



सत्यमेव जयते

Extra

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.2471/1021/2014

Dated 27.04.2017

In the matter of:

Ms. Girija T.M.,
Jr. Stenographer,
Assistant Divisional Engineer's Office,
Southern Railway, Ernakulam, Kerala-682016

R664

.... Complainant

Versus

Southern Railway,
(Through: General Manager)
Headquarters Office, Personnel Branch,
Park Town, Chennai-600003

R665

.... Respondent No.1

Railway Board,
(Through: Secretary)
Ministry of Railways, Rail Bhawan,
New Delhi - 110001

R666

.... Respondent No.2

Ministry of Personnel, Public Grievances & Pensions,
Deptt. Of Personnel & Training
(Through: Secretary)
North Block, New Delhi-110001

R667

.... Respondent No.3

Date of Hearing – 29.01.2015, 23.03.2015 and 07.02.2017

Present:

29.01.2015

1. Shri Mukesh Gupta on behalf of the Complainant
2. S/Shri T.D. Dinakar, IRPS, Dy. Chief Personnel Officer and K. Srinivasulu, APO on behalf of Respondent.

23.03.2015

1. Shri Mukesh Gupta, on behalf of the Complainant.
2. None on behalf of Respondent No.2 & 3

07.02.2017

1. Shri G. Srinivasan, D.S., DoP&T for Respondent No.3.
2. None appeared for Respondent No.1 and Respondent No.2.
3. None appeared for Complainant.

ORDER

The above named complainant, a person with visual impairment filed a complaint dated 13.07.2014 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act', regarding promotion.

2. The complainant submitted that she is working as a Jr. Stenographer in the Office of the Assistant Divisional Engineer, Southern Railway, Ernakulam. She got her initial appointment through SSC as Jr. Stenographer and joined in Railway Board on 20.11.1998. In spite of her absorption in TVC Division on May, 1999 and completing 15 years of successful service in the same category, she was not granted / considered for any promotions.

3. The matter was taken up under Section 59 of the Act with the respondent No.1 vide this Court's letter dated 12.08.2014.

4. Respondent No.1 vide reply dated 11.09.2014 submitted that the complainant appointed through Staff Selection Commission and posted to Railway Board was transferred to Trivandrum Division, Southern Railway on her own request and joined at Trivandrum Division on 11.06.1999. She is visually impaired and belonging to OBC community. She was extended the financial up gradation to the Grade Pay of Rs.2800/- in Pay Band Rs.5200-20200 under MACP with effect from 01.09.2008. In terms of para 189-A of Indian Railway Establishment Manual/Vol.I, inserted vide ACS No.75 on 29.04.1999 regarding promotion of persons with disabilities, "such staff will be considered for promotion in their turn based on the eligibility and suitability among the others in the selection/suitability/Trade test for promotion to higher grade posts." In the Group 'C' Stenographer cadre, there are no higher grade posts with any element of direct recruitment and posts are filled up entirely on promotion without any reservation for persons with disabilities. DoP&T's OM dated 01.08.2011 is specifically for promotion to Group 'A' and 'B' posts, there is no provision to give promotion for persons with disability against any relaxation and they can be considered for promotion to a post by applying the same criterion as applicable to other persons. The complainant stood third in seniority for Steno/Gr.III for promotion as Steno/Gr.I. At that time there were vacancies available only for reserved posts for 1 SC and 1 ST and she could be considered for promotion in her turn as per existing norms and procedures. Notwithstanding the absence of reservation promotion for persons with disabilities, they are considered at par with other employees as per their seniority and suitability and there are no denial/disadvantages to them on account of any physical disability.

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5. The complainant in her rejoinder dated 17.10.2014 to the reply dated 11.09.2014 submitted that Hon'ble Supreme Court orders relating to reservation in promotion of differently-abled employees, issued by DoP&T was not implemented by respondent No.1 and the instant case is merely a matter of non-implementation. Railway Ministry implemented the order. The complainant further submitted that her other visually impaired stenographer who was appointed together with her in Railway Board's Office in 1998 was already given promotions twice to reach the grade Rs.4,800/-.

6. Upon considering the respondent's No.1 reply dated 11.09.2014 and the complainant's rejoinder dated 17.10.2014, a hearing was scheduled on 29.01.2015.

7. During the hearing on 29.01.2015, the representative of the respondent submitted that Ministry of Railways (Railway Board) vide letter dated 28.01.2005 have informed that Department of Personnel & Training is in the process of filing Review Petition in such cases as that of Ms. T.M. Girija including case titled Union of India (through G.M. – NR) vs. Jagmohan Singh, Civil Appeal of which has been dismissed by the Hon'ble Supreme Court. The Railway Board in the said letter have further informed that the relevant papers have been handed over to DoP&T and the case is under process with that Department and "since there are no provisions to give promotion for persons with disabilities against any relaxation and they can be considered for promotion on the same basis as applicable to other persons." The respondent in their letter dated 20.01.2015 have also stated that railway Board vide RBE No. 112/2006 dated 11.08.2006 has clarified that "Ministry of Railways having regard to the special nature of jobs performed by the Railways and their primary responsibility of safe carriage of goods and passengers and non-discrimination in promotions against physically handicapped employees in posts identified as capable of being manned by them merely on ground of their physical disability, have not adopted the instructions of the Department of Personnel & Training regarding reservation for physically handicapped employees in posts filled by promotion. It is accordingly clarified that the instructions contained in DoP&T's O.M. dated 29.12.2005 referred to in their OM dated 26.04.2006 should be taken as applicable to Railways only to the extent the same relate to reservation for the persons with disabilities in posts filled by direct recruitment from open market.

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8. Shri Mukesh Gupta, appearing on behalf of the complainant submitted that DoP&T had already issued instructions for providing reservation in promotion to persons with disabilities in Group 'C' and 'D' posts, which are being implemented in all the Central Government Departments/PSUs except the Railways. It is, therefore, unlikely that DoP&T would file a Review Petition in the Hon'ble Supreme Court against their own instructions. He requested that DoP&T and Railway Board should be impleaded and directed to clarify why, despite directions of the Hon'ble Supreme Court vide Order dated 04.09.2014 in Civil Appeal Nos. 5265-5267/2008, Union of India through G.M.,

Northern Railway vs. Jagmohan Singh & Ors. reservation is not being provided to persons with disabilities in promotion in the Railways.

9. In the light of the submissions of the parties, Ministry of Railways (Railway Board) and Department of personnel & Training were impleaded as Respondents No. 2 and 3 respectively and directed to submit their comments on the submissions made on behalf of the complainant within 15 days from the date of receipt of these Record of Proceedings so that the case can be disposed off.

10. The case was rescheduled for hearing on 23.03.2015

11. During the hearing on 23.03.2015, none appeared on behalf of respondent No.2 and 3.

12. Vide Record of Proceedings dated 06.02.2015, Ministry of Railways and Department of Personnel & Training were advised to submit their comments on the submissions of the complainant regarding the reason for not reserving vacancies for persons with disabilities in promotion in the Railways. As the case was pending disposal on this very point, Ministry of Railway and Department of Personnel & Training were once again, vide Record of Proceedings dated 26.03.2015, advised to clarify the position by 07.04.2015, failing which the case would be disposed off based on available record.

13. Respondent No.1 vide letters dated 10.04.2015 and 19.05.2015 intimated that the matter is still under consideration for filing a Review Petition before the Supreme Court. The final decision taken by Railway Board in this regard would be apprised to this Court after the same is received from Railway Board.

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14. This Court vide letters dated 07.08.2015 and 06.11.2015 advised to forward the comments of the Railway Board at the earliest.

15. Respondent No.1 vide letters dated 24.08.2015 and 24.11.2015 submitted that as soon as the decision is received from the Railway Board, the same would be furnished to this Court. Respondent No.1 requested to grant further time to file final comments of Railway Board.

16. Respondent No.3 vide letter dated 16.04.2015 submitted that as per OM dated 29.12.2005, three percent of the vacancies in case of direct recruitment to Group A, B, C and D posts shall be reserved for persons with disabilities of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability. Three percent of the vacancies in case of promotion to Group D and Group C posts in which the element of direct recruitment, if any does not exceed 75%, shall be reserved for persons with disabilities of which one percent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability.

Respondent No.3 further submitted that while reservation in promotion for persons with disabilities in Group D and C is available as per DoP&T instructions the issue of reservation in promotion in Group A and B is under litigation and no final decision was taken by them. The implementation of reservation in the respective cadres is the job of the concerned administrative Ministry, which in this case is the Ministry of Railways.

17. Upon considering the replies received from the respondents, the case was scheduled for hearing on 07.02.2017.

18. The complainant vide fax dated 31.01.2017 intimated that she is married to the person with visual impairment and they have a son aged 10 years. Her husband is unable to move out due to demise of his elder brother. She expressed her apology for her inability to travel such a long distance to appear in person and requested for order.

19. The respondent No.3 vide letter dated 27.01.2017 submitted their reply and relied upon their reply submitted on 16.04.2015 and further intimated that the instruction dated 29.12.2005 issued by DoP&T has been declared illegal by the Hon'ble Supreme Court in its judgment dated 30.06.2016 in Rajeev Kumar Gupta Vs Union of India & Ors.

20. During the hearing on 07.02.2017, the representative appearing on behalf of respondent No.3 submitted a copy of the judgment dated 30.06.2016 of Hon'ble Supreme Court in Writ Petition (Civil) No.521 of 2008 in the case of Rajeev Kumar Gupta Vs Union of India & Ors. with Civil Appeal No.5389 of 2016 whereby the DoP&T's OM dated 29.12.2005 has been declared illegal by the Hon'ble Court. The representative also submitted that since the Act has been repealed and new Rights of Persons with Disabilities Act, 2016 has been passed by the Parliament, the new OM in lieu of OM dated 29.12.2005 would be issued after the new Act and the rules thereunder framed by the Government are implemented.

21. Paras 22, 23, 24 and 25 of the Judgment dated 30.06.2016 of the Hon'ble Supreme Court in Writ Petition (Civil) No.521 of 2008 reads as under:

"22. The 1995 Act was enacted to fulfill India's obligations under the 'Proclamation on the Full Participation and Equality of the People with Disabilities in the Asia and Pacific Region'. The objective behind the 1995 Act is to integrate PWD into the society and to ensure their economic progress. The intent is to turn PWD into 'agents of their own destiny'. PWD are not and cannot be equated with backward classes contemplated under Article 16(4). May be, certain factors are common to both backward classes and PWD such as social attitudes and historical neglect etc.

23. It is disheartening to note that (admittedly) low numbers of PWD (much below three per cent) are in government employment long years after the 1995

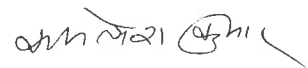
Act. Barriers to their entry must, therefore, be scrutinized by rigorous standards within the legal framework of the 1995 Act.

24. *A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.*

25. *In light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three percent reservation to PWD in all IDENTIFIED POSTS in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."*

22. In view of the above, this Court observes that the right of promotion of the complainant to the next grade has been discriminated by the respondent No.1 due to non-implementation of the Act and DoP&T's instructions in vogue. Therefore, the respondent No.1 is advised to consider the complainant for promotion in the next higher grade with relaxation in the light of DoP&T's instructions, within one month from the date of receipt of this Order. Respondent No.2 is advised to issue necessary instructions to Respondent No.1 and all concerned to implement the Act and DoP&T's instructions with regard to 3% reservation in recruitment and promotion for the persons with disabilities.

23. The case is accordingly disposed off.



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