



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

Case No.20/1026/12-13TR

Dated:-15.7.2014

In the matter of:

Shri Govindbhai K. Shrimali,
AT: Ambetha, P.O. Lokniketan,
Rampur, Tal. Palanpur,
District – Banaskantha- 385001 (Gujarat)

..... Complainant

Versus

Central Water Commission,
(Thru the Chairman),
Room No. 303, Seva Bhawan,
R.K. Puram, New Delhi-110066.

.... Respondent

Date of hearing : 11.06.2014

Present :

1. Shri Govind Bhai K. Shrimali, Complainant alongwith Sardaben Shrimali, Harshad M. Shrimali and N.J. Shrimali.
2. S/Shri D.K. Tiwary, Superintending Engineer, G.S. Audhkhasi, Director (Estt.) & Ajay Gairola, Under Secretary, for the respondent.

O R D E R

The above named complainant, a person with blindness (95%) filed a complaint dated 30.12.2012 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act referred to this Court by Ministry of Social Justice & Empowerment vide letter No.7-1/2012/FC&PG/256 dated 24.01.2013 regarding his regularization on the post of Khalasi.

2. The complainant submitted that he joined as Monsoon Khalasi on 15.06.1988 in Central Water Commission (CWC), Gandhinagar on the basis of fitness certificate of Civil Surgeon. He worked for 21 years on the same post at different places in Gujarat. After suffering some eye problem, CWC did not allow him to continue his job. He submitted that the persons who were junior to him were regularized while he was not considered for the same though he was equally qualified and his name was also on the seniority list. He stated that CWC in its 19th Meeting held on 14/15th October, 2009 had taken a decision to promote 60 employees. His name stood at serial no. 33 in the seniority list. He further submitted that his family consists of wife and three children. Now he is jobless and has no other source of income and his financial condition has become worse. He also belongs to Scheduled Caste.

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3. The matter was taken up with the respondent vide this Court's letter dated 27.02.2013 follow up with a reminder dated 03.04.2013.

4. The respondent vide letter No.6/23/2012-RMCD/53 dated 25.07.2013 inter-alia submitted that the matter has been examined in consultation with the Commission's Regional office i.e. Hydrological Observation Circle, Gandhinagar who have intimated that Shri Shrimali was earlier engaged as Seasonal Khalasi for 21 monsoon sessions since 1988 for 3-4 months purely on temporary basis. After every monsoon session, his services were dispensed with without any obligation/liability for further engagement. He never entered into regular Government service. The respondent further submitted that there is no provision for reservation for physically handicapped candidates for the post of Skilled Worker Assistant (SWA) and as per Ministry of Social Justice & Empowerment's notification No.16-70/2004-DD.III dated 18.01.2007, 15.03.2007 and 22.03.2007, the post of Khalasi (Group D) is not identified for persons with blindness. Thus, the complainant was not found suitable by DPC for appointment to the post of Khalasi, now named Skilled Work Assistant, which he claimed to be regularized to. It was for the same reason that he was not engaged for purely seasonal work of Seasonal Khalasi during the last four monsoon seasons.

5. A copy of the reply dated 25.07.2013 of the respondent was forwarded to the complainant vide this Court's letter dated 14.08.2013 for his comments, if any.

6. The complainant vide letter dated 19.06.2013 which was received in this Court on 04.09.2013, submitted that inspite of the recommendation of this Court, Central Water Commission had not considered his case. He requested to again recommend his case to Central Water Commission.

7. After considering the written submissions of the respondent and the complainant, a hearing was scheduled on 11.06.2014.

8. Reiterating the written submissions, the respondent submitted a copy of the point-wise comments on the complaint with the letter dated 29.05.2014 with a copy to the complainant which are as follows:-

Sl.No.	Point as raised in the representation of Shri G.K. Shrimali	Comments of CWC
1.	I have served as Monsoon Khalasi from 1988 to 2008.	Shri G.K. Shrimali has been claiming that he has served from 1988 to 2008 and continued for 21 years. It gives an impression as if he has been continuously serving the department for 21 years on regular basis without any break. The fact that his engagement was purely temporary, seasonal and casual, lasting for only 3 to 4 months in a year, has been concealed in the representation.
2.	I have not been appointed from 2009 to 2014.	The statement of the complainant is not correct. In the year 2009, he was given an offer to join as seasonal khalasis at Jotasan site under North Western Rivers Sub, CWC, Himatnagar. But he could not join duty because of the medical condition related to his vision. His letter dated

		<p>22.06.09 states that he was under medical treatment for the same at Ahmedabad and he hoped to get it cured. He had specifically admitted in the same letter dated he was not in a condition to work for 2009 monsoon and requested the office to give him an opportunity in the year 2010. He also stated that once his eye problem was resolved, he would inform the office about it. Again for the monsoon 2010 he was given an offer to work as seasonal khalAsl at Banas Luni Sub Division, CWC Palanpur with a condition that he would submit a medical fitness certificate prior to his engagement. The then Sub divisional Officer found him medically unfit for the said post, on the basis of medical certificate submitted by him which stated that Shri Shrimali has lost sight in the left eye while the right eye had vision of (1) feet only. Thus, he could not join in 2010 as well. In the year 2011, 2012 & 2013, he has not been given offer of appointment as clarifications were sought and pending regarding employability of the Petitioner owing to his disability i.e. blind (90%).</p>
3.	<p>Keeping me aside, other Monsoon Khalasis, who were recruited alongwith me in 1988 have been regular orders but I have not been given order of regularization.</p>	<p>The decision leading to the regularization of other seasonal khalasis was based on the following ground.</p> <p>The scheme of regularization of seasonal khalasis (SKs) is governed by the scheme viz. 'Grant of temporary status and regularization of Seasonal Khalasis in the work-charged establishment of Central Water Commission' issued vide Ministry of Water Resources, New Delhi No.8/3/95-Estt.I(Vol.II) dated 20.06.1997.</p> <p>Also, under section 10(v) of the scheme for regularization mentioned above, it is clearly stated that "He should be medically fit for the post for which he is considered for absorption/regularization. He should be get medically examined at the time of his initial appointment by the competent medical authority."</p> <p>Accordingly, the DPC for regularization of seasonal Khalasis was held on 26.5.10, wherein the DPC recommended regularization of 60 seasonal Khalasis and a panel of further 25 seasonal khalasis was also recommended for promotion as W/C khalAsl, which remained valid up to 30.06.11.</p> <p>However, in the said panel, the DPC observed that the Petitioner appeared to be blind. The DPC could not ascertain his eligibility for promotion or otherwise in the absence of any medical certificate. Hence, it was decided by the DPC that before issuing order for his regularization a medical fitness certification should be obtained from the competent authority, especially for his vision, required to be produced as per the existing rules.</p> <p>Accordingly, the EE, Mahi Division, CWC, Gandhinagar vide his letter even no.7304-05 dated 18.11.10 requested him to submit the medical certificate of the competent authority within 30 days of issue of the letter i.e. by 18th December, 2010. But he did not immediately comply and it was only after issue of 2nd reminder, the petitioner vide his letter dated 25.02.11 submitted a medical certificate obtained from the General Hospital, Palanpur, wherein the Resident Medical Officer, certifies him as 90% blind and also recorded that he considered it as a disqualification for</p>

		<p>employment in the office of Mahi Division, CWC, Gandhinagar.</p> <p>It may be noted that the very purpose of engaging Seasonal Khalasis is for any type of unskilled job for hydrological observation and flood forecasting, survey and investigation of projects with knowledge of swimming and rowing of boat/rafts, etc. The work is required to be done outdoors in the field, mostly on the river banks.</p> <p>As per Revised Recruitment Rules, the duties and job responsibilities assigned to the post of SWA are:</p> <p>(a) To carryout any job of assistance/help nature related to hydrological meteorological observation, flood forecasting, Gauge & Discharge, Surveys, Investigation of projects, snow observation, silt observation, plying of boats, operation of machines, watch and ward, gardening, office upkeep/cleaning etc.</p> <p>(b) Any other duty assigned by the Officer-in-charge.</p> <p>Further, the Recruitment Rules prescribes that the posts of SWAs are to be filled first from the eligible seasonal khalasis/Adhoc Khalasis/Casual Labourers in WC East by seniority cum fitness basis. In this case, Shri Govindbhai K. Shrimali has failed the fitness test.</p> <p>In the meanwhile, the Petitioner requested vide his letter dated 7.12.2010 for regularization, involving section 47(1) of PWD Act, 1995. Since the office of Superintending Engineer, Hydrological Observation Circle, CWC, Gandhinagar was not clear about legal implications of the case in the light of PWD Act, advice/guidance was ought vide this office letters No.A-46//10/Regularization.</p> <p>Mon.Kh/HOC/379-82 dated 9.2.11 and 1097-1100 dated 13.04.11 requesting CWC to provide direction in the case so that further regularization of seasonal Khalasis could be taken up. In response, the following direction was, inter alia, provided by the commission.</p> <p>“In the meanwhile you are requested to detach the case of Shri Shrimali and consider the case or regularization of other seasonal khalasis as per the recommendations of DPC. The case of Shri Shrimali may be decided after doing the needful as suggested above.”</p> <p>In accordance with the above, this office proceeded with regularization of seasonal khalasis who were in the panel drawn by the DPC held in March, 2013 after detaching the case of the Petitioner pending a decision in the matter.</p>
4.	<p>Those Monsoon Khalasis who have been regularized have been employed in Palanpur Sub Division in Mahi Division and SE office also, they have been given general work and therefore, I request that I may also be given general work and my livelihood be continued. In 2008, regular recruitment of Monsoon Khalasis have been done in 2010, 60, in 2011, 11,</p>	<p>Shri Govindbhai K. Shrimali, Seasonal Khalasi has requested to give him general work. In this regard, it is to mention that in consideration out of compassion, Executive Engineers were asked vide this office letter No.A-46/1/10/Regularisation-Mon-KH/HOC/1447-49 dated 04.07.12 to explore if a visually impaired person such as Shri Govindbhai K. Shrimali, Seasonal Khalasi can be usefully and productively deployed for office related works at site offices or in other office set up and their comments/recommendations, were called for.</p> <p>In this regard, Executive Engineers, Mahi Division, CWC</p>

<p>and in 2013, 27 employees have been recruited regularly.</p>	<p>Gandhinagar vide his letter dated 04.02.13 has conveyed inability to engage the petitioner for office work as the Sub Divisional Officers gave him feedback that the petitioner cannot discharge such functions.</p> <p>As regards deploying some of the regularized seasonal khalasis in sub division, Division or SE office, it is to state that there is a severe shortage of regular staff in these offices and therefore work charged employees are temporarily engaged, as a stop-gap measure for office work and will be deployed back to the field once the incumbency situation improves. However, the assertion of the petitioner is based on the premise that petitioner is entitled for an alternative employment in terms of the provisions of Disability Act at par with the regular employees of Govt. of India which is not correct.</p> <p>In this case, a precedence may be taken from the judgment of Hon'ble CAT Principal Bench in OA No.566/2012 Pawankumar V. Delhi Transport Corporation (6/2013 Swamy's News, 58 date of judgment 24.09.12). An abstract of the judgment as quoted in Swamy's News (June 2013). The following is quoted from the said judgment:-</p> <p><u>"Hence, the Tribunal did not find any force in the present case to entitle the Applicant herein to alternate employment. As far as a probationer is concerned, his services can be terminated without assigning any reason. A probationer needs to prove himself fit for being confirmed and it is open to employer to terminate the services of a probationer if the probationer is unfit or unsuitable on any ground of medical disability."</u> (emphasis supplied).</p> <p>An analogy from the above may be drawn in the sense that the petitioner in the said OA No.566 as well as the current petitioner, both are not confirmed as regular employees, the situation of the petitioner is even weaker in comparison as he was only a casual, seasonal labourer.</p> <p>From the above precedence, it is established that, it is imperative that the petitioner proved himself fit for being regularized and in the absence of such medical fitness it is open for the competent authority to refuse to regularize the petitioner on the ground of his being unfit or unsuitable on the ground of medical disability.</p> <p>It cannot be the case of Petitioner that he has incurred disability during the course of performance of duty because he was engaged only for a limited period of monsoon season for 3 or 4 months and his disability came to the light when he reported for his seasonal duties in 2009 when he himself admitted that he was not in a position to perform duties of the Seasonal Khalasi during 2009 monsoon owing to his sight problem.</p> <p>From the post of SWA, there is no provision for reservation for physically handicapped candidates as already conveyed by CWC vide its letter No.6/23/2012-RMCD/53 dated 25.07.13 to Deputy Chief Commissioner, Court of Chief Commissioner for Persons with Disabilities, Ministry of Social Justice & Empowerment, New Delhi.</p>
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5.	<p>In Seniority list in 2009 my number was 33. Other Monsoon Khalasis have been regularized, keeping my name aside, and I have not been order. I request your honour that I may be given service, my name is already there in seniority, I have sent the list if according to this letter. I am not given appointment, then I shall be constrained 90 on strike upto death and I will take last breath.</p>	<p>As already stated in the background mentioned at the beginning of this note, the so called seniority list is, in fact, merely a priority just prepared for the sole purpose of having a readily identified pool of experienced persons arranged in the descending order of experience of working in monsoon seasons only. This cannot be treated at par with the seniority list of regular employees. Thus, the so called seniority list, or more appropriately, the priority list of Seasonal Khalasis is subject to revision every year after taking into account the cases of those Seasonal Khalasis who do not report for their monsoon duties in earlier season or could not perform monsoon duties in earlier season for any reason whatsoever as the case of the Petitioner is.</p> <p>As Shri Shrimali was not able to perform his duties during monsoon 2009 and 20`10 his "seniority" (Priority) no. which was 33 in on 1st March, 2009 was moved down to 63 as on 1st February, 2010.</p> <p>Notwithstanding the above, in view of the established position as per law as stated in the judgment in OA 566 of 2012 of Hon'ble CAT, Principal Bench as quoted earlier under sr. no. (4), Petitioner is not entitled to regularization or for alternate employment. As such his claim for regularization based on the so called seniority (priority) list is not relevant at all.</p>
6.	<p>I may bring to your notice that the seniority list of persons who have been regularized is sent as above, but I am not regularized or given appointment.</p>	<p>Comments as already made under sr. no. 5.</p>

9. The complainant vide his reply dated 07.06.2014 submitted that in all the replies of the respondent, they have emphasized on the Medical Fitness Certificate. It is the fact that present complainant does not have that and therefore, his case is required to be considered on the basis of provisions of Persons with Disabilities Act. There is no single averment why the provision of Persons with Disabilities Act is not made applicable. In the these circumstances the present complainant's case clearly falls within four lines and bounds of the provisions of the Act, namely, Persons with

Disabilities Act and present complainant be extended the benefit looking to his present condition. The present complainant who has upto now for many years worked satisfactorily and at the time of regularization his case is not considered, therefore, he may be given any other work but his case is required to be considered on the basis of Persons with Disabilities Act and his services are required to be regularized. The present complainant is even otherwise in the merit list and his case is not considered only on the basis of medical fitness but the provisions of Persons with Disabilities Act are required to be followed and in the case of complainant and complainant be given the benefit of regularization from the date on which he was initially eligible and all consequential benefits be granted. There are number of persons who are appointed as Khalasi but are now working with chamber of the officers. The present complainant can also be accommodated in this fashion and therefore, present complainant's case may be considered in light of the provisions of Persons with Disabilities Act. The present complainant was at sr. no. 33 when in 2009 the case of the present complainant was first time considered for the post of regularization of Khalasi in the merit list contained in list of 60 persons. Only the present complainant is left out in the total 60 persons, so present complainant has sufficient lot due to this and therefore, in light of all these, present complainant be considered for regularization.

10. The representative of the respondent also submitted that in compliance of DoP&T's Office Memorandum dated 29.12.2005, all the offices under Central Water Commission have been asked to identify suitable posts/jobs for persons with disabilities and forward the same to Central Water Commission by 15.06.2014. After receipt of inputs from various field offices, action to fill up the backlog of reserved vacancies will be taken up. As already submitted in their reply dated 25.07.2013, the complainant's case can be considered against the reserved post for persons with disabilities as a direct recruitment candidate against such identified vacancies. However, they can not indicate any time frame for completion of this process.

11. The complainant reiterated his written submissions and pressed for granting the prayer that the he should be appointed on regular basis in any post that is considered appropriate. He further submitted that he can perform the duties of MTS/Attendant in the office including Palampur Sub Division.

12. It is observed that the post of Khalasi is indeed not identified for persons with blindness and the complainant acquired blindness in 2009. It is also observed that the respondent admittedly did not reserve vacancies for persons with disabilities as mandated under section 33 of the Act against the vacancies filled by regularization of seasonal Khalasis while the respondent should compute the backlog of reserved vacancies against such number of vacancies. However, the complainant would not stand benefited as the post of Seasonal Khalasi is not identified for persons with blindness. Although, the relevant data/information is not immediately available with the respondent with respect to the number of backlog of reserved vacancies in Group 'C' posts which includes MTS (erstwhile Group 'D' posts), if the above stated exercise of identifying the vacancies in suitable posts./jobs results in the backlog of reserved vacancies for persons with disabilities (blindness or low vision), the

complainant should be considered on priority basis, if necessary, by relaxing/condoning the upper age limit for appointment to identified reserved vacancies keeping in mind the typical and special circumstances of his case. With a view to giving expeditious relief to the complainant, the respondent is advised to complete the exercise of identifying backlog of vacancies in posts identified as suitable for persons with blindness within three months from the date of receipt of this order under intimation to this Court and consider the complainant for appointment accordingly.

13. The matter stands disposed off accordingly.

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