



सत्यमेव जयते

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

Case No.1286/1011/2014

Dated: 15.06.2016

In the matter of:

Shri P. K. Ash,
Secretary,
S.E. Railway (HQ)
Physically Handicapped Employees' Association,
HD. Qrs., Hut No. 07 (North Colony), Garden Reach,
Kolkata - 700043.

0132

..... Complainant

Versus

South Eastern Railway,
Through the Chief Personnel Officer,
Office of the CPO, Garden Reach,
Kolkata-700043.

0133

..... Respondent No. 1

South Eastern Railway,
Through the Medical Director,
Central Hospital, Office of the CPO,
Garden Reach, Kolkata - 700043.

0134

..... Respondent No. 2

Date of Hearing : 16.05.2016

Present :

1. Shri Mukesh Gupta, General Secretary, Disabled Employees Association of Railway, New Delhi on behalf of Shri P.K. Ash, General Secretary, South Eastern Railway (HQ) Physically Handicapped Employees' Association, Kolkata, the Complainant.
2. Shri B.N. Soren, Dy.CPO, on behalf of the Respondent No. 1.
3. Dr. Rupa Mitra, Medical Director & Dr. Bhudeb Sengupta, ACHD/ADMN/CH/GRC on behalf of Respondent No.2.

ORDER

The above named complainant, Shri P.K. Ash, Secretary, South Eastern Railway (HQ), Physically Handicapped Employees' Association, Kolkata filed a complaint dated 25.03.2014 vide letter No. PHEA/Injustice/JCV/64/2014/02 before the Commissioner for Persons with Disabilities, Government of West Bengal under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act' regarding denial of employment opportunity to persons with disabilities by South Eastern Railway. The Commissioner for Persons with Disabilities, Government of West Bengal vide Memo. No. Com/1/497 dated 08.04.2014 forwarded the same to the Chief Commissioner for Persons with Disabilities for taking up the matter with appropriate South Eastern Railway authority for redressal as the petitioners do not fall under their jurisdiction.

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2. The complainant has submitted the grievances of S/Shri Jay Chandra Verma, Sanjay Krishan and Vinit Prasad Bharti, persons with disabilities for redressal. The grievances of the above named persons are as under:-

- (a) As regards Shri Jay Chandra Verma, Shri P.K. Ash had submitted that he was sent for the medical examination before joining for the post of Tech. III in Mechanical Department. He has disability certificate issued by the Medical Board of Balia Hospital saying 50% OH whereas the South Eastern Railway Medical Department stated that Medical Director has not taken that certificate in consideration and advised him to submit the fresh certificate.
- (b) As regards Shri Sanjay Krishan, Shri P.K. Ash has submitted that he got himself selected for the post of Technical. The Chief Personnel Officer, South Eastern Railway sent Shri Sanjay Krishan to the Medical Department, South Eastern Railway for Medical Assessment, where the Medical Department, South Eastern Railway has opined that disability percentage of Shri Sanjay is less than 40% whereas the disability certificate issued by the Medical Board of Bhojpur indicates his disability as 40%.
- (c) As regards Shri Vinit Prasad Bharti, Shri P.K. Ash has submitted that though Shri Bharti was 60% disability but the Medical Director, South Eastern Railway has not issued him fit certificate for the post. The Selection Board before he was employed has thoroughly checked his disability but did not allow him saying that his disability does not cover the appointment criteria for Technical-III.

3. The matter was taken up under Section 59 of the Act with the (i) Chief Personnel Officer, South Eastern Railway, Kolkata and (ii) Medical Director, South Eastern Railway, Kolkata vide this Court's letter dated 17.10.2014. As no reply was received from them, a reminder dated 24.12.2014 was sent to them.

4. In response Chief Specialist (G&O)/GRC vide letter No.MD/SER/CON/133 dated 06.01.2015 has informed that the comments of Sr. DMO (OPD)/GRC vide note sheet no. OPD/PME/14/160 dated 19.11.2014 duly endorsed by ACHD (OPD)/GRC and MD/GRC with supporting annexures was sent to CPO, SER/GRC as in Indian Railways Recruitment to all categories of staff is dealt by the Personnel

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Department. As a matter of act the opinion of Medical Department related to Pre Appointment Initial Medical Examination is sent to the Personnel Department to be dealt accordingly from their end.

5. The copy of the reply dated 06.01.2015 received from the Chief Specialist (G&O)/GRC was forwarded to the complainant vide this Court's letter dated 27.01.2015 for submission of his comments/rejoinder.

6. The complainant vide his letter No. PHEA/PWD/ACT95/CC/100/26/2015 dated 17.03.2015 has submitted its comments as under:-

- (i) That the certificate of disability to Shri Jay Chandra Verma was issued by the Chief Medical Officer, Balia and as per the extant rule , only the issuing authority can revise the percentage. Therefore, the act of the S.E. Railway Medical Department is against the letter and spirit of PwD Act, 1995. The denial of employment opportunity to Shri Jay Chandra Verma is strongly regretted.
- (ii) As regards Shri Sanjay Krishan, he has submitted that he do not understand why the percentage of disability was challenged by S.E. Railway, Medical Authority which was against the PwD Act.
- (iii) As regards Shri Vinit Prasad Bharti, he has submitted that the post of Tech-III(Machinist) is suitable for persons having deformity of one leg as per RRB, Kolkata's Employment Notification No.10/2010(SRD) but the examination findings of ACHD (Orthopedics/H/GRC) shows deformity of left lower limb and also left side mild residual paralysis of left upper limb. The mild residual paralysis of left upper limb cannot come in the way of working as Tech-III (Machinist) and, therefore, he should not have been declared unfit arbitrarily and irrationally.

He also submitted that the PH Certificates of all the above candidates, may be reviewed with the related State Government Appellate Authorities for reassessment.

7. The copy of complainant's letter dated 17,.03.2015 was forwarded to the Chief Specialist (G&O)/GRC vide this Court's letter dated 29.04.2015 for submission of their reply/comments to be submitted to this Court by 15.05.2015.

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8. Medical Director/GRC vide letter No. MD/SER/CON/3377 dated 18.06.2015 has submitted that their office vide letter dated 06.01.2015 has already communicated to this Court that the opinion of Medical Department related to pre Appointment Initial Medical Examination is sent to the Personnel Department of the Railways to be dealt accordingly from their end.

9. The Chief Specialist (G&O)GRC was advised vide this Court's letter dated 10.07.2015 to submit the basis/guidelines on which the candidate's disability was assessed. Further, it may also be clarified whether assessment was done in consonance with the guidelines for evaluation of various disabilities and procedure for certification as notified by Ministry of Social Justice and Empowerment vide Notification No. 16-18/97-NI.I dated 01.06.2001. As nothing was received reminders dated 16.10.2015 and 16.02.2016 were sent to the Medical Director/GRC.

10. The Medical Director/GRC vide letter No. MD/SER/CON/1136 dated 23/24.02.2016 has submitted that the reply to this Court's letter dated 16.10.2016 was sent vide their Office letter No. MD/SER/CON/7010 dated 30.10.2015. All the letters received in the past from this court was duly replied by their office. He has again reiterated that the basis/guidelines on which the candidates disability was assessed was based on clinical examination by concerned Specialty doctor (ACHD/Orthopedics) where percentage of disability in each case was found to be less than 40% while disposing the case Railway Board's letter No.2008/H/23/1 dated 07.03.2008 was adhered to as well as Advance Correction Slip to para 511(7) of IRMM 2000 as also Estt. Sr. no.221/2009 of Railway Board were followed. The revised guidelines of Railway Board were issued on 30.07.2015 vide letter No.2008/H/23/1 whereas the above three cases were decided in the year 2012-13. For further proper disposal of the case as deem fit, necessary advice may please be communicated to CPO/GRC/SER to resolve the issue.

11. Upon considering the replies dated 06.01.2015 and 23.02.2016 of Respondent No. 02 and complainant's letter dated 17.03.2015, a hearing was scheduled on 16.05.2016.

12. The representative of the complainant, Shri Mukesh Gupta, General Secretary, Disabled Employees Association of Railway, New Delhi submitted that Candidature of Sh. Jai Chandara Verma & Sh. Sanjay Krishan was rejected on the ground of less percentage of disability by the MD/Medical

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Department of S.E. Railway. It is absolutely wrong decision taken by the concerned authority. As per Para 10 & 11 of the DOP&T letter dated 29.12.2005 the disability certificate is issued by the competent Medical Board duly constituted by the Central or a State Government and same Medical Board can review the disability certificate if required. Medical Department of the Railway cannot issue or review the disability certificate as per Persons with Disability Act-1995 & DOP&T instructions. Thus the medical board of railway cannot say that the %age of the above two candidates is less than 40% and are not entitled to get the appointment. It is strongly requested to kindly issue the directions for appointing the both candidates in Railway without any further delay. Candidature of another candidate Sh. Vinit Prasad Bharti has been rejected on the ground of not identified post for him due to his disability. When the candidate has applied for the post of Tech.-III (Machinists) with their disability certificate and cross all the hurdles then how can the competent authority deny to appoint the candidate on the ground of post is not identified for him. It is pertinent to mention here that as per Section 47 of the Act, no government can denied to appoint a person on the ground of disability. Another fact is also worth mentionable that only S.E. Railway administration is fully responsible for all the above facts. So it is strongly requested to kindly direct the S.E. Railway Administration to appoint him at another suitable post.

13. The representative of Respondent No. 2 submitted that S/Shri Jai Chandra Verma s/o Ram Chij Verma, Sanjay Krishan s/o Sudama Prasad and Vinit Prasad Bharti s/o Gynaeswar Prasad were examined in OH category by Medical Department, Central Hospital/GRC/SE Railway only after receiving requisite medical memos from Personal Branch in each case. Shri Jaichandra Verma s/o Ram Chij Verma on medical examination was found to have percentage of disability below 40% and this fact was communicated to Dy. CPO (Rectt)/SER/GRC vide letter no. OPD/PME/OH/12/17 dated 18.01.2013. Shri Sanjay Krishan s/o Sudama Prasad on medical examination was found to have percentage of disability below 40% and this fact was also communicated to Dy. CPO (Rectt)/SER/GRC vide letter no. OPD/PME/OH/12/18 dated 18.01.2013. Shri Vinit Prasad Bharti s/o Gynaswar Prasad was sent for medical examination for the post of Tech-III (Machinist) in Mechanical Department in OH category. On physical examination as well as mentioned in his disability certificate, he was found to have post polio paralysis affecting both left lower and upper limbs. As per Estt. Sr. no. 221/2009 of Railway Board, the post of Machinist in Mechanical Department has been found suitable for candidates having disability of only One Leg (OL). This has been also intimated to Dy. CPO (Rectt)/SER/GRC for further action vide no. OPD/PME/OH/12/212 dated 21.12.12. As per Railway Board's circular no. 2008/H/23/1 dated 30.07.2015 of the Zone is of the opinion that the

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

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physically challenged certificate issued by the medical board of the State is not as per physical condition of the person, the zone may write to the concerned State/Central Medical Authority for review of the certificate issued by them. In case of disagreement on percentage, the competent authority to intervene in a certificate for physically challenged person is Director General, Health & Family Welfare.

14. The representative of the Respondent No. 1 submitted that the Railway Medical Authorities on examination of Shri Jai Chandra Verma S/o Ram Chij found his disability to below 40% in OH category and therefore he was not given fit certificate by the Railway Medical Authorities. Hence his appointment was not considered. As per latest Railway Board's instructions, this case is required to be referred to the Director General of Health of the concerned State Government from where disability certificate has been issued and if the Director General Health of the State confirms the certificate issued by the State Govt. Authorities i.e. Civil Surgeon of the District of the State to be genuine and given percentage is correct, the Railway Authority will issue offer of appointment of the candidate and the process will be completed within one month. In the case of Sanjay Krishan s/o Sudama Prasad, the Railway Medical Authorities on examination of the candidate also found his disability to be below 40% in OH category and therefore he was not given fit certificate by the Railway Medical Authorities. Hence his appointment was not considered. As per latest Railway Board's instructions, this case is required to be referred to the Director General of Health of the concerned State Govt. from where disability certificate has been issued and if the Director General Health of the State confirms the certificate issued by the State Govt. Authorities i.e. Civil Surgeon of the District of the State to be genuine and given percentage is correct, the Railway Authority will issue offer of appointment to the candidate and the process will be completed within one month. In case of Vinit Prasad Bharti s/o Gyaneswar Prasad, the candidate had applied for appointment to the post of Tech. III (Machinist) in Mechanical Department in OH category. In this particular post as per employment notification, the eligibility of the candidate was mentioned as OH/OL. The Medical Authority of South Eastern Railway examined his case and it was found in the certificate as well as on physical examination of the candidate, his orthopedically disability is on one leg and one arm. Therefore, due to mismatching of his disability with eligibility criteria for the post of Tech.III (Machinist), he was not issued fit certificate for appointment. In this case, it was agreed on the request of the Commission to examine as to whether the candidate can be considered for appointment against any alternative category of post published in the said notification against shortfall vacancy of South Eastern Railway, if any. The outcome of this exercise will be informed to the Commission within one month.

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15. Rule 6 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Rules, 1996 provides that the Certificate issued by the Medical Board under Rule 5 shall make a person eligible to apply for facilities, concessions and benefits admissible under schemes of the Government or Non Governmental Organizations, subject to such conditions as the Central or the State Government may impose. Rule 6 of the Amended Rules, 2009 provides that a certificate issued under Rule 4 shall render a person eligible to apply for facilities, concessions and benefits admissible under schemes of the Government and of Non-Governmental Organizations funded by the Government, subject to such conditions as may be specified in relevant schemes or instructions of Government, etc., as the case may be.

16. Para 22 of DoP&T's O.M. dated 29.12.2005 provides that if sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them. Further Para 23 of the said O.M. provides that as per Rule 10 of the Fundamental Rules, every new entrant to Government Service on initial appointment is required to produce a medical certificate of fitness issued by a competent authority. In case of medical examination of a person with disability for appointment to a post identified as suitable to be held by a person suffering from a particular kind of disability, the concerned Medical Officer or Board shall be informed beforehand that the post is identified suitable to be held by persons with disability of the relevant category and the candidate shall then be examined medically keeping this fact in view.

17. After hearing the parties, this Court observed that S/Shri Jay Chandra Verma and Sanjay Krishan should be re-examined by the Railway Medical Authorities in the light of Para 23 of the DoP&T's O.M. dated 29.12.2005 as referred above and if otherwise found eligible for the post should be appointed to the post from the date when the other candidates appointed against the advertisement in question. If the Medical Authority still doubts the percentage of disabilities of the above candidates, they may get their disability certificate verified from the respective issuing authorities. As regards, the complaint of Shri Vinit Prasad Bharti, who is one arm and one leg affected person, this Court directs the respondent to consider his case in the light of Para 6 of Ministry of Social Justice & Empowerment, Government of India Notification No. 16-70/2004-DD-III dated 15.03.2007 and inform him about the outcome.

18. The case is accordingly disposed off.

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

N.O.O.:

Copy to : Office File.

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