., Northern Railway, Delhi vide his letter no. 728-E/19/2592/Court Case dated 07.07.2017 submitted that the Complainant was promoted as Tech-II/Composing GP-2400 Level-4 w.e.f. 11.06.2002 and the financial benefit for 3rd MACP is GP-2800 Level-5 was granted to him w.e.f. 11.06.2012.. As per Roster Register for the next promotional post of Tech-I GP-2800 Level – 5, the coming point for persons with disabilities is 67 and coming operational point is 40. He submitted that in view of the above, promotion of the Complainant is not due at present. As soon as promotion is due, he will be promoted as per Extant Rules.

5. The Complainant vide rejoinder letter dated 16.03.2018 submitted that he falls under the zone of promotion and due to non preparation of Roster Point Register, he had been deprived of his promotion despite the fact that he is the second most disabled employee in composing section of Northern Railway Ptg. Press/SSB, Delhi. He submitted that the Chief Manager Ptg. & Sty. /Press, Shakurbasti vide his letter dated 10.07.2017 informed him that there was no reservation in promotion to PH employees.

6. After considering Respondent's reply dated 07.07.2017 and Complainant's rejoinder dated 16.03.2018, a personal hearing was scheduled on 03.05.2018.

7. During the hearing, the Complainant No.1 submitted that his establishment has not maintained the Roster Register for persons with disabilities so far and this is the hurdle in denial of his promotion to the next post.

8. During the hearing the representatives of Respondent submitted that the post on which the complainant is working at present in the Composing Section is not identified for persons with disabilities. He submitted that Complainant No.1 is working in 2800 Grade Pay and has taken five promotions till date and reached Level 5.

Case No: 7469/1021/2017

In this case the complainant Shri Satyender Kaushik, a person with 40% locomotor disability had filed a complaint dated 11.01.2017 under the Rights of Persons with Disabilities Act, 2016 regarding denial of his promotion from Tech-II to the next post.

9. Shri Satyender Kaushik submitted that he is working as Technician-II in the Office of Chief Printing & Sty. Supdt/N. Rly/Punjab Bagh/New Delhi. He falls under the zone of promotion & due to non preparation of Roaster Point register w.e.f. 20.11.1989 all his promotions were affected badly. The complainant vide his numerous representations had requested his establishment to promote him to the next higher grade, but the management took no action on his request. He submitted that being a person with disability, he had been discriminated by his establishment. The Complainant submitted that the Northern Railway Physically Handicapped Employees Welfare Association, New Delhi had filed an OA 2279/2003 seeking directions for implementation of the instructions of DoP&T issued under O.M. No. 36035/8/89-Estt.(SCT) dated 20.11.1989 for reservation in promotions of disabled employees. After consideration Hon'ble Central Administrative Tribunal vide its judgment dated 30.04.2004 had allowed the OA and directed to comply with the policy decision of Railways and Dop&T's instruction dated 20.22.1989. These orders had been upheld by the Hon'ble High Court, Delhi in WP (C) 13627-28/2004 and further by the Hon'ble Supreme Court of India in SLP (Civil Appeal) No.5265-5267/2008.

10. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 23.05.2017.

11. The Sr. Manager/Ptg. & Sty., Northern Railway, Delhi vide his letter no. 728-E/19/2592/Court Case dated 07.07.2017 stated that the Complainant was promoted as Tech-1/Composing GP-2800 Level-5 w.e.f. 01.09.2015. As per Roster Register for the next post, i.e. Sr. Tech GP-4200 Level – 6, the coming point for persons with disabilities is 34 and coming operational point is 20. He submitted that in view of the above promotion, the Complainant is not due for promotion at present and as soon as promotion is due, he will be promoted as per Extant Rules.

12. Shri Kaushik vide his letter dated 11.07.2017 has submitted that he got promotion on 01.09.2015 in usual way without taking into account the disability quota. He submitted that due to non preparation of Roster Register w.e.f. 20.11.1989, he was deprived of his promotion inspite of being the senior most person with disability in the Composing Section of Northern Railway Ptg. Press/SSB, Delhi. He submitted that he had received a letter from the Chief Manager Ptd. Press, Shakurbasti Office dated 10.07.2017 vide Letter No. 728-E/19/2592/Court Case dated 07.07.2017 stating that there is no reservation in promotion to PH persons.

13. After considering Respondent's reply dated 07.07.2017 and Complainant's rejoinder dated 11.07.2017, a personal hearing was scheduled on 03.05.2018.

14. During the hearing, Shri Satender Kaushik submitted that his establishment has not maintained the Roster Register for persons with disabilities which is the cause of denial of his promotion to the next post.

15. During the hearing the representatives of Respondent submitted that the post on which the Complainant No.2 is presently working in the Composing Section is not identified for persons with disabilities. He submitted that he is working in 2800 Grade Pay.

16. After hearing both the Complainants and Respondents, the Court observed that there is no violation of any provisions of Rights of Persons with Disabilities Act, 2016. However, the Court directed the Respondents to submit a copy of the Roster for persons with disabilities since 01.01.1996 to this Court within 90 days from the date of receipt of this Order.

17. The case is disposed off.



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



सत्यमेव जयते

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No.: 8162/1141/2017

Dated 12.06.2018

In the matter of:

R-9323

Shri Kamlesh Roy,
S/o Shri Priolal Roy,
Subhash Pally, Duliajan,
District-Dibrugarh, Assam-786602

.... Complainant

Versus

Oil India Limited,
[Through: The Chairman & Managing Director]
Plot No.19, Sector-16A,
Noida-201301 (Uttar Pradesh)

R-9324

.... Respondent

Date of hearing: 23.02.2018

Present:

1. Shri S.K. Senapati, CGM (Legal) & Company Secretary for respondent
2. None appeared for the complainant

ORDER

The above named complainant, a person with 40% locomotor disability (Right Lower Limb) filed a complaint dated 13.06.2017 under the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the 'RPWD Act, 2016', regarding inhuman and hostile environment at the office premises of the Materials Department, Oil India Limited, Duliajan and also discrimination in providing and warranting necessary supply order to him and to his firm M/s K.R. Enterprise, Duliajan by the officers and staff of respondent;

2. The complainant submitted that in the year 1994, he met with an accident due to fault of an official of Oil India Ltd., Duliajan which resulted to him 40% locomotor disability. The respondent offered him a registered supply firm under the name and style of M/s K.R. Enterprise, Duliajan. He is the Proprietor of the firm since its registration i.e. 1995. Due to his sufferings he remained unable to run for supply order and he could be active to execute supply orders from his firm since 2008 only. During his regular visit for any warrant of supply order(s), he experienced inhuman and hostile environment at the office premises of the Material Department at Duliajan of the respondent as well as

Page 1 of 4

discrimination in providing and warranting him and to his firm with the supply orders necessarily required by the officials. He felt discrimination of his right in respect of providing/warranting supply orders from the respondent's Duliajan Office.

3. The matter was taken up with the respondent vide this Court's letter dated 12.07.2017 for submission of their comments.

4. The respondent filed their reply dated 14.08.2017 enclosing therewith the copies of the letters sent to the complainant for the perusal of this Court. But, the respondent did not submit their comments to this Court.

5. The complainant filed his rejoinder dated 17.10.2017 to the reply filed by the respondent and categorically submitted that false information was provided by the respondent's Duliajan Office. A total of 300 firms are registered in the category of 'Hardware Items (miscellaneous)' and out of these, 100 firms are regular in nature. The total allocation to M/s K.R. Enterprise and the percentage of share as shown in the letter dated 08.08.2017 is false. Due to filing of applications under RTI, he was misbehaved by the officials of the Materials Department of the respondent's Duliajan Office. He reiterated his complaint of ill-treatment and ill-response by the officials of the Material Department with vested interest and after his repeated requests the Department scarcely handed over supply orders. He further submitted that his firm has been suspended for a period of six months by the respondent's Duliajan Office due to filing FIR by him against the mis-behaviour by an office staff, namely, Shri Pradip Nath of the Materials Department, Duliajan.

6. Upon considering the reply filed by the respondent and rejoinder of the complainant, the case was listed for personal hearing on 05.01.2018.

7. During the hearing, on 05.01.2018, none appeared for the respondent. However, the CGM (CS & Legal) of the respondent vide letter dated 4th January, 2018, received in this Office on 05.01.2018, requested to grant one month's time for furnishing the point-wise reply, as the matter pertains to the Field Head Quarter, Duliajan (Assam) and point-wise reply to the rejoinder of the complainant has yet to be received from their Duliajan Office and the concerned Officers were retired.

8. The complainant appeared before the Court, reiterated his complaint and filed miscellaneous documents relating to his case, which were taken on record.

9. The hearing was adjourned to 23.02.2018 and complainant was exempted from appearing in the hearing since he had to travel a long distance from Duliajan, Assam.

10. The respondent filed their reply dated 23.01.2018 to the rejoinder of the complainant, and submitted that complainant's firm M/s K.R. Enterprise, Duliajan is one of the registered vendor under "Hardware Category" in Sport Purchase Section amongst 117 such local vendors. Out of which only 102 vendors are active. As per available records, the total business transactions of complainant's firm during the last three financial years are as under:-

Financial year	Total Procurement of Hardware Items (INR)	Total allocation to M/s K.R. Enterprise (INR)
FY 2014-15	92,94,186.88	2,04,540.23
FY 2015-16	1,49,41,955.31	2,42,411.16
FY 2016-17	1,43,77,557.19	2,78,432.56

The position of M/s K.R. Enterprise in FY 2016-17 in terms of total value of job allocation has been within top 5 (five) Vendors amongst all the vendors registered under "Hardware Category". Despite all above, the complainant's have always been provided information related to spot purchases in logical manner as and when asked by him. The allegation of misbehaviour by Oil officials and staff against him is baseless / false. In the contrary, multiple complaints were received against him regarding his indulgence in offensive/aggressive behaviour from Oil employees as well as from other Spot Purchase Vendors. The complainant was suspended for a period of 6 months towards his misbehaviour with Oil employees and other vendors during office hours leading to disruption of official work.

11. On the basis of the facts submitted on the record, it is pertinent to mention that Section 3 and Section 7(1) & (2) of RPWD Act, 2016 provide as under:-

"3. (1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities."

"7. (1) The appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same, shall—

(a) take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents;

(b) take steps for avoiding such incidents and prescribe the procedure for its reporting;

(c) take steps to rescue, protect and rehabilitate victims of such incidents; and

(d) create awareness and make available information among the public.

(2) Any person or registered organisation who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any person with disability, may give information about it to the Executive Magistrate within the local limits of whose jurisdiction such incidents occur.”

12. In terms of Section 2(y) of RPWD Act, 2016, “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.”

13. In the light of the above, this Court is of the view that respondent should consider to take necessary steps to sensitize the officers and staff towards persons with disabilities so that persons with disabilities enjoy or exercise their rights equally with others as envisaged in the RPWD Act, 2016.

14. The case is accordingly disposed of.



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



सत्यमेव जयते

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

केस सं० 8406/1022/2017

दिनांक: .06.2018

के मामले में:-

श्री जयपाल मलिक
 सहायक प्रबन्धक
 सर्व हरियाणा ग्रामीण बैंक
 शाखा तोशाम, जिला भिवानी
 हरियाणा

—वादी

बनाम

सर्व हरियाणा ग्रामीण बैंक
 (द्वारा: अध्यक्ष)
 रोहतक, हरियाणा

— प्रतिवादी

सुनवाई की तिथि: 24.05.2018

उपस्थित — श्री जयपाल मलिक — स्वयं (वादी की तरफ से)

श्री नवीन गुलाटी, प्रबन्धक, प्रधान कार्यालय — प्रतिवादी की ओर से

आदेश

श्री जयपाल मलिक, 60 प्रतिशत अस्थि दिव्यांग ने उनको उनके निवास स्थल के समीप स्थानांतरित/पदस्थापित नहीं करने से संबंधित शिकायत दिनांक 14.07.2017 दिव्यांगजन अधिकार अधिनियम, 2016(जिसे इसके बाद अधिनियम कहा जाएगा) के अंतर्गत इस न्यायालय में दायर की।

2. मामले को अधिनियम की धारा 75 के अंतर्गत इस न्यायालय के पत्र दिनांक 08.11.2017 द्वारा प्रतिवादी के साथ उठाया गया।

3. महाप्रबन्धक—मानव संसाधन, सर्व हरियाणा ग्रामीण बैंक ने अपने पत्र दिनांक 23.11.2017 द्वारा मामले में अपने टिप्पण इस न्यायालय को प्रेषित किए।

4. वादी ने अपने पत्र दिनांक 03.12.2017 द्वारा प्रतिवादी के उत्तर के प्रतिउत्तर में अपना रिज्वाइन्डर न्यायालय में प्रेषित किया।

5. वादी के उपरोक्त वर्णित रिज्वाइन्डर दिनांक 03.12.2017 के अवलोकन उपरान्त मामलों में दिनांक 24.05.2018 के लिए एक व्यक्तिगत सुनवाई निर्धारित की गयी।

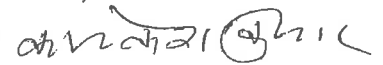
6. सुनवाई के दौरान वादी ने कहा कि वह वर्ष 2010 में बैंक में लिपिक—सह—खंजाची के पद पर नियुक्त हुए थे। उन्हें परिवीक्षा अवधि में 18 माह उनके निवास स्थल से 75 कि०मी० दूर पदस्थ किया गया। अब उनकी पदस्थापना तोशाम में है जोकि उनके पैतृक स्थल से 55 कि०मी० दूर है। उन्होंने बताया कि उनकी बीमारी के कारण वह ज्यादा यात्रा करने में सक्षम नहीं है।

7. प्रतिवादी की ओर से उपस्थित प्रतिनिधि ने न्यायालय में उल्लेखित किया कि प्रधान कार्यालय को उचित माध्यम से अभी तक वादी के स्थानांतरण सम्बन्धित कोई आवेदन प्राप्त नहीं हुआ है जोकि क्षेत्रीय प्रबन्धक के द्वारा प्राप्त होना चाहिए। उनका यह भी कहना था कि वादी फील्ड वर्क के लिए उपयुक्त नहीं है।

पृष्ठ 1/2

8. उपरोक्त प्रकरण को प्रतिवादी को इस आदेश के साथ बन्द किया जाता है कि वादी उचित माध्यम से अपने स्थानांतरण सम्बन्धित आवेदन को प्रधान कार्यालय को भिजवाना सुनिश्चित करें ताकि उनके आवेदन पर संक्षम प्राधिकारी द्वारा उचित कार्यवाही की जा सकें । प्रधान कार्यालय भी क्षेत्रीय प्रबन्धक को निर्देशित करें कि वादी के स्थानांतरण सम्बन्धित आवेदन को उचित माध्यम से अग्रेसित करें । मामले में यथोचित कार्यवाही कर, कृत कार्यवाही से इस न्यायालय को 45 दिन के अन्दर अवगत कराया जाए ।

9. आदेश की एक प्रति सम्बन्धित क्षेत्रीय प्रबन्धक को भी उपलब्ध करवाई जाए ।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन

01/12



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 8208/1023/2017

Dated : 12.06.2018

Dispatch No.

In the matter of :

Shri C.R. Sekhar,
S/o Late C.R. Chary,
Flat No. 202,
Sri Balaji Home,
Plot No. 45,
Teacher's Colony
East Marredpally,
Secunderabad – 500 026
Email<jayant@jaisoorya.com>
Email<crsekhar20@gmail.com>

.....Complainant

Versus

UCO Bank,
(Thru General Manager [Personnel]),
Head Office-2,
3-4, DD Block,
Sector-1,
Salt Lake City,
Kolkata – 700 064

.....Respondent

Date of Hearing : 09.01.2018, 23.02.2018, 06.04.2018 and 09.05.2018.

Present :

1. Shri T. Jayant Jaisoorya, Advocate, on behalf of complainant.
2. Shri Sarfaraz Khan, Advocate and Shri Gaurav Kumar, Law Officer, on behalf of Respondent Bank.

ORDER

Shri T. Jayant Jaisoorya, Advocate had filed complaints dated 19.06.2017 and 06.07.2017 in respect of Shri C.R. Sekhar, a person with 100% locomotor disability under Rights of Persons with Disabilities Act, 2016, to treat the period from 10.02.2001 to 12.11.2011 as supernumerary post.

2. The Complainant submitted that Shri C.R. Sekhar is an officer attached with UCO Bank. While serving in Srinagar Main Branch, Shri Sekhar had inherited a peculiar Neuro ailment called 'Quadriplegia GB Syndrome' which crippled him from head to toe. He is immobile with an impaired speech. Thereafter, Shri Sekhar was transferred in absentia from Kashmir to Hyderabad. Shri Sekhar was on extended leave till 10.02.2001 for his treatment. He was served a Show Cause Notice for continuous absence from duty on 13.07.2001. Shri Sekhar gave a detailed reply to the said Show Cause Notice. A second Show Cause Notice dated

22.05.2002 was served on him and a letter dated 25.07.2002 requesting Shri Sekhar to resume duty within 7 days from this date of letter. On 20.10.2004, the Enquiry Officer of the Respondent Bank without considering the detailed representations and the oral submissions of the Shri Sekhar during the personal hearing held that the Shri C.R. Sekhar 'stands compulsorily retired from services of Bank with immediate effect. Shri C.R. Sekhar then challenged the Order dated 20.10.2004 before the Appellate Authority of the Respondent Bank and the Appellate Authority of the Respondent Bank modified the Order dated 20.10.2004 taking into account the illness of Shri C.R. Sekhar, he was reinstated on the rolls of the Bank. Shri C.R. Sekhar started working in the Bank without receiving any pay till he opted for a pension scheme and asked to be taken off the rolls of the Respondent bank vide letter dated 02.09.2010 and also submitted a proposal for voluntary retirement on medical grounds from the Respondent's Bank by letter dated 09.08.2010. The Respondent Bank vide letter dated 13.12.2011 handed over a Cheque bearing number 545009 dated 09.12.2011 amounting to Rs. 3,70,724.41 to the complainant as a full and final settlement on account of Provident Fund. Shri C.R. Sekhar also received Rs.3,18,436/- towards Gratuity Fund. The complainant submitted that Shri C.R. Sekhar should have been kept on supernumerary post by the Respondent Bank and paid the entire emoluments due to him along with all revisions in pay and arrears. Shri C.R. Sekhar has been denied the benefits of an employee since 2001 to till date and has suffered irreparable loss and injury due to the arbitrary and illegal action of the Bank. The complainant submitted that the UCO Bank failed to treat the period as supernumerary post with all related benefits and also failed to compute all monetary benefits and many other benefits and pay along with interest as per UCO Bank (Officers') Services Regularisation, 1979.

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 11.08.2017.

4. The Dy. General Manager (Zonal Head), Delhi Zone vide his reply dated 22.09.2017 has submitted that the complaint filed by Shri C.R. Sekhar before this Court is not maintainable as the Persons with Disabilities Act, 1995 is repealed by a new enactment called 'Rights of Persons with Disabilities Act, 2016. He further stated that Rights of Persons with Disabilities Act, 2016 has no application for the institutions established and maintained by Central and State Governments and it is just and appropriate to reject the complaint on this ground of non applicability of Act to the respondent establishment. He submitted that Shri Sekhar joined the Bank on 23.09.1997 as Clerk-cum-Typist and was promoted to the post of Officer JMG-1 on 01.08.1997. On promotion to the Officer cadre, Shri Sekhar was posted at Srinagar Main Branch from 23.04.1999 to 19.05.2000. While travelling in Train from Srinagar to Hyderabad, he suddenly fell and ill and was totally paralysed. He was suffering from Sequelae of Guillian Barre Syndrom (GB Syndrome). He was

bed ridden since April 2000. After exhausting all leaves, he was put under loss of pay from 11.01.2001. The Bank issued a Charge Sheet dated 26.08.2002 to Shri Sekhar for his unauthorized absence from duties from April 2000. After the Enquiry, the Disciplinary Authority vide its order dated 20.10.2004, as a punishment, compulsory retired Shri Sekhar from his services. Shri Sekhar then approached the Appellate Authority for an appeal for setting aside the punishment of Disciplinary Authority and as per the order dated 23.12.2004 of the Appellate Authority, the complainant was reinstated by exoneration. Shri Sekhar's name was removed from attendance rolls from 29.10.2001 to 27.12.2004 as the Disciplinary authority passed the final order by way of punishment of Compulsory Retirement, thereafter the Shri Sekhar's name was reinserted in the attendance rolls on 28.12.2004 in terms of the Order passed by the Appellate Authority. Shri Sekhar availed sick leave on full pay basis upto 31.01.2001 and could not attend the duty w.e.f 01.02.2001 to 12.11.2011 on sick grounds. Shri Sekhar vide his letter dated 09.09.2011 opted for Voluntary Retirement on health grounds. His application was accepted on 12.11.2011 and the Bank released all the terminal benefits to the complainant including pension. The Respondent submitted that the complaint dated 06.07.2017 filed by the complainant in this Court to treat the Shri Sekhar is not eligible for supernumerary post as Bank has allowed to continue his name in Bank's rolls and his name was reinserted in the attendance register on 28.12.2004 as per the order of Appellate Authority.

5. The Learned Counsel for the complainant vide his rejoinder dated 13.11.2017 submitted that the complaint is maintainable and is entitled for relief of the same as Shri C.R. Sekhar inherited the peculiar Neuro ailment called 'Quadriplegia GB Syndrome' while he was in service. He submitted that the provisions of the Old Act were applicable to the present case, in view of the fact that the relief sought by the complainant is for the period from 10.02.2001 to 12.11.2011, i.e. much prior to the commencement of the New Act and further other relevant provisions of the New Act having bearing on the matter. He submitted that Shri Sekhar attained the said peculiar Neuro ailment called 'Quadriplegia GB Syndrome' while he was in service at Jammu & Kashmir. The Respondent Bank failed to shift Shri Sekhar to some other post with same pay scale and service benefits nor did the Respondent Bank kept him on supernumerary post until the suitable post is available in view of the provisions as per S. 20(4) of the New Act. However, to the utter dismay of Shri Sekhar, he was served a Show Cause Notice dated 13.07.2001 and subsequently was Chargesheeted on 26.08.2002 for his continuous absence from duty. However, Shri Sekhar was reinstated on 28.12.2004. The Learned Counsel for the complainant submitted that the plea of 'No Work No Pay' cannot be pressed into service in case of an employee who had sustained total permanent disability and also in bedridden condition without any capacity to do active productive work in view of Section 20 of the new Act. The complainant denied the averment of the Respondent Bank that it has paid all the benefits as per UCO Bank (Officers) Service Regulations, 1979. Shri Sekhar was not paid full salary, i.e. from 01.02.2001 to 12.11.2011 or any other

benefits as per UCO Bank (Officers) service Regulations, 1979. The Learned Counsel requested this Court to treat the period from 01.02.2001 to 12.11.2011 as a supernumerary post in terms of Sec 20 of the Right of Persons with Disabilities Act, 2016 along with all related benefits and further direct the Respondent Bank to compute all monetary benefits and any other benefits and pay along with interest as per UCO Bank(Officers) Service Regulation, 1979.

6. Upon considering Respondent's reply dated 22.09.2017 and Complainant's rejoinder dated 13.11.2017, a personal hearing was scheduled on 09.01.2018.

7. During the hearing the Learned Counsel vide his written submission dated 09.01.2018 submitted that the Complainant suffers from 'Quadriplegia GB Syndrome' with 100% disability which affects all four limbs, plus the torso. The Complainant is an officer attached to the Respondent Bank with PFM No.20687. The Complainant joined the Respondent Bank in the year 1977. The Respondent Bank in the year 1998 issued Special Circular inviting officers throughout the country to serve in Kashmir Valley. The Complainant applied for the said position in the year 1999 and was posted to Bud Shah Chowk Srinagar Main Branch. While serving at Bud Shah Chowk Srinagar Main Branch, the Complainant inherited a peculiar Neuro ailment called 'Quadriplegia GB Syndrome' which has crippled the Complainant from head to toe. The Complainant became immobile with an impaired speech. Thereafter, the Complainant was transferred in absentia from Kashmir to Hyderabad. The Complainant was issued a Chargesheet letter dated 26.08.2002 and directed to submit a written statement within 10 days from the receipt of the letter dated 26.08.2002. The Complainant submitted his detailed reply. On 20.10.2004, the Enquiry Officer of the Respondent Bank without considering the detailed representations and the oral submissions of the Complainant during the personal hearing held that the Complainant 'stands compulsorily retired from services of Bank with immediate effect'. The Complainant challenged the Order dated 20.10.2004 before the Appellate Authority of the Respondent Bank and the Appellate Authority of the Respondent Bank modified the Order dated 20.10.2004 taking into account the illness of the Complainant and reinstated the Complainant on the rolls of the Respondent Bank. The Complainant continued uninterruptedly on the rolls of the Respondent Bank without receiving any pay or any service benefits as an employee of the Respondent Bank in complete violation of Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as 'the Act'). It is settled law that an employee who acquired disability during his service, is sought to be protected under Section 47 of the Act. If he is not protected, he would not only suffer himself, but his dependents also would suffer. Further, the Respondent Bank in their Reply dated 22.09.2017 at Para 6 categorically stated that 'the Complainant was on the rolls of the Bank only and he has neither rendered any service nor he has performed any duty, hence he would not be eligible for any payment or benefits for the claimed period on the principle of "no work no pay". As per the Complainant, he has to be paid in full the

entire emoluments due to this post along with all revisions in pay and arrears. He has been denied the benefits of an employee since 2001 to till date and has suffered irreparable loss and injury due to the arbitrary and illegal action of the Respondent Bank. He reiterated that the Respondent Bank must compute his entire unpaid salary since the year 2001 along with all benefits as applicable as well as all promotional benefits. The Respondent Bank failed in not fulfilling the statutory obligations under Section 47 of the Act since keeping the Complainant in rolls without pay is illegal arbitrary. The Respondent Bank were statutorily obliged to give the Complainant all benefits accruing to the post held by the Complainant as per UCO Bank (Officers) Services Regulation, 1979. Thereafter, the Complainant having no other option opted for a pension scheme and asked to be taken off the rolls of the Respondent Bank vide letter dated 02.09.2010 and also submitted a proposal for voluntary retirement on medical grounds from the Respondent's Bank by letter dated 09.08.2010. The Complainant requested 1) to treat the period from 10.02.2001 to 12.11.2011 as a supernumerary post in terms of Section 47 of the Act along with all related benefits and 2) to compute all monetary benefits and any other benefits and pay along with interest as per UCO Bank (Officers) Service Regulation, 1979. The Respondent was provided a copy of Complainant's rejoinder dated 13.11.2017 by the Learned Counsel of the complainant during the hearing.

8. The representatives of Respondent submitted that the complaint filed by Shri C.R. Sekhar before this Court is not maintainable as the Persons with Disabilities Act, 1995 is repealed by a new enactment called 'Rights of Persons with Disabilities Act, 2016. He further stated that Rights of Persons with Disabilities Act, 2016 has no application for the institutions established and maintained by Central and State Governments and it is just and appropriate to reject the complaint on this ground of non applicability of Act to the respondent establishment. He submitted that the complainant joined the Bank on 23.09.1997 as Clerk-cum-Typist and was promoted as Officer JMG-1 on 01.08.1997. On promotion to the Officer cadre, the complainant was posted at Srinagar Main Branch from 23.04.1999 to 19.05.2000. While travelling in Train from Srinagar to Hyderabad, he suddenly fell ill and was totally paralyzed. He was suffering from Sequelae of Guillain Barre Syndrome (GB Syndrome). He was bed ridden since April 2000. After exhausting all leaves, he was put under loss of pay from 11.01.2001. The Bank issued a charge sheet dated 26.08.2002 to the complainant for his unauthorized absence from duties from April 2000. After the Enquiry, the Disciplinary Authority vide its order dated 20.10.2004, as a punishment, compulsory retired the complainant from his services. The complainant then approached the Appellate Authority for an appeal for setting aside the punishment of Disciplinary Authority. As per the order dated 23.12.2004 of the Appellate Authority, the complainant was reinstated by exoneration. The complainant's name was removed from attendance rolls from 29.10.2001 to 27.12.2004 as the Disciplinary authority passed the final order by way of punishment of Compulsory Retirement, thereafter the complainant's name was reinserted in the attendance rolls on 28.12.2004 in terms of

the Order passed by the Appellate Authority. The complainant availed sick leave on full pay basis upto 31.01.2001 and could not attend the duty w.e.f 01.02.2001 to 12.11.2011 on sick grounds. The complainant vide his letter dated 09.09.2011 opted for Voluntary Retirement on health grounds. His application was accepted on 12.11.2011 and the Bank released all the terminal benefits to the complainant including pension. The representatives of Respondent submitted that complainant is not eligible for supernumerary post as Bank has allowed to continue his name in Bank's rolls and his name was reinserted in the attendance register on 28.12.2004 as per the order of Appellate Authority.

9. On hearing both the Complainant and the Respondent, the Court directed the Respondent to submit the following documents to this Court before the next date of hearing.

1. The copy of note served to the complainant about his absence.
2. Copy of complainant's application to the bank intimating about his disability.
3. The Bank's policy on Section 47 of Persons with Disabilities Act, 1995.
4. Copy of Bank's reply to the Complainant for not giving any job and salary, medical benefits etc.

10. The next hearing was adjourned to 23.02.2018 at 11:00 Hrs.

11. During the hearing the Counsel for the complainant reiterated the submission made by him earlier during the hearing on 09.01.2018.

12. During the hearing the Learned Counsel for the Respondent Bank submitted that in terms of last Record of Proceedings dated 07.02.2018, the Respondent Bank was directed to produce the following documents.

1. The copy of note served to the complainant about his absence.
2. Copy of complainant's application to the bank intimating about his disability.
3. The Bank's policy on Section 47 of Persons with Disabilities Act, 1995.
4. Copy of Bank's reply to the Complainant for not giving any job and salary, medical benefits etc.

13. It is submitted by the Counsel for the Respondent that vide Show Cause notice dated 22.05.2002 and 25.07.2002, the absence of the complainant was informed. As regards the copy of complainant's application to the Bank intimating about his disability, the Counsel for the Bank submitted that as per the records no such intimation was given by the complainant to the Bank with regard to his disability. In view of this, the Respondent Bank had no occasion to send the reply to the complainant about not giving any job, salary and medical benefits. As far as Bank's policy on Section 47 of Persons with Disabilities Act, 1995 is concerned, the Counsel for the Respondent Bank has sought time to file an appropriate reply in this regard.

14. The Court advised the Respondent to file the reply well before the next date of hearing. The complainant was advised to submit a copy of his Disability Certificate which he submitted to Respondent Bank while in service for the year 2002.

15. The next hearing is scheduled on 06.04.2018 at 11:00 Hrs.

16. During the hearing the Learned Counsel for the complainant submitted that he relied on the judgment no. 2007 (4) CTC 478 of the High Court of Madras in the case of Shri V. Palanishanmugavel and Others, a copy of which was submitted to Court and wherein it states that there is absolutely no necessity of any Certificate from the medical authority as contemplated in the Act. This view is fortified by the fact that all the disabilities mentioned under Section 2(i) are clearly in terms defined under various provisions of Section 2 itself. Therefore, in my view, the contentions of the Learned Counsel of the Respondent that unless and until a Certificate issued by the competent authority contemplated under the Act is given the benefits under Section 47 of the Act cannot be claimed is an untenable argument. Further the Learned Counsel of the Respondent relied on document no. 2,3,7 and 8 of the complaint to show that Complainant submitted certificate on his illness during the said period. Further, the Counsel of the complainant sought further time to furnish the Disability Certificate during the said period.

17. During the hearing the Learned Counsel for the Respondent Bank reiterated that as per records, no intimation was given by the Complainant to the Bank with regard to his disability.

18. The Court gave one more chance to the Complainant to submit a copy of his Disability Certificate to this Court which he had submitted to the Respondent Bank while in service in the year 2002. The Court also advised the Learned Counsel for the Respondent Bank to submit to the Court the documents listed in the Record of Proceedings dated 12.03.2018.

19. The next hearing was scheduled on 09.05.2018 at 11:00 Hrs.

20. During the hearing the Learned Counsel for the Complainant submitted a Medical Certificate No.039663 dated 13.09.2000 to the Court showing that the Complainant had been suffering from G B Syndrome since the year 2000. The Counsel for the Complainant sought Commission's permission to write a representation to the Respondent Bank pertaining to the disability of Shri. C.R. Sekhar.

21. The Learned Counsel for the Respondent vide his written submission dated 15.05.2018 Submitted that the present complaint is not maintainable in as much as no cause of action whatsoever has arisen in favour of the Shri Sekhar. He submitted that Shri Sekhar had never

approached the Respondent Bank for redressal of his grievance in terms of the Persons with Disabilities (Equal Opportunity, Protection of Right and Full Participation) Act, 1995, and hence, the present Complaint is premature. He submitted that even on merits, the Complaint of the Shri Sekhar is liable to be dismissed in as much as there is no violation of Section 47 of the Persons with Disabilities (Equal Opportunity, Protection of Right and Full Participation) Act, 1995. It is submitted that Section 47 is attracted only when an establishment has dispensed with or reduced in rank an employee, who acquires disability during his/her service. Admittedly, Shri Sekhar was never dispensed with nor reduced in rank by the Respondent Bank on the basis of his alleged disability. It is further submitted that after issuing Charge Sheet dated 26.08.2002, although Shri Sekhar was compulsorily retired from service of the Respondent Bank on 20.10.2004, however, in the Appeal filed by him herein, the Appellate Authority of the Respondent Bank was pleased to modify the order of compulsory retirement dated 20.10.2004 to that of reinstatement. The Learned Counsel submitted that Shri Sekhar himself, who had submitted proposal for voluntary retirement on medical grounds (not on the basis of disability) from the Respondent Bank vide its letter dated 09.08.2010. However, the Respondent Bank was pleased to accept the proposal of Shri Sekhar herein for his voluntary retirement vide letter dated 13.12.2011, full and final settlement on account of Provident Fund was also paid for an amount of Rs.3,70,724.41 to him by the Respondent Bank through Cheque No. 545009 dated 09.12.2011. Admittedly, Shri Sekhar had accepted the said amount without any protest in the year 2011 itself. Shri Sekhar had also received a sum of Rs.3,18,436/- from the Respondent Bank towards Gratuity Fund. He submitted that after voluntary retirement, the Complainant has regularly been receiving the pension from the Respondent Bank, that too without any protest.

22. The claim of the Complainant to treat the period from 10.02.2001 to 09.09.2010 as supernumerary post in terms of Section 47 of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995, along with all related benefits is not tenable on facts as well as in law. The further claim of Shri Sekhar for computation of all monetary benefits and any other pension and pay along with as per UCO Bank (Officers) Service Regulation 1979 is also not maintainable. The Learned Counsel for the Respondent Bank submitted that the Bank is relying upon the Judgement of the Hon'ble Supreme Court delivered in the matter of Geetaben Ratilal Patel Versus District Primary Education Officer cited as AIR 2013 SC 3092. Para 20 of the said Judgement is reproduced for ready reference:

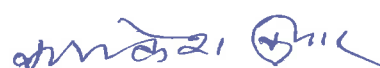
"Para 20

Now the question remains about the back wages, if any, to which the Appellant is entitled. The Appellant remained absent from duty from time to time for about 1360 days when she was in service. Therefore, she cannot claim any wages for the said period. The order of dismissal was passed on 15.04.2004 but she moved before the Commissioner after a span of 3 years, i.e. in the year 2007. There being a delay on her part, in moving before the Commissioner, he cannot claim any salary for such intervening period."

The Learned Counsel for Respondent submitted that the above Judgement of the Hon'ble Supreme Court squarely covers the present case in as much as it is admitted position that Shri Sekhar had remained absent for a very long period, i.e. 01.02.2001 to 12.11.2011 and was voluntarily retired in the year 2011, that too on the request of Shri Sekhar himself on medical grounds and not on the basis of disability.

23. The Complainant is accordingly directed to represent his case to the Respondent Bank directly and if there is any discrimination faced by the Complainant on the basis of his disability, then he may approach this Court.

24. The case is disposed off.



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



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Notice of hearing u/s 77 of Rights of Persons with Disabilities Act, 2016

Case No: 8733/1022/2017

R-9237

Dated : 11.06.2018

Dispatch No.

In the matter of :

Shri Kailash Chandra Panda,
E-10, Sektore-4,
Rourkela,
Odisha – 769 002
Email<panda.kailash10@gmail.com>

.....Complainant

Versus

✓ Steel Authority of India Limited,
(Through Chairman),
ISPAT Bhawan,
Lodhi Road,
New Delhi – 110 003

R-9238

.....Respondent

Date of Hearing : 10.05.2018

Present :

1. Shri Kailash Chandra Panda, the Complainant along with Shri Biswa Ranjan Padhy.
2. Shri B. Kullu, DGM (Pers.), Rourkela Steel Plant and Shir Mani, S.O.(Pers.), On behalf of Respondent.

ORDER

The above named complainant, had filed a complaint dated 23.10.2017 under the Rights of Persons with Disabilities Act, 2016 regarding his transfer from Rourkela Steel Plant to Liaison Office at Bhubaneswar for treatment and rehabilitation of his 15 years old daughter suffering from Mental Retardation;

2. The Complainant had submitted that he is working as Manager, SMS-I in Rourkela Steel Plant in Odisha. His daughter, aged 15 years is suffering from Mental Retardation since her birth. He submitted that his only child needs proper medical care, special attention and proper rehabilitation measures, which are not available in Rourkela. He submitted that Bhubaneswar has got the most advanced Hospitals equipped with special treatment facilities for mentally retarded/mentally illness child for treatment of his daughter's ill health and also rehabilitation. The Complainant had requested for his transfer at Liaison Office of Rourkela Steel Plant, in Bhubaneswar. His native place is 60 Kms from Bhubaneswar and his relatives and near and dear ones can help him if he is posted in Bhubaneswar. He has already given his representation for his transfer on 04.07.2017, but has not received any favourable reply till date.

....2/-

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 15.11.2017.

4. The Sr. Manager (Pers.-IR&W), SAIL vide his letter no. PER/IR&W/A-206/17 dated 28.12.2017 had submitted that the complainant joined Rourkela Steel Plant as Senior Operator cum Senior Technician (SOST) in 1995. After being selected as Management Trainee (Technical) in 2007 as departmental candidate, the Complainant was posted to Bhilai Steel Plant (BSP). On his request, he was transferred back to Rourkela Steel Plant (RSP) in the year 2009. Presently the Complainant is working as Manager in SMS-1 (Operation) department at RSP. The complainant had requested for his transfer to Liaison Office in Bhubaneswar based on the provisions of the DoP&T's O.M. No.42011/3/2014-Estt.(Res) dated 06.06.2014. The Respondent submitted that there is no plan to transfer the Complainant from RSP, Rourkela. The complainant's earlier request for transfer from BSP to RSP in 2009 was duly considered by SAIL management. The Respondent submitted that the SAIL Management is in the process of scaling down the Unit Offices including Liaison Office at Bhubaneswar. Presently manning of Liaison Office at Bhubaneswar is being done with skeleton staff, i.e. One Executive and there is no further vacancy for executive there.

The DGM (Personnel), SAIL vide his letter no.PER/IR&W/A-206/18 dated 03.03.2018 had submitted that the presently there is no requirement of additional executives at RSP Liaison Office at Bhubaneswar. Regarding the transfer of the Complainant to other 3 places as suggested by this Court, it was informed that there are guidelines in SAIL for transfer of employees on compassionate grounds. The Respondent had requested this Court to advise the Complainant to apply for transfer on compassionate grounds in SAIL as per the laid down procedure.

5. The Complainant vide his rejoinder dated 18.01.2018 had submitted that his transfer from BSP to RSP was based on the points of his wife's service at Odisha, Sundergarh district and his mother's ill health and disability of his daughter, who was seven years old then. He submitted that the facility for upbringing a 16 years old MR child is different from upbringing a 7 years MR child. He submitted that the transfer of parents adversely affects the rehabilitation and brining of an MR child. He further submitted that for the last six years, the closing of Liaison office at Bhuybaneswar is being heard. He submitted that SAIL may transfer him to any of the below mentioned offices;

- 1) At SAIL Bhubneswar office
- 2) SAIL-Branch Office(CMO)
- 3) SAIL-RMD Liaison office at Bhubaneswar
- 4) SAIL-Logistics at Paradeep (last choice)

6. The complainant vide his rejoinder dated 26.03.2018 had submitted that during July 2017, he had already applied for his transfer in the format as suggested by the Respondent vide its letter dated 03.03.2018. At that time, he was advised to apply through a note sheet. He submitted that this is to misguide him and harass him mentally. He submitted that he has been a dedicated worker throughout. He had once again applied for his transfer as suggested by RSP Management in the format on 17.03.2018. He had requested this Court to take quick action as the time for treatment and admission for his mentally retarded child is passing as the maximum age for admission for this type of child in the specified school is 18 years.

7. Upon considering Respondent's replies dated 28.12.2017, 03.03.2018 and Complainant's rejoinders dated 18.01.2018 and 26.03.2018, a personal hearing was scheduled on 10.05.2018.

8. During the hearing, the Complainant reiterated that he had given his representation for his transfer on 04.07.2017. His daughter who is 15 years of age is suffering from Mental Retardation since her birth. His daughter needs proper medical care, special attention and proper rehabilitation measures, which are not available in Rourkela. He submitted that Bhubaneswar has most advanced Hospitals equipped with special treatment facilities for treatment of mentally retarded/mentally persons. The Complainant had requested for his transfer to Liaison Office of Rourkela Steel Plant, in Bhubaneswar. His native place is 60 Kms from Bhubaneswar and his relatives and near and dear ones can help him if he is posted in Bhubaneswar. He submitted that the treatment and admission time for his only mentally retarded daughter is passing. The maximum age for admission of this type child is in the specified school is 18 years.

9. During the hearing the representatives of Respondent submitted that the complainant had requested for his transfer to Liaison Office in Bhubaneswar. The complainant's earlier request for transfer from BSP to RSP in 2009 was duly considered by SAIL management. The Respondent submitted that the SAIL Management is in the process of scaling down the Unit Offices including Liaison Office at Bhubaneswar. Presently manning of Liaison Office at Bhubaneswar is being done with skeleton staff, i.e. One Executive and there is no further vacancy for executive there. The representatives of Respondent submitted that presently there is no requirement of additional executives at RSP Liaison Office at Bhubaneswar. The Respondent had requested this Court to advise the Complainant to apply for transfer on compassionate grounds in SAIL as per the laid down procedures.

10. On hearing both the Complainant and the Respondent, the Court after taking into consideration the disability of the grown up daughter of the Complainant, directed the Respondent to consider the request of Complainant and post him in the SAIL office in Bhubaneswar at the

earliest in the light of DoP&T O.M. No. 42011/3/2014-Estt.(Res) dated 06.06.2014. The Court further stated that otherwise also it is the responsibility of the organisation to take care of the employees/dependents with disabilities and to post them in suitable places as requested by them where medical facilities/special schools for rehabilitation are available. The compliance report may be made available to this Court within 45 days from the date of receipt of this Order.

11. The case is disposed off.



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



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04/

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

केस सं० 7046/1021/2016

R-9235

दिनांक: 12.06.2018

के मामले में:-

श्री मंसूब अली खाँ
मौहल्ला-एनटीआई स्कूल के निकट
लोधीपुर, शाहजहाँपुर
उत्तर प्रदेश

बनाम

आर्डनेन्स फैक्ट्री बोर्ड(सेक्शन ए/एन आई)
(द्वारा: सचिव)
10-ए, शहीद खुदीराम बोस रोड
कोलकाता-700001

R-9236

सुनवाई की तिथि: 24.05.2018

उपस्थित - श्री मंसूब अली खाँ - स्वयं (वादी की तरफ से)

सुश्री सोनाली साहू, ए०डब्ल्यू०एम०, आर्डनेन्स फैक्ट्री शाहजहाँपुर - प्रतिवादी की ओर से
श्री अब्दुल लतीफ, जे०डब्ल्यू०एम०, आर्डनेन्स फैक्ट्री शाहजहाँपुर - प्रतिवादी की ओर से

आदेश

श्री मंसूब अली खाँ, 40 प्रतिशत अस्थि दिव्यांग ने दिव्यांग श्रेणी में प्रौन्नति प्रदान नहीं करने से संबंधित शिकायत दिनांक 03.10.2016 निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण एवं पूर्ण भागीदारी) अधिनियम, 1995 (जो अब दिव्यांगजन अधिकार अधिनियम, 2016 हो गया है।) के अंतर्गत इस न्यायालय में दायर की।

2. मामले को अधिनियम की धारा 59 के अंतर्गत इस न्यायालय के पत्र दिनांक 27.10.2016 द्वारा प्रतिवादी के साथ उठाया गया। प्रतिवादी को स्मरण पत्र दिनांक 17.08.2017 भी भेजा गया।

3. चूंकि प्रतिवादी से कोई उत्तर प्राप्त नहीं होने की स्थिति में इस न्यायालय के नोटिस दिनांक 14.03.2018 द्वारा मामलों में दिनांक 16.04.2018 को 16.00 बजे व्यक्तिगत सुनवाई निर्धारित की गयी।

4. उपरोक्त सुनवाई के दौरान वादी और प्रतिवादी की तरफ से कोई उपस्थित नहीं हुए।

5. मामले में अगली सुनवाई दिनांक 24.05.2018 को पुर्ननिर्धारित की गयी और दोनों पक्षों को सूचित किया गया कि सुनवाई के समय अनुपस्थिति की दशा में अधिनियम की धारा 77 के अंतर्गत कार्रवाई की जा सकती है अथवा शिकायत की सुनवाई एवं निपटारा उपलब्ध दस्तावेजों के आधार पर किया जा सकता है।

पृष्ठ 1/2

6. सुनवाई के दौरान वादी ने उल्लेखित किया कि वे वर्ष 1982 में दिव्यांग श्रेणी कोटे के अंतर्गत भर्ती हुए थे और 30 वर्ष तक मजदूर पद पर ही पदस्थ रहे उन्हें कोई पदोन्नति प्रदान नहीं की गयी । सूचना के अधिकार अधिनियम, 2005 के तहत सूचनाएं मांगने पर भी विभाग द्वारा प्रदान नहीं की जाती है। उनको वर्ष 2012 में सामान्य श्रेणी में पदोन्नत किया गया है।

7. सहायक कार्यप्रबन्धक, आयुध वस्त्र निर्माणी, शाहजहाँपुर ने सुनवाई के दौरान पत्रांक एल0बी0/2432/प्रमोशन दिनांक 24.05.2018 प्रस्तुत किया जिसमें उन्होंने उल्लेखित किया है कि श्री मंसूब अली खाँ, जन्म तिथि 01.09.1961 निर्माणी में दिनांक 19.04.1982 को श्रमिक/अकुशल के पद पर नियुक्ति हुए थे । इनके सेवा अभिलेखों के अनुसार नियुक्ति के समय यह सामान्य श्रमिक के पद पर नियुक्त हुए थे। सेवा अभिलेख में विकलांग कोटे में श्रमिक/अकुशल के पद पर नियुक्ति का उल्लेख नहीं है। दिनांक 27.09.1994 को इन्हें वरिष्ठता के आधार पर श्रमिक/अकुशल से श्रमिक/अर्धकुशल के पद पर पदोन्नत किया गया था । सेवा नियमों के अनुसार श्रमिक/अर्धकुशल का पद अपनी श्रेणी में अंतिम पद है जिसमें अन्य कोई पदोन्नति का प्रावधान नहीं है। छठे वेतन आयोग की सिफारिशों के अनुसार दिनांक 01.01.2006 से श्रमिक/अकुशल व श्रमिक/अर्धकुशल के पद को मर्ज कर दिया गया है एवं वर्तमान में भी श्रमिक/अर्धकुशल एक मात्र पद है तथा इस पद में अगली पदोन्नति नहीं है।

24 वर्ष की सेवा पूर्ण करने पर इन्हें ए0सी0पी0 स्कीम के अंतर्गत दिनांक 19.04.2006 को वेतनमान 2650-4000(वर्तमान लेवल-1) से वेतनमान 3050-4590(वर्तमान लेवल-2) में अपग्रेडेशन प्रदान किया गया था । सातवे वेतन आयोग की रिपोर्ट की स्वीकृति के उपरान्त एम0ए0सी0पी0 स्कीम के प्रभावी होने पर इन्हें 20 वर्ष की सेवा पूर्ण करने पर दिनांक 01.09.2008 से ग्रेड पे 2000/-(लेवल-3) तथा 30 वर्ष की सेवा पूर्ण करने पर इन्हें दिनांक 19.04.2012 से ग्रेड पे 2400/-(वर्तमान लेवल-4) से अपग्रेड किया जा चुका है।

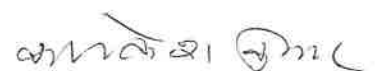
इसके पश्चात निर्धारित ट्रेड टेस्ट उत्तीर्ण करने पर इन्हें दिनांक 08.10.2012 से श्रमिक/अर्धकुशल के पद से मशीनिस्ट/अर्धकुशल (ट्रेडमैन) के पद पर पद-परिवर्तित किया गया । ट्रेडमैन के पद क्रमशः अर्धकुशल ग्रेड से कुशल ग्रेड, कुशल ग्रेड से अतिकुशल ग्रेड-।।, अतिकुशल ग्रेड-।। से अतिकुशल ग्रेड-। तथा अतिकुशल ग्रेड-। से मास्टर क्राफ्टमैन क्रमशः पदोन्नति के पद है जो सेवा नियमों, निर्धारित ट्रेड टेस्ट उत्तीर्ण करने पर तथा वर्तमान ग्रेड में नियमित सेवाकाल पूर्ण करने पर पदोन्नति द्वारा भरे जाते हैं।

निर्धारित ट्रेड टेस्ट उत्तीर्ण करने पर इन्हें दिनांक 28.04.2015 को मशीनिस्ट/अर्धकुशल से मशीनिस्ट/कुशल ग्रेड के पद पर प्लेसमेंट प्रदान किया गया ।

मशीनिस्ट/कुशल ग्रेड से मशीनिस्ट/अतिकुशल ग्रेड-।। में पदोन्नति हेतु निर्धारित सेवाकाल मशीनिस्ट/कुशल ग्रेड में 03 वर्ष है जो श्री मंसूब अली खाँ ने दिनांक 28.04.2018 को पूर्ण किया है। निर्धारित ट्रेड टेस्ट उत्तीर्ण करने पर एवं रिक्तियों की उपलब्धता के आधार पर इन्हें नियमानुसार मशीनिस्ट/अतिकुशल ग्रेड-।। के पद पर पदोन्नत किया जायेगा ।

पूर्व में भी श्री मंसूब अली खाँ द्वारा विकलांग कोटे में अपनी पदोन्नति के लिए एक प्रार्थना पत्र दिनांक 05.10.2015 निर्माणी को दिया गया था जिसके क्रम में उन्हें निर्माणी के पत्र सं. एलबी/2432/प्रमोशन विकलांग दिनांक 01.12.2015 द्वारा सभी तथ्यों से अवगत कर दिया गया था।

8. सुनवाई के दौरान दोनों पक्षों को सुनने के बाद उक्त मामले में अधिनियम के किसी प्रावधान का कोई उल्लंघन नहीं पाया गया । अतः यह मामला बन्द किया जाता है।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No.: 7134/1101/2016

Dated: 12.06.2018

In the matter of:

R-9234

Shri Tushar Kanti

Emailtkpal50@gmail.com

.....Complainant

Versus

Railway Board

(through: the Secretary)

Rail Bhawan, New Delhi

9233

.....Respondent

Date of Hearing: 09.05.2018

Present:

1. Complainant – Absent
2. Shri Tarit Kumar Das, Sr. Div. Engr., ER, Sealdah – on behalf of the Respondent

ORDER

Shri Tushar Kanti filed a complaint dated 04.10.2016 in this Court regarding non-provision of accessible approaches to all Railway Platforms at Rajchandrapur, Bally Halt and Ballyghat(ER) under the Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 hereinafter referred to as "the Act".

2. The matter was taken up with the Respondent vide this Court's letter dated 30.11.2016 followed by reminder letter dated 18.08.2017 and 07.03.2018.

3. Despite lapse of sufficient time no reply was received from the side of Respondent and therefore a hearing was scheduled on 09.05.2018 vide notice of hearing dated 13.04.2018.

4. The matter was heard as per schedule on 09.05.2018 and the Complainant was absent during the hearing.

5. Sr. Divisional Engineer, Eastern Railway, Sealdah, Representative of the Respondent has submitted that the ramp cannot construct due to lack of sufficient space at the station. Whenever space will be available the same may be built. He has submitted relevant photographs in support of his oral submissions.

Contd. 1/2

6. The case is disposed of with the directions to the Respondent that they will act under Section 45(1) of the RPwD Act, 2016 however a detailed reply may be submitted in the matter within 45 days from the receipt of this Order under intimation to the Complainant. It is ensured that persons with disabilities shall not be deprived of their legitimate rights.



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

Copy to:

Sr. Divisional Engineer
Eastern Railway
Sealdah

for compliance in the matter.



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No.:8156/1092/2017

Dated: .06.2018

In the matter of :

Shri Satish Panjwani

email:satishpanjwani@gmail.com

R-9216

.....Complainant

Versus

United India Insurance Co. Ltd.(UIICL)

{through: the General(HR)}

24, Whites Road

Chennai – 600 014

email:phemamalini@uiic.co.in

R-9215

.....Respondent

Date of Hearing : 06.04.2018

Present :

3. Shri Satish Panjwani – self (on behalf of the Complainant)
4. Shri Ashutosh Kumar Srivastava, Advocate – on behalf of the Respondent

Date of Hearing : 11.05.2018

Present:

1. Shri Satish Panjwani – self (on behalf of the Complainant)
2. None appear on the behalf of the Respondent

ORDER

Shri Satish Panjwani father of Master Kanishk, a child suffering from Down's Syndrome(special needs) filed a complaint in this Court regarding denial of speech and occupational therapy charges by the United India Insurance Co. Ltd. under the Rights of Persons with Disabilities Act, 2016 hereinafter referred to as "the Act".

2. The matter was taken up with the Respondent vide this Court's letter dated 18.08.2017 followed by reminder letter dated 19.12.2017.

3. Despite lapse of sufficient time no reply was received and a hearing was scheduled on 06.04.2018 vide notice of hearing dated 14.03.2018.

4. The Regional Manager, UIICL vide letter dated 01.03.2018 has informed that they have once again examined the file in detail and are of the firm view that the claim of Shri Satish Panjwani cannot be satisfied by them. They have already addressed a letter of repudiation dated 24.04.2017 and affirm to the said contents. The Company has repudiated the claim within the four corners of the policy since as per Clause 3.1 of the policy under domiciliary treatment the said ailment is not covered. Since the present claim pertains to Down Syndrome which is not specifically covered within Clause No. 3.1 of the policy the claim cannot be processed for payment since this would lead to a violation of Clause 3.1 of the Policy itself.

Contd 2

- 2 -

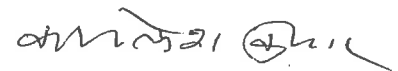
5. The matter was heard as per schedule on 06.04.2018 and during the hearing on the oral request of the Counsel of Respondent for filing a detailed reply and extension of some more time, the next hearing in the matter was fixed for dated 11.05.2018.

6. The matter was heard again on afore mentioned date 11.05.2018. From the side of Respondent no one appear during the hearing.

7. The complainant during the hearing has submitted that his two bills have passed by the Company but other bills are still pending. He has requested this Court to direct the Company to clear his outstanding dues.

8. Respondent is accordingly advised that the pending bills in respect of the complainant's son may be cleared as soon as possible under intimation to this Court within 45 days. Please ensure that person with disability is not deprived of his legitimate rights.

9. The case is accordingly disposed off.



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



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

केस सं. 6695/1024/2016

R-9076

दिनांक:

04/01/2018
05.2018

के मामले में :-

श्री राघवेन्द्र प्रसाद गौतम,
12/175 खुटेही सिविल लाइन्स
रीवा, मध्य प्रदेश-486001

-वादी

बनाम

अध्यक्ष एवं प्रबन्ध निदेशक,
यूनियन बैंक ऑफ इंडिया,
239 विधान भवन मार्ग,
मुंबई, महाराष्ट्र

R-9077

-प्रतिवादी

सुनवाई की तिथि: 13/02/2018

उपस्थित - वादी की तरफ से कोई उपस्थित नहीं हुए
श्री आशुतोष पाण्डेय, मुख्य प्रबन्धक - प्रतिवादी की तरफ से

आदेश

उक्त मामले में आदेश दिनांक 22.03.2017 पारित किया गया ।

2. न्याय के हित में निर्णय लिया गया कि मामले को पुनः सुना जाए, अतः मामले में सुनवाई के नोटिस दिनांक 27.09.2017 द्वारा दिनांक 24.10.2017 को 11.00 बजे सुनवाई निर्धारित की गई । तदनुसार मामले को सुना गया ।

3. मामले में कार्यवाहियों के रिकार्ड दिनांक 10.11.2017 द्वारा मामले में अगली सुनवाई दिनांक 16.11.2017 को 11.00 बजे निर्धारित करते हुए प्रतिवादी को निम्न सलाह दी गई कि :-

- (क) चार्जशीट की प्रति;
- (ख) वादी की अनुपस्थिति के दौरान बैंक द्वारा तीन वर्ष में की गई कार्यवाही संबंधित दस्तावेज;
- (ग) वादी की अनाधिकृत अनुपस्थिति संबंधित दस्तावेज;

4. दिनांक 16.11.2017 को सुनवाई के दौरान बैंक के प्रतिनिधि ने कार्यवाहियों के रिकार्ड दिनांक 10.11.2017 द्वारा वांछित दस्तावेजों की प्रतियां न्यायालय के समक्ष प्रस्तुत की । मामले में अगली सुनवाई दिनांक 22.12.2017 को 12.00 बजे नियत की गयी ।

पृष्ठ 1/3

5. वादी के लिखित अनुरोध दिनांक 13.12.2017 जोकि उनके ईमेल दिनांक 14.12.2017 द्वारा न्यायालय में प्राप्त हुआ के मददेनजर मामले में सुनवाई का पुनःनिर्धारण दिनांक 13.02.2018 को 11.00 बजे के लिए किया गया ।

6. वादी ने अपने पत्र दिनांक 12.02.2018 में निम्न तथ्यों को उल्लेखित किया जो कि उनके ईमेल दिनांक 12.02.2018 द्वारा न्यायालय में प्राप्त हुआ :-

- दिनांक 31.03.2017 को समाप्त वित्तीय वर्ष 2016-17 के लिए भारत सरकार के वित्तीय बजट में की गई घोषणा के अनुसार आयकर अधिनियम की धारा 80 डी.डी. के अंतर्गत निःशक्तजनों को निवेश में रु 1,25,000/- में कर की छूट न देना भी "निःशक्तजन अधिनियम 1995" के विरोध का अकाट्य प्रमाण है।
- अध्यक्ष एवं प्रबन्ध निदेशक के पद से श्री अरुण तिवारी दिनांक 30.06.2017 को सेवा निवृत्त हो गये है तथा 01 जुलाई 2017 से अध्यक्ष पद पर श्री विपिन कुमार हांडा और प्रबन्ध निदेशक पद पर श्री राज किरण राय नियुक्त हुए है।
- प्रतिवादी की ओर से पैरवी कर रहे मुख्य प्रबन्धक श्री अभिषेक कुमार पाण्डे ने अवगत कराया है कि आवेदक को जारी आरोप पत्र दिनांक 09.08.2004 निरस्त हो चुका है तथा "नो वर्क नो पे" का सिद्धांत हटाया जा चुका है।
- प्रतिवादी द्वारा आवेदक पर आरोप लगाया है कि वह लिपिक वर्ग से अधिकारी संवर्ग में पदोन्नति हेतु आयोजित वर्ष 1998, 2001 तथा 2003 की परीक्षाओं में सम्मिलित हुआ था तथा असफल रहा । प्रतिवादी ने न तो कोई सबूत दिया है न ही आज तक पदोन्नति का लाभ दिया है।
- प्रतिवादी द्वारा वेतन छीनने के लिए दिनांक 01.07.2000 से दिनांक 25.05.2003 तक आवेदक को सेवा से पृथक रखा ।
- प्रतिवादी द्वारा जारी पत्र दिनांक 22.05.2015 द्वारा प्राथमिकी दर्ज कराने तथा आरोपों को सार्वजनिक करने पर रोक लगाई गई है।
- प्रतिवादी द्वारा जिला मेडिकल बोर्ड रीवा द्वारा जारी विकलांगता प्रमाण पत्र विवादित बताया जा रहा है साथ ही आवेदन पत्र दिनांक 02.03.2002 को भी विवादित बताया है।
- दिनांक 13.02.2018 को आवेदक अस्वस्थता के कारण सुनवाई हेतु उपस्थित रहने में असमर्थ रहा ।

उक्त पत्र में मामले में सुनवाई को स्थगित करने का अनुरोध किया, परन्तु अपरिहार्य परिस्थितियों के कारण दिनांक 13.02.2018 को मामले को यथावत सुना गया ।

उपरोक्त ईमेल में प्रतिवादी द्वारा प्रस्तुत दस्तावेजों से सम्बन्धित कोई उत्तर अथवा खण्डन नहीं किया गया था । अतः पुनः वादी को दिनांक 07.05.2018 को लिखित रूप से इस न्यायालय द्वारा यह पुछा गया कि "यदि आप मामले से सम्बन्धित कोई दस्तावेज भेजना चाहते हे तो भेजें" परन्तु वादी द्वारा कोई दस्तावेज प्रस्तुत नहीं किये गये ।

7. उपरोक्त मामले में प्रतिवादी द्वारा प्रस्तुत दस्तावेजों से यह प्रतीत नहीं होता है कि उनके द्वारा दिव्यांगजन अधिकार अधिनियम, 2016 के प्रावधानों का उल्लंघन किया गया है, अतः प्रतिवादी को निर्देश दिया जाता है कि प्रतिवादी दिव्यांगजन अधिकार अधिनियम, 2016 के प्रावधानों के अंतर्गत वादी को नियमानुसार सभी पद लाभ यथाशीघ्र उपलब्ध कराएं तथा सुनिश्चित करें कि दिव्यांग कर्मचारी/अधिकारी के संवैधानिक अधिकारों का हनन् न होने पाएं ।



(डा. कमलेश कुमार पाण्डेय)
मुख्य आयुक्त दिव्यांगजन



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 8653/1022/2017

R-9056

Dated : 01.05.2018

Dispatch No.

In the matter of :

Shri Vikash Kumar Pandey,
122, Pushpanjali Nagar Phase-3,
Near Awadhपुरी Colony,
Shahganj
Agra – 282 010
Email<vikashpandey168@yahoo.com>

.....Complainant

Versus

State Bank of India,
(Through Chairman)
State Bank Bhavan,
Madame Cama Road,
Nariman Point,
Mumbai – 400 021

R-9057

.....Respondent

Date of Hearing : 18.04.2018

Present :

1. Shri Vikash Kumar Pandey Complainant along with Smt. Ritu Pandey and Shri D.N. Tiwary.
2. Shri Harish Sablok, Chief Manager (HR), On behalf of Respondent.

ORDER

The above named complainant, a person with 40% visual impairment had filed a complaint dated 04.09.2017 under the Rights of Persons with Disabilities Act, 2016 against denial of posting of his wife and himself on compassionate ground to Agra.

2. The Complainant submitted that he was selected under VH category by the State Bank of India. He joined the Hathras main branch on 04.02.2013 and had completed 4 ½ years in the said branch. He is regularly working 7 hours on Computer a day. His wife Smt. Ritu Pandey is also working in the same branch at Hathras. They are both going up and down from Agra to Hathras, which it is 120 Kms every day. Due to his disability he is facing lot of problems while travelling to office and back. His relatives are staying in Agra and there is no medical facilities in Hathras. It is not feasible for him to take a rented house and stay in Hathras without his family's assistance. Earlier he had requested his bank to transfer him to Ahmedabad, where his parents are staying, but the request was rejected by the bank. Both the complainant and his wife had applied for request posting to Agra.

.....2/-

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide letter dated 07.11.2017.

4. The Respondent vide letter dated 05.12.2017 submitted that as per their record the Complainant and his wife Smt. Ritu Pandey were posted at Mandi Samiti Hathras and Hathras main branch respectively and the Complainant's request for transfer of his wife and himself to Agra cannot be considered.

5. A copy of Respondent's letter dated 05.12.2017 was sent to the Complainant for his comments vide this Court's letter dated 27.12.2017.

6. The Complainant vide his rejoinder dated 20.01.2018 had submitted that his wife Smt. Ritu Pandey had joined State Bank of India on 15.12.2010 and was posted at Hathra since March 2011 and the complainant joined State Bank of India on 21.01.2013 and was posted at Hathras Main branch. As per the Medical Report of the Eye Research Centre and Retina Foundation, Ahmedabad, his right eye has total retinal detachment and he is taking regular treatment since 1992. There is no medical facility available in Hathras. It is very difficult for him to go on regular medical check to Ahmedabad from Hathras. The complainant submitted that they had requested for posting at Agra because there is no medical facilities available for treatment of his eye at Hathras. He has requested this Court to consider his posting to Ahmedabad or Agra, where he can take proper medical assistance.

7. Upon considering Respondent's reply dated 05.12.2017 and Complainant's rejoinder dated 20.01.2018, a personal hearing was scheduled on 18.04.2018.

8. During the hearing the Complainant reiterated that he and his wife are posted at SBI branches in Hathras. They both are staying in Agra. He is facing problem as both had to travel more than 100 Kms a day to reach their branches in Hathras. He submitted that there is no medical facilities available in Hathras. He had earlier requested his bank to transfer him to Ahmedabad, where his parents are staying, but the request was rejected by the bank.

9. The representative of the Respondent submitted that the Complainant had not completed five years of eligibility for transfer at the time when he had applied and now as he has completed five years of service at a particular station, he can apply for his transfer either to Agra or Ahmedabad and they will consider his request.

10. After hearing both the complainant and the Respondent the Court observed that as the complainant has completed five years of service in a particular branch, he may apply for his posting. However, the Court advised the Respondent Bank to consider his request for transfer to Agra as emphasized by him during the hearing. It is also advised to be more sensitive towards persons with disabilities and to ensure a conducive and accessible work environment for the complainant in specific and for the persons with disabilities, in general and provide him a level playing field, so that rights of persons with disabilities as enshrined under the Rights of Persons with Disabilities, Act, 2016, are not infringed.



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