



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.2619/1021/2014

Dated:-09.01.2017

In the matter of:

Shri Dilip Kumar Jha, ²⁶⁵⁹
Peon/APO(W)TATA,
Controlled by Sr. DPO/CKP,
South Eastern Railway,
Chakradharpur,
Jharkhand
Email <dkjjsr13@gmail.com>

..... Complainant

Versus

South Eastern Railway, ²⁶⁶⁰
Through General Manager,
11, Garden Reach Road,
Bungalow No. 12A,
Kolkata – 700043.

.... Respondent

Date of hearing : 14.07.2016, 06.09.2016, 25.10.2016, 25.10.216, 07.11.2016 & 22.12.2016

Present :

14.07.2016

1. Shri Dilip Kumar Jha, Complainant.
2. Shri Vidur Sikka, Advocate, on behalf of Respondent.

06.09.2016

1. Shri Dilip Kumar Jha, Complainant.
2. Shri Vidur Sikka, Advocate, on behalf of Respondent

25.10.2016

1. Complainant absent
2. Shri Vidur Sikka, Advocate, on behalf of Respondent

07.11.2016

1. Complainant absent..
2. Shri F. Alam, Advocate, Proxy Counsel for Vidur Sikka, Advocate, on behalf of Respondent.

22.12.2016

1. Shri Dilip Kumar Jha, Complainant.
2. Shri Vidur Sikka, Advocate, on behalf of Respondent

ORDER

The above named complainant, a person with 90-95 percent locomotor disability filed a complaint dated 27.08.2014 before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act' regarding non grant of promotions and mental and physical harassment by colleagues/seniors.

2. The complainant has submitted that he is a physically handicapped employee and working as a peon under APO(W)/S.E. Railway, Tatanagar which is under Senior Divisional Personnel Officer, South Eastern Railways, Chakradharpur Division. He has further stated that although he is a

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Commerce Graduate and Diploma in Computer but has not been given any chance in departmental promotion for the last 14 years because he is a person with disability. Other employees get their work done on computer alongwith the work of peon but use bad language for him and very often humiliate him.

3. The matter was taken up with the respondent vide this Court's letter dated 26.03.2015 followed by reminder dated 25.06.2015, 27.11.2015.

4. As no reply was received from the respondent and after considering complainant's letters dated 18.04.2015, 7.06.2015 and 24.05.2016, a hearing was scheduled on 14.07.2016.

5. During the hearing on 14.07.2016, The complainant reiterated his written submissions and submitted that although he is a commerce graduate and having Diploma in Computer but he has not been given any chance in Departmental promotion for the last 14 years because he is a person with disability. Other employees get their work done from me on computer alongwith the work of peon but use bad language for him and very often humiliate him. Recently the Railway announced vacancies for promotion for the post of Junior Clerk and he could not give exam satisfactorily due to leg injury and suffering from leg fracture and ultimately was unsuccessful. He prayed to make provision for reservation in departmental promotional examination or promotion should be given according to qualification.

6. The Counsel appearing on behalf of the respondent submitted that he has received message only on 11.07.2016 from the respondent-railway for attending the hearing on today in this Court. The respondent has further requested to seek a copy of the complaint and adjournment for two weeks from this Court. He has filed the Memo of Appearance and submitted that he will file Vakalatnama on the next date of hearing.

7. A copy of the complaint alongwith a copy of this Court's letter dated 26.03.2015 was handed over to the Counsel for the respondent for submitting the comments and the required information within three weeks from today to this Court. The case was fixed for next hearing on 06.09.2016. The complainant was exempted from appearing on the next date of hearing.

8. The Counsel on behalf the respondent filed a scanned copy of the reply alongwith Vakalatnama, which were taken on record. However, he was directed to ask the Respondent to send a hard copy of this reply to this Court. In the meanwhile, Grievance Division is directed to send a copy of the reply of the respondent alongwith copy of this Record of Proceedings to the Complainant for his comments/rejoinder within 15 days from the receipt of this Record of Proceedings as he was exempted for appearing in the Court on the last date of hearing. The case was re-scheduled for hearing on 25.10.2016.

9. During the hearing on 25.10.2016, none appeared on behalf of the complainant. Nor any intimation was received about his inability to attend the hearing 07.11.2016 despite the fact that the

copy of Record of Proceedings was sent on 04.11.2016 by Speed post. The Court noted with serious concern, the utter disregard shown by the complainant by neither intimating his inability to attend the hearing nor caring to appear to explain his versions of the case.

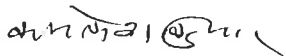
10. The Proxy Counsel submitted that the main Counsel Shri Vidur Sikka is not available today for arguments. He further submitted that the comments of the complainant have not been received so far.

11. The complainant was given the last opportunity to appear on the next date of hearing and is directed to submit his rejoinder/comments to the reply of the respondent which was forwarded to him alongwith the copy of the Record of Proceedings dated 08.09.2016, before one week of the date of hearing with a copy to the respondent..

12. During the hearing on 22.12.2016, the complainant again reiterated his written submissions and submitted that half of my service period has been passed without any promotion. In the Peon Cadre there is no importance of seniority. As per Government's instructions, there is 3% reservation in promotion for in-service persons with disabilities. Grant of MACP Scheme and promotion are two different things. In the MACP, I have been granted Grade Pay of Rs.1900/- from Rs.1800/- but my designated remained as Peon. He further submitted that in the Departmental examination for the post of Junior Clerk, though I had got maximum marks but no reservation benefit was given any person with disability. In the end, he prayed before the Court that his case for promotion may be considered sympathetically.

13. The Counsel appearing on behalf of the respondent submitted that at the time of his appointment, though he was qualified well, despite he chose to get the appointment on the post of Peon. Railways Recruitment Rules do not provide out of turn promotion on the basis of handicapped quota and he even got two transfers on his own request, one from Asansol to Chakradhar Division and thereafter from Chakradhar to Tata Nagar and as the transfers were on the basis of his own request, he lose his seniority as well. Whereas to compensate his disability and duration of his service, he was given financial upgradation under MACP Scheme from 02.06.2011, which is the maximum grade of pay for him. He further submitted that the complainant was treated at par with any other employee of the respondent/Railways to ensure his legitimate rights during the tenure of complainant's service. He was never discriminated by any of the official of the respondent/Railways at any point of time. Therefore, the complainant of the complainant is not maintainable and may be dismissed.

.14. After hearing the parties and after perusal of the available records in the file, the Court has observed that there does not seem any violation of any of the Section of the Persons with Disabilities Act, 1995 or Government instructions with regard to persons with disabilities in the present case. Therefore, no direction can be issued to the respondent and the case is accordingly closed.


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