



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.4235/1011/2015

Dated: 01.06.2016

In the matter of:

Dr. Nitesh Kumar Tripathi,
H. No. 08, A-1 Block,
Bengali Colony, Sant Nagar,
Burari, Delhi-110084.

..... Complainant

Versus

Banaras Hindu University,
Through the Vice Chancellor,
Varanasi-221005(U.P.)

..... Respondent

Case No. 5146/1011/2015

In the matter of:

Dr. Nitesh Kumar Tripathi,
H. No. 08, A-1 Block,
Bengali Colony, Sant Nagar,
Burari, Delhi-110084..

..... Complainant

Versus

Banaras Hindu University,
Through the Vice Chancellor,
Varanasi-221005(U.P.)

..... Respondent

Date of Hearing : 19.04.2016

Present :

- 1.Complainant absent.
- 2.Dr. Nand Lal, Deputy Registrar (RAC),BHU, on behalf of the respondent.

ORDER

CASE NO. 4235/1011/2015

The above named complainant, a person with 65% locomotor disability filed a e-mail complaint dated 03.05.2015 before the Chief Commissioner for the 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-implementation of provisions of Persons with Disabilities Act by the Banaras Hindu University.

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2. The complainant submitted that BHU has published an advertisement for the post of Medical Officer and the advertisement was not showing the reservation status, number of seats reserved for persons with disabilities. He also submitted that the respondent be directed to submit the 100 point reservation Roster for the persons with disabilities since 1995 till date, direct the respondent to implement the provisions of Persons with Disabilities Act, 1995 and also to conduct the Special Recruitment Drive for filling up the backlog vacancies for persons with disabilities. The respondent should take initiative for providing disabled friendly examination centre to the persons with disabilities in its campus as well as nearest possible to the home town of the PwD candidates. The respondent may not use word as Handicapped which is derogatory in nature which must not be repeated and suitable legal terminology must be used, full exemption for payment of application fee, age relaxation by atleast 10 years, extra time during examination or interview, travel expenses to attend interview alongwith an escort.

3. The matter was taken up under Section 59 of the Act with the respondent vide this Court's letter dated 19.05.2015.

4. The respondent vide letter No. AA/VI-RAC/456 dated 05.06.2015 submitted that University is following reservation policy as per prescribed guidelines of the Government of India and maintaining 3% horizontal reservation on 100 point reservation roster for the disabled (one point for each category of the three categories of disabilities (OH, HH, VH), under Group 'A', 'B', 'C' and 'D' posts in the University to the extent of total number of vacancies under Group 'A' and 'B' and total sanctioned strength Group 'C' and 'D' posts as has been permitted by the UGC to fill the posts. The respondent also enclosed the information in the prescribed format as desired in Annexure-I.

5. A copy of the reply dated 05.06.2015 received from the respondent was forwarded to the complainant vide this Court's letter dated 18.06.2015 for his comments/rejoinder.

6. The complainant vide e-mail dated 06.07.2015 had filed his rejoinder. He submitted that nothing has been answered by the respondent as per the issues raised in his original complaint. On going through the reservation roster, only one PwD candidate has been selected against 2173 posts in Group A posts, 1 PwD candidate was selected out of 224 posts in Group B, 9 persons with disabilities candidates were selected out of 3575 in Group C and only 10 persons with disabilities candidates were selected out of 3698 posts in Group D, which proves that respondent is not sensitive

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towards the employment of the PwD candidates even when the Apex Court has fixed deadline of 31.12.2015. He also submitted that as he was also an eligible candidate for the post of Medical Officer, he must be provided a chance with disabled friendly atmosphere at the time of interview as per the recommendation of DoP&T and Sixth CPC. The respondent must be directed to use suitable terminology while addressing the persons with disabilities and handicapped like derogatory words must be prohibited in all kinds of the official practices. Respondent must be directed to fill up this backlog as per the instructions of the Apex Court in the tie frame of 31.12.2015 alongwith the offer letter to the candidates with disabilities. Reservation is irrespective of type of recruitment either regular, contractual or adhoc basis and this Court in similar matter has already clarified this fact and also directed for maintaining 100 point reservation roster for PwD separately as for regular, contractual etc. Respondent has to be directed for implementation of the recommendation of the 6th CPC like exemption from application fee, maintaining 100 point reservation roster in almost all kinds of the recruitments. Calculating backlog for PwD and conducting special recruitment drive for the PwD according to the directions of the Apex Court, disabled friendly work place, disabled friendly atmosphere and allowing travel expenses with an escort while travelling for attending interview, if any.

7. Upon considering the respondent's letter No. AA/VI-RAC/456 dated 05.06.2015, this Court vide letter dated 23.09.2015 has sought the details of vacancies filled since 01.01.1996 in all Group 'A' and 'B' posts in their establishment from the respondent.

8. As no reply was received from the respondent, a hearing was scheduled in the matter for 21.03.2016 which was re-scheduled to 19.04.2016.

9. None appeared on behalf of the complainant nor any intimation received about his inability to attend the hearing on 19.04.2016 despite the fact that the Notice of Hearing was sent on 16.02.2016 and 23.02.2016 by Speed Post. This 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 representative of the respondent submitted that two posts of Medical Officer sanctioned by the Ministry of Health & Family Welfare, Government of India sponsored "National Programme for Health Care of Elderly (NPHCE)" at Institute of Medical Sciences, BHU, Varanasi under the Nodal Officership of Professor I.S. Gambhir, Department of General Medicine, (Scheme No.NPHCE-4191)

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was advertised for filling the same on contract basis with qualification as MBBS from a MCI recognized institution was advertised vide Notification for which Scrutiny Test was scheduled on 15th April, 2015. The posts were advertised for filling up on contract basis with the stipulation that reservation as per norms be given. But Being 2 posts of Medical Officer on contract basis, it seems that reservation for any category post is not applicable. However, as per O.M. No. 43011/H/2015-Estt.(Res.) dated 12.08.2015 of the Deputy Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, New Delhi informed that as per the extant instructions, there is no provision for reservation for Persons with Disabilities in contractual/temporary appointments. Therefore, it is amply clear that the reservation for 2 advertised posts in the sponsored NPHCE Scheme at Institute of Medical Sciences, BHU, Varanasi may not be applicable.

11. After hearing the representative of the respondent and after going through the record placed on file, this Court observed that the advertisement in question was for contractual appointment. The DoP&T vide its O.M. No.43011/8/2015-Estt.(Res) dated 12.08.2015 clarified that as per the extant instructions, there is no provision for reservation for persons with disabilities in contractual/temporary appointments. Hence, there is no violation of any provision of the Persons with Disabilities Act, 1995, Rules and Government instructions in the matter. The case is disposed of with the following directions to the respondent:-

- (i) To calculate the backlog and conduct the Special Recruitment Drive.
- (ii) Provide disabled friendly examination center to candidates with disability during the recruitment examination.
- (iii) The guidelines for conducting the written examination issued by the Ministry of Social Justice & Empowerment, Department of Disability Affairs (now Department of Empowerment of Persons with Disabilities) vide O.M. No.F.No.16-110/2003-DD.III dated 26.02.2013 may be followed in letter and spirit.
- (iv) Use the word person with disability in place of Handicapped.
- (v) Strictly follow the DoP&T's O.M. dated 29.12.2005 and subsequent O.Ms issued by DoP&T while advertising the vacancies for persons with disabilities.

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12. The matter is disposed off accordingly.

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13. This Court observed that the said matter was not taken up with the respondent. It is directed that the complainant's e-mail dated 07.09.2015 be forwarded to the respondent who may file his comments in the matter to this Court within 20 days from the date of receipt of communication.

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



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सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No.5229/1011/2015

Dated: 03-06-2016

In the matter of:

Shri Ved Parkash, १११०
D-3/41, Ground Floor,
Sector-11, Rohini,
Delhi-110085

..... Complainant

Versus

Department of Official Language,
Through the Secretary, ११११
Ministry of Home Affairs,
NDCC-II (New Delhi Citi Centre) Bhawan,
'B' Wing, 4th Floor, Jai Singh Road,
New Delhi-110001.

..... Respondent

Date of Hearing : 16.05.2016, 23.05.2016

Present :

16.05.2016

1. Shri Ved Prakash (PGT), Complainant.
2. Shri Y.P. Devgan, Under Secretary (Service) on behalf of the Respondent.

23.05.2016

1. Shri Ved Prakash (PGT), Complainant.
2. Shri Y.P. Devgan, Under Secretary (Service) on behalf of the Respondent.

ORDER

The Above named complainant, a person with 40% locomotor disability filed a complaint dated 22.09.2015 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 as the 'Act' regarding recruitment to the post of Assistant Director (Official Language) in Grade IV of Central Secretariat Official Language Service.

2. The complainant has submitted that UPSC vide advertisement No.12/2015 advertised various posts including 50 posts of Assistant Director (Official Language) in Grade IV of Central Secretariat Official Language Service. Out of 50 posts, 01 post is reserved for persons with disabilities i.e. OH (OL), OA, but the post was not reserved for OH(BL). He also submitted that as per the list of identified posts, the post of Hindi Officer at Sl. Nos. 445 to 453 are identified for OL, BL, OA, B, LV and HH categories of disabilities. He questioned that when the post in question is identified for various disabilities, why the post was reserved for OL. He prayed that the UPSC and Ministry of Home Affairs may be ordered to review the matter, reserve the post for the OH(BL) affected persons

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सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001; Tel.: 23386054, 23386154; Telefax : 23386006

E-mail: ccpd@nic.in; Website: www.ccd disabilities.nic.in

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)



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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

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also, to stay on the advertisement for the above post till the final decision comes, extend the last date for OH(BL) and to reserve atleast 02 posts for persons with disabilities instead of 01 post.

3. The matter was taken up under Section 59 of the Act with the respondent vide this Court's letter dated 13.10.2015 with subsequent reminder dated 16.12.2015.

4. The respondent vide letter No.3/4/2015-Ra.Bha.(Service) dated 15.01.2016 and 07.03.2016 submitted that the 50 vacant posts of Assistant Director (Official Language) in the cadre of Central Secretariat Official Language Service in the Official Language Department are to be filled by the Union Public Service Commission without any delay. The applications of the eligible candidates have been received. For the selection of the candidates, the examination/interviews are going on. Keeping in view that there may not be any delay in the direct recruitment started from 2.6.2015 and the job requirements, inspection of offices located in Delhi and outside Delhi with liability to serve anywhere in India of the Assistant Director (Official Language), out of the 50 posts under consideration, for filling up of 1 post from Orthopedically Handicapped (One Leg affected, one arm affected) and at present and in future through direct recruitment by Union Public Service Commission in filling up from persons disabled with both legs and persons suffering from blindness and low vision, the Official Language Department has asked permission from Ministry of Social Justice & Empowerment on dated 26/30.11.2015 for granting exemption and in this reference has also issued reminders on dated 15.1.2016 and 07.03.2016. The required exemption from Ministry of Social Justice & Empowerment is still awaited. On getting information in this regard from the Ministry of Social Justice & Empowerment, the information will be made available to the Court.

5. A copy of reply dated 07.03.2016 received from the respondent was forwarded to the complainant for his comments/rejoinder vide this Court's letter dated 16.03.2016.

6. The complainant vide his letter dated 22.03.2016 submitted that the respondent has stated of having started the recruitment process from 2.06.2015 while the advertisement of recruitment was published in September, 2015 and the last date of receipt of application was 01.10.2015. I had filed my complainant on dated 22.09.2015 in the Court of Chief Commissioner for Persons with Disabilities and on 13.10.2015, the Secretary, Official Language Department was asked to submit his reply in this connection. But the wrong facts have been submitted with delay willingly. He further submitted that the post of Assistant Director (OL) is already identified for OL, BL, OA, B, LV and HH categories of disabilities. He prayed to this Court that his manual application may be accepted by the UPSC and he may be included with other applicants for interview.

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सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
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E-mail: ccpd@nic.in; Website: www.ccdisabilities.nic.in

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
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7. Upon considering the respondent's letter dated 15.01.2016 and 07.03.2016 and complainant's letter dated 22.03.2016, a hearing was scheduled on 16.05.2016.

8. On 16.05.2016, the complainant reiterated his written submission and submitted that UPSC vide Advertisement No.12/2015 advertised 50 posts of Assistant Director (Official Language) in Grade IV of Central Secretariat Official Language Service. Out of 50 posts, 01 post was reserved for persons with disabilities i.e. OH (OL), OA but the post was not reserved for OH (BL). As per the list of identified posts, the posts of Hindi Officer at Sr.No.445 to 453 are identified for OL, BL, OA, B, LV and HH categories of disabilities. The post should also be reserved for the OH(BL) in addition to OL. He further submitted that out of 50 posts, atleast 2 posts should be reserved for persons with disabilities.

9. The representative of the respondent submitted that for filling up of the 50 vacant posts of Assistant Director (Official Language), requisition was sent to UPSC, out of which 08 vacancies were reserved for Scheduled Castes, 04 vacancies for Scheduled Tribe, 13 vacancies for Other Backward Classes and 01 post was reserved for persons with disabilities (One Leg affected, One Arm affected). The examination for these posts has been held on 20.03.2016 by the UPSC. Keeping in view the job requirements viz. inspection of offices located in Delhi and outside Delhi with liability to serve anywhere in India, the Ministry of Social Justice & Empowerment has been requested to grant exemption from filling up the post from persons disabled with both legs and persons suffering from blindness and low vision. The exemption from the said Ministry is still awaited inspite of repeated reminders.

10. This Court observed from the material on record as well as after hearing both the parties that the examination was conducted on 20.03.2016 whereas this Court vide letter dated 13.10.2015 informed the Rule position and sought comments from the Department of Official Language within 30 days of receipt of letter which were received on 22.01.2016 and 11.03.2016. This Court ask the respondent to clarify the following:-

- (i) The reason for reserving 01 vacancy instead of 02 vacancies for persons with disabilities;
- (ii) The reason for not reserving the vacancies for other categories of disabilities as identified by the Ministry of Social Justice & Empowerment, Department of Disability Affairs (now Department of Empowerment of Persons with Disabilities) vide Notification No.16-15/2010-DD.III dated 29.07.2010.

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सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
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- (iii) Whether the Reservation Roster has been maintained from 01.01.1996 as per instructions of DoP&T;
- (iv) The details of vacancies filled since 01.01.1996;

The representative of the respondent sought one week time to submit the desired information/documents in the Court. On request of the representative of the respondent, the case is fixed for hearing on 23.05.2016 at 11.30 A.M.

11. On 23.05.2016, the complainant reiterated his written submissions and prayed that the post should also be reserved for the OH(BL) in addition to OL and out of 50 posts, atleast 2 posts should be reserved for persons with disabilities.

12. The representative of the respondent submitted that a case has already been sent to the Ministry of Social Justice & Empowerment requesting them to grant exemption from filling up the post from persons disabled with both legs and persons suffering from blindness and low vision. The exemption from the said Ministry is still awaited inspite of repeated reminders. For submission of the Reservation Roster from 01.01.1996, he requested for four weeks time.

13. After hearing both the parties, this Court observed that the Advertisement No. 12/2015 was advertised by the Union Public Service Commission was not made as per Para 25 of the DoP&T's O.M. No. 36035/3/2004-Estt.(Res) dated 29.12.2005, due to which the complainant as well as the other eligible candidates with disabilities were unable to apply for the post in question. The respondent is not maintaining the Reservation Roster and hence, it is not clear how the respondent calculated the vacancies and reserved only one vacancy for the person with locomotor disability instead of reserving two vacancies for persons with disabilities.

14. The case is disposed of with the following directions to the respondent:-

- (i) To prepare a 100 point Reservation Roster with effect from 01.01.1996 as per DoP&T's instructions, the compliance report of which may be sent within six weeks from the receipt of this order.
- (ii) To calculate the backlog vacancies and to take immediate steps to fill up the backlog vacancies by conducting Special Recruitment Drive.

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- (iii) Inform UPSC to declare result in respect of 48 vacancies instead of 50 vacancies in the instant matter.
- (iv) Issue corrigendum and re-advertise 2 vacancies for PwD as per Para 25 of DoP&T's O.M. dated 29.12.2005. The candidates who had already applied under PwD category, may be considered and they may not apply again for the post in question.

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