



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. 3219/1014/2014

Dated:- 13.05.2016
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In the matter of:

Shri Anil Kumar Dhakar,
S/o Shri Prabhu Lal Dhakar, 257
Village and Post Sukhwara,
Via Sawa, District- Chittorgarh
Rajasthan – 312613.

..... Complainant

Versus

The Chairman and Managing Director,
Nuclear Power Corporation of India Ltd.,
Rawatbhata Rajasthan Site,
Post – Anushakti, Via – Kota,
Rajasthan – 323303

..... Respondent

Date of hearing : 07.04.2016

Present :

1. Sh. Om Prakash Dhakar, brother of Complainant, on behalf of the Complainant.
2. S/Shri S. R. Trivedi, Manager (HR) and B.B. Upadhyay, Dy. Law Officer on behalf of the Respondent.

ORDER

The above named complainant, a person with above 40% hearing and speech impairment filed a complaint dated 09.01.2015 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 the 'Act' regarding non selection of any disabled candidate by NPCIL to the post of Scientific Assistant 'C'.

2. The complainant has submitted that he passed the written examination (Roll No. 30104) held on 23rd November, 2014 for the post of Scientific Assistant 'C' (Discipline – Electrical) (post code SCD 11) but no person with disability was finally selected.

3. The matter was taken up with the respondent vide this Court's letter dated 17.03.2015 followed by reminders dated 22.05.2015 and 03.06.2015.

4. The respondent vide letter No. RR Site/GM(HR/86/2015/403 dated 03.06.2015 submitted that in the advertisement for various posts issued in 2013, it has been very categorically mentioned the number of posts reserved for persons with disabilities under horizontal reservation. The type of

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disability was also indicated. Though the advertisement was issued in the year 2013, but due to the certain administrative reasons, the written test for the post was held in the month of November, 2014. The complainant had applied for the post of Scientific Assistant 'C' in Electrical Engineering Branch in OBC and PwD category. He was selected in the written Examination. But, he could not find his place in the final merit/selection as other candidates secured more marks than the complainant. The complainant belongs to OBC category and only one post was reserved for OBC category. The respondent vide letter No. RR Site/GM (HR)/86/2015/408 dated 17.06.2015 also submitted that complainant has locomotor disability (one leg) and is not hearing and speech impaired.

5. A copy of the reply dated 17.06.2015 received from the respondent was forwarded to the complainant vide this Court's letter dated 08.07.2015.

6. The complainant vide his e-mail dated 15.06.2015 submitted his comments/rejoinder. In his rejoinder, he reiterated his the earlier submissions. He stated that he had attended written exam dated 23.11.2014 and personal interview dated 24.11.2014 and got 11th position in final merit. He further submitted that in the category Scientific Assistant 'C' (Electrical Engineering) one post has been marked as reserved for PwD (OL) candidates. Only he has cleared the written exam and interview as a PwD candidate and was found suitable for the above mentioned post. Interim result was declared on 15.12.2014 by NPCIL in which he was not selected. This is non compliance of O.M. No. 36035/3/2004-Estt. (Res) dated 29.12.2005 on Reservation for Persons with Disabilities Rules. NPCIL have mentioned that the post reserved for PwD candidates was for orthopedically disabled (One leg) and the complainant belongs to PwD category of hearing & speech impairment which is not suitable for the said post. This is incorrect as he is an orthopedically disabled person suffering from locomotor disability (OL) with above 40% disability and it has been clearly mentioned in his application. This was a typing error which may be corrected.

7. The complainant further vide letter/rejoinder dated 19.06.2015 has submitted that as per para 22 of DoP&T's O.M. No.36035/2004/Estt.(Res.) dated 29.12.2005, 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, candidates belonging to this category may be selected on relaxed standards to fill up the vacancies reserved for them provided they are not found unfit for such post or posts. Thus to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to the category may be taken by relaxing the standards to

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make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post/posts in question. He also referred to DoP&T's O.M. No.36012/24/2009-Estt (Res) dated 03.12.2013 issued by DoP&T in compliance of Hon'ble Supreme Court Order dated 08.10.2013 issued in Civil Appeal No.9096/2013 (arising out of SLP (Civil No.7541 of 2009) titled Union of India & Anr. Vs. National Federation of the Blind & Ors., modifying Para 14 of its O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 to the following extent:-

"Reservation for persons with disabilities in Group 'A' or Group 'B' posts shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group "A" posts or Group "B" posts respectively in the cadre. Separate rosters for Group "A" posts and Group "B" posts in the establishment shall be maintained."

8. The respondent further vide letter dated 17.06.2015 has enclosed the copy of its letter dated 03.06.2015 and again submitted that the complainant could not be selected because he had scored less marks than the other OBC candidate.

9. Copy of respondent's letter No. RR Site/GM(HR)/86/2015/408 dated 17.06.2015 was sent to the complainant for his comments/rejoinder vide this Court's letter dated 08.07.2015. Copy of comments/rejoinder dated 19.06.2015 received from the complainant was forwarded to the respondent for their comments vide this Court's letter dated 08.07.2015.

10. The complainant vide his rejoinder letter dated 17.07.2015 in reply to respondent's letter dated 17.06.2015 submitted that the reply of the respondent is misleading and incorrect. He denied that he got less marks than other candidates because of the fact that his performance was shining and scored 11th rank. He also denied that he had applied only for the quota of OBC category. He had applied against the category of locomotor disability OL(One Leg). He cited the judgment rendered by the Apex Court of India dated 08.10.2013 in Civil Appeal No.9096/2013 in the case of Union of India & Ors. Vs. National Federation of the Blind & Ors. and the modified instructions issued by DoP&T dated 03.12.2013 and prayed that this case may be allowed with time bound implementation of Court orders.

11. The respondent vide letter No. RR Site/GM(HR)/86/2015/M/732 dated 24.07.2015 in reference to this Court's letter 08.07.2015 has submitted that the complainant in his rejoinder has

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mentioned that he has locomotor disability with one leg and not hearing and speech impairment. He has not brought out any new issues except the correction in his type of disability and has mentioned the provisions/orders relating to PwD issued by DoP&T. The respondent referred to comments on the Court's letter dated 03.06.2015 forwarded vide letter dated 17.06.2015 as follows:-

"Shri Dhakar (OBC category) has appeared for written test for the post of Scientific Assistant 'C' and had qualified the written test. Accordingly, he was interviewed. After interview, the final merit list was prepared. He could not be selected because he had scored less marks than the other OBC candidate."

12. This Court vide letter dated 28.08.2015 forwarded a copy of comments/rejoinder submitted by the complainant to the respondent for their comments. The respondent was also informed that on perusal of their reply submitted vide letter No.RR Site/GM(HR)/86/2015/403 dated 03.06.2015, it is revealed that as per Advertisement No. RR Site/HRM/01/2013, three posts were reserved for persons with disabilities in Group 'B' posts. They were advised to submit the status of filling up these posts by 11.09.2015. The details of marks obtained by candidates viz-a-viz cut-off marks for all categories/posts were also asked for.

13. The respondent vide letter No. RR Site/GM(HR)/86/2015/423 dated 15.09.2015 informed that total 93 vacancies (Scientific Assistant-B 22, Scientific Assistant-C 20, Stipendiary Trainee (Diploma Holder) 41, Nurse-A (Female) 09, Pathology Lab Technician -1) were advertised. Out of which 81 vacancies (Scientific Assistant-B 22, Scientific Assistant-C 18, Stipendiary Trainee (Diploma Holder) 41) were filled and 12 vacancies were lying vacant, in which 3 vacancies of persons with disabilities can easily be adjusted. It was also informed that an advertisement for filling up vacancies for persons with disabilities under Special Recruitment Drive was in process for 35 vacancies, out of which in Group 'B', there are 10 vacancies.. As per the directions of the Hon'ble Supreme Court, the recruitment process of Special Recruitment Drive for persons with disabilities is to be completed by 20.12.2015. Out of the above, 10 vacancies for persons with disabilities in Group 'B', 01 vacancy was reserved for OH category in Stipendiary Trainee (Diploma Holder in Electrical Branch). The three vacancies which were reserved for persons with disabilities in Group-B posts are still lying vacant and no other persons with disability has qualified. Accordingly, details of marks obtained by selected person with disability candidates viz-a-viz their cut off marks are not available.. These three vacancies for PwD have already been included in their special recruitment drive for which advertisement is going to be published before 30.09.2015.

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14. A copy of respondent's reply received vide letter no. RR Site/GM (HR)/86/2015/423 dated 15.09.2015 was sent to complainant vide this Court's letter dated 07.10.2015 for his comments.

15. The complainant vide letter dated 12.10.2015 and 20.10.2015 offered his comments on the rejoinder submitted by the respondent. He, inter-alia, submitted that as per terms and conditions laid down in item No. 8 of the recruitment letter for the post of Scientific Assistant 'C' dated 27.10.2014 has not been filled in. He had secured 57 marks in written examination and 60 marks in interview which are much and more than minimum limit of 30, hence he is entitled to be selected and placed on panel and for offer of appointment against the reserved vacancies. 03 vacancies are still lying vacant. As per him, his case is fully covered under the para 22 of DoP&T's O.M. dated 29.12.2005. It is evident from record of NPCIL that one post of Scientific Assistant 'C' was earmarked/reserved for persons with disabilities (One Leg). This post was available on the date of his final/oral examination but he was not selected. The action of respondent is in violation to DoP&T's instructions. He has requested that the respondent may be directed to offer him appointment for Scientific Assistant 'C' in Electrical Engineering Branch of PwD's in OL disabled category.

16. A copy of the complainant's letter dated 20.10.2015 was sent to the respondent vide this Court's letter dated 21.10.2015 for their comments.

17. An email dated 23.10.2015 was received from complainant enclosing therewith a copy of his letter dated 21.10.2015 reiterating his earlier submission. In his letter dated 21.10.2015, the complainant has added about the maintenance of reservation roster and prayed for direction to respondent for his appointment for Scientific Assistant 'C' in Electrical.

18. The respondent vide letter No.RR Site/DGM(HR)/2015/M/1165 dated 07.12.2015 submitted that the complainant has been writing on same issue to various authorities in NPCIL such as Liaison Officer for persons with disabilities, Grievance Redressal Authority etc., sending e-mails to various authorities and he has been suitably replied also. At the same time, he has also been replied suitably personally before bringing this issue to the Hon'ble Court. The respondent also submitted that the complainant has applied for the post of Stipendiary Trainee (Electrical) under Special Recruitment Drive for persons with disabilities at Rawatbhata, Rajasthan site for which recruitment process is in progress.

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19. Upon considering the replies of the respondent dated 03.06.2015, 09.06.2015, 17.06.2015, 24.07.2015, 15.09.2015 and 07.12.2015 and the complainant's rejoinder dated 15.06.2015, 19.06.2015, 12.10.2015, 20.10.2015, 06.12.2015, 30.12.2015, 05.01.2016, it was decided to hold a hearing in the matter on 07.04.2016.

20. On 07.04.2016, the complainant's representative reiterated his written submissions and submitted that the respondent in their Advertisement dated 13.04.2014 had published 93 Group B posts, out of which 03 posts were reserved for persons with disabilities. Keeping in view these 03 posts, he applied for the post of Scientific Assistant 'C' Electrical Engineering as a PwD (OH, One Leg) OBC candidate. In the written test, he got 57 marks out of 75 and 60 marks out of 75 in personal interview and over all 117 marks out of 150. He was the only PwD (OH, OL) candidate who qualified the written test and interview but the respondent did not select him. The reason was stated that he has scored less marks than other OBC candidate which was selected. As per DoP&T O.M. dated 29.12.2005, the respondent should have select him as a PwD OH(OL) candidate by relaxing the standard and adjust him in his category (OBC). He stated that the respondent had admitted that 01 post of Scientific Assistant 'C' Electrical Engineering branch was earmarked for PwD (OH, One leg) category and he as a PwD (OH, One Leg) candidate in electrical engineering fulfilled all criteria of recruitment. 03 posts of persons with disabilities are still lying vacant and will be filled by special recruitment drive. He prayed that in the light of instructions issued by DoP&T vide O.M. dated 29.12.2005, his case may be considered and he may be appointed as a Scientific Assistant 'C' Electrical and he may be given all benefits from effective selection date.

21. The representative of the respondent submitted that the complainant had applied for the post of Scientific Assistant 'C' in Electrical Engineering Branch in OBC and PWD category against their advertisement No. RR Site/HRM/01/2013. He was selected in the written examination for the post of Scientific Assistant 'C' in Electrical Branch. But, he could not find his place in the final merit/selection as the candidates who were selected for the said post secured more marks in the merit than the complainant. Here, it is mentioned that the complainant belongs to OBC category and only one post was reserved for OBC category. There was another candidate belonging to OBC category who had scored more marks. The complainant could not get place in the merit list as there was only one post available for OBC which was consumed by the candidate who had better score than the complainant. The respondent further submitted that the Disability Certificate which had been produced by the complainant, in which complete loss of speech has been written while the complainant tells that he

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has the locomotor disability in one leg. They objected to the validity of the certificate for the purpose of vacancies reserved for OH. The respondent also informed that the written test of Special Recruitment Drive was held on 09.12.2015 and interviews were held on 10.12.2015 and on 11.12.2015, the letter was issued to the complainant for document verification and the complainant has been selected for the post of Scientific Assistant (Trainee) Group 'B'. The offer of appointment will be issued within a fortnight on receipt of the report of Intelligence Bureau.

22. The Court queried about the reasons for clubbing the post of Scientific Assistant Group 'B' and 'C' for the purpose of roster while showing separate vacancies for different trades like (i) Electrical; (ii) Mechanical; (iii) Civil, (iv) Instrumentation for the purpose of reservation. The respondent was not able to answer the query.

23. After hearing both the parties and evaluating the evidence on record, the Court concluded that it has been the consistent stand of the respondents that the complainant an OBC/PWD(PH) could not be selected as the other OBC candidate secured higher marks. No body should be benefitted at the cost of anybody else, more deserving. In the special recruitment drive undertaken by respondents, the complainant has reportedly been selected as Stipendiary Trainee (Electrical).

24. In view of the above statement of the respondent, the case is disposed off with the direction to the respondent to finalize the recruitment process for the said post within 45 days of receipt of this order and submit the compliance report with regard to the appointment of the complainant to this Court within 15 days of joining the complainant to the post of Stipendiary Trainee (Electrical).

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

N.O.O.:
Copy to :- Record File.