



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.4434/1021/2015

Dated:-06.12.2016

In the matter of:

Ms. R. Jayalakshmi, ⁰⁵⁷⁹
C/o Sivasubramanian,
No. 2/5, DuraiKannu Nagar,
Sekkadu, Avadi,
Chennai-600071.

..... Complainant

Versus

Heavy Vehicles Factory, ⁰⁵⁸⁰
(Through Jt. General Manager/Admin.),
Avadi,
Chennai-600054.

..... Respondent

Date of hearing : 26.08.2016, 05.10.2016, 04.11.2016 & 21.11.2016

Present :

26.08.2016

1. Complainant absent.
2. Shri T.N. Rajiv, Assistant. Works Manager, on behalf of Respondent.

05.10.2016

1. Ms.. R. Jayalakshmi, Complainant.
2. Shri T.N. Rajiv, Assistant Works Manager and Shri V. Rajendran, Junior Works Manager, on behalf of Respondent.

04.11.2016

1. Complainant exempted from appearing.
2. Shri T.N. Rajiv, Assistant. Works Manager, on behalf of Respondent.

21.11.2016

1. Ms.. R. Jayalakshmi, Complainant
2. S/Shri T.N. Rajiv, Assistant. Works Manager & V. Rajendran, Junior Works Manager, on behalf of Respondent

ORDER

The above named complainant, a person with visual impairment filed a complaint dated Nil 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-compliance of DoP&T norms for 3% reservation in promotion to persons with disabilities.

2. The complainant has submitted that she has not being considered by her establishment for promotion to the post of Telephone Operator Grade-1 under 3% quota. She further submitted that she had requested her department to provide her a scribe to appear in the competitive examination, but she was not provided a scribe by her department saying that the post was not identified for visually impaired. During the year, 2004, she was given promotion to the post of Supervisor NT under general

.....2/-

category. On 01.07.2008, she was promoted to the post of Chargeman NT under 3% PwD quota. The promotion order was cancelled with a reason that the promotion given to her had overlooked the seniority of one Mrs. Suguna P. Nair and the complainant was reverted back to the Supervisor NT.

3. The matter was taken up with the respondent vide this Court's letter dated 15.06.2015.

4. The General Manager, heavy Vehicles Factory vide letter No. 1(1)/ESTT/RG/MISC/2015 dated 27.07.2015 has stated that the complainant was not considered for promotion in 1997 as the one vacancy available at that time was SC backlog vacancy. Regarding not allowing the complainant to participate in LDCE for the post of Chargeman-NT/OITS, the post of Chargeman-II(NT) is not identified for VH persons. In the year 2004, the complainant was holding the post of Telephone Operator-1. The post of Telephone Operator was redesignated as Supervisor-NT. Therefore, the respondent stated that the statement of the applicant that she was promoted to SUP-NT was denied. The complainant was promoted from Telephone Operator-II to Telephone Operator-I w.e.f. 22.07.2004 and then redesignated as SUP-NT w.e.f. 3.10.2004. Smt. Suguna Nair was senior to Mrs. Jayalakshmi in the grade of Supervisor-NT. Smt. Suguna Nair approached court and the court has ordered that the promotion granted in respect of Smt. Suguna Nair with retrospective date is not valid. Therefore, she was reverted back to the post of Supervisor-NT in 2010. Smt. Suguna Nair being senior to Smt. Jayalakshmi in the post of SUP-NT, promotion granted to the post of Chargeman in respect of Smt. Jayalakshmi was cancelled and Smt. Suguna Nair was issued promotion Order to the post of Chargeman-II during 2010. The promotion to the post of Chargeman against PH quota was considered before the implementation of 6th CPC being under Group 'C' category. As per 6th CPC, the post of Chargeman falls under Group 'B'. Therefore, promotion to the post of Chargeman cannot be considered against PH quota as per prevailing rules. Promotion to the complainant was given as per availability of vacancy and prevailing rules.

5. A copy of the respondent's letter dated 27.07.2015 was sent to the complainant for her comments vide letter dated 18.08.2015.

6. The complainant vide her rejoinder dated 19.11.2015 submitted that even after putting in 23 years of service, she has not got a single promotion under PH quota. She further submitted that denial of permission to appear for LDCE to the post of Chargeman Grade-2 is a clear violation of the provisions of Disabilities Act, 1995.

7. After considering respondent's reply dated 27.07.2015 and complainant's rejoinder dated 19.11.2015, a hearing was scheduled on 26.08.2016.

8. During the hearing on 26.08.2016, none appeared on behalf of the complainant during the hearing. An email dated 22.08.2016 and FAX dated 23.08.2016 were received from the complainant requesting for postponing the date of hearing due to unavoidable circumstances as she is unable to

attend the hearing and requested for extension of hearing date for a month. Accordingly the complainant was informed vide email dated 24.08.2016 that due to paucity of time, the extension could not be possible and attend the hearing on 26.08.2016.

9. The representative of the respondent submitted that the complainant R. Jayalakshmi was appointed as Telephone Operator Grade-II on 19.04.1992 and was further promoted to Telephone Operator Grade-I during July, 2004, the post was subsequently re-designated as Supervisor (Non Technical) from October, 2004. The complainant was promoted as Chageman Grade-II on 08.07.2008. The promotion of Chageman was cancelled on 12.04.2010 as she was promoted against PH quota and superseding her senior Smt. Suguna Nair (PH-OH) The Hon'ble CAT, Madras Bench vide Order dated 12.10.2009 had dismissed the O.A. No. 152/2008 filed against the cancellation of promotion order in respect of Smt. Suguna Nair. Hence she was reverted back to the post of Supervisor-NT in 2010. Since Smt. Suguna Nair being senior to Smt. Jayalakshmi in the post of SUP-NT, promotion granted to the post of Chageman in respect of complainant was cancelled and Smt. Suguna Nair was issued to promotion order to the post of Chageman-II during 2010.

10. After hearing both the parties, the respondent is directed to submit the following information to this Court by 26.08.2016:-

- (i) Copy of Reservation Roster (Promotion) from 01.01.1996 alongwith Certificate of Liaison Officer certifying that the reservation roster has been maintained as per the instructions of DoP&T.
- (ii) There is reservation in promotion for Group C, D from 20.11.1989. It may be clarified whether the benefit of DoP&T's O.M. No. 36035/8/8—Estt.(SCT) dated 20.11.1989 was provided to the complainant when she became eligible for promotion.
- (iii) Whether benefit of Section 47(2) of the Persons with Disabilities Act, 1995 was provided to the complainant.
- (iv) As per reply dated 27.07.2015, 6899 vacancies were filled by promotion, whereas only 131 vacancies were filled by persons with disabilities instead of 207 vacancies. Also please provide the category-wise details of 131 vacancies i.e. OH, VH, HH.
- (v) Copy of the CAT Order as mentioned during the hearing may also be filed.

The case was re-scheduled for hearing on 05.10.2016.

11. During the hearing 05.10.2016, the representative of the respondent submitted the point-wise reply to the queries raised by this Court vide Record of Proceedings dated 14.10.2016 and submitted that since there were no eligible employees available in VH and HH category, the number of OH employees were promoted more. Therefore, the vacancies were filled with OH candidates. The individuals were promoted only when the vacancies arose and there is no time scale promotion. The promotions are effected only when the vacancies arise and eligible candidates are found for the post.

12. To counter the respondent's version, presence of complainant is necessary in the Court. Since the complainant was exempted on the last date of hearing for appearing before this Court. The complainant is directed to appear before this Court on 21.11.2016 at 1630 Hrs. to submit her version in the matter. The case was adjourned for hearing on 21.11.2016.

13. During the hearing on 21.11.2016, the complainant reiterated her written submissions and submitted that she was found eligible for promotion to the post of Chargeman Grade-II and consequently was promoted to the said post on 8.7.2008. However, she was reverted back on 12.04.2010 on the ground that she was junior to one Smt. Suguna Nair, who is Orthopedically handicapped. Ever since then the complainant has not been granted the said promotion nor the reversion order has been quashed which is the subject matter of the present complaint. The complainant wishes to make the following submissions in support of her claim:-

- (a) From the roster filed by the respondent, it is evident that the respondent has not maintained the roster in accordance with the instructions of DoP&T and also in accordance with the judgment dated 13.12.2007 of the Hon'ble Apex Court in the matter of Union of India Vs. National Federation of the Blind. It is submitted that from the roster it is evidence that separate points for reservation have not been provided for each of the three categories of disabilities resulting into violation of the statutory provisions of giving 1% reservations separately to each of the three categories. It is submitted that out of 6889 vacancies 131 vacancies have been filled up by persons with disabilities against their reservation quota. However, out of 131 vacancies, 120 vacancies have been given to Orthopedically handicapped against reservation in promotion where as only 4 vacancies have been given to visually handicapped persons while remaining have been given to hearing handicapped. These figures and distribution of vacancies clearly reveal that blind employees, the category to which the complainant belongs, have not been given 1% reservation which is the mandate of section 33 of the Act. Thus, the roster has not been properly maintained and, therefore, the reversion of the complainant in the year 2010 as well as non grant of promotion to the complainant till date is illegal and contrary to the provisions of Section 33 of the PwD Act, 1995 as also section 47 of the Act.
- (b) The respondent has not given any reason for reversion of the complainant except that Smt. Sugna Nair was senior to her. It is submitted that the complainant and the said Smt. Sugna Nair belongs to different categories of disabilities vis. VI and OH respectively, and, therefore, there cannot be common inter-se seniority between them.
- (c) That another stand taken by the respondent is that the post of Chargeman is not identified, is also completely wholly misconceived. It is submitted that the job profile of the

Chargeman Grade-II is that the Superintendent of a Department which is identified as suitable for the blind and, therefore, the respondent cannot treat the said vacancy as unidentified for the complainant on the ground of her blindness. It is submitted that in the notification of identification of jobs issued under section 32 of the Act, it has been made very clear that the nomenclature of a post cannot by itself determine the post as unidentified. It is the job profile of the given post which determines the identification of the post for a particular category. In this case as already stated hereinabove the post in question and its job profile is that of a Superintendent which is identified as suitable for the blind. Further, there is yet another stipulation in the notification for identification of post which provides that if a person of a particular category is working on a given post, the same shall also be treated as identified for that category. Admittedly, the complainant had been working on the post in question since 08.07.2008 upto 12.4.2010 and therefore, this post is deemed to be identified for the blind in any case.

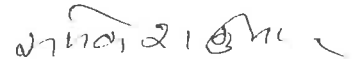
- (d) That the action of the respondent complained of is also illegal being violative of section 47(2) of the Persons with Disabilities Act, 1995.
- (e) Another stand taken by the respondent that the post in question has been upgraded and included in Group B posts in the 7th Pay Commission wherein there is no provision for reservation in promotion, is also wholly misconceived. Admittedly, the promotion granted to the complainant and reversion of the complainant took place much prior to the submission of the report of 7th Pay Commission and its implementation in the year 2016. As such, the same cannot be used as a ground for justifying the illegal action of the respondent.

14. The representative of the respondent submitted that the complainant Smt. Jayalakshmi was appointed in 1992 as Telephone Operator Grade-II. The qualifying period for promotion to Telephone Operator Grade-I is 5 years. One vacancy in Telephone Operator Grade-I occurred during the year 1997. Since the complainant was having less qualifying service, therefore, she was not eligible. She was not promoted to the post of Telephone Operator Grade-I as there is no relaxation in qualifying service for PH quota. During the year 2004, one vacancy occurred in Telephone Operator Grade-I and she was promoted. For the next promotion to the post of Chargeman, the qualifying service is 03 years. So she was promoted in the year 2008 to the post of Chargeman in the year 2010. Later on, due to a Court case, Smt. Suguna Nair who was senior to Smt. Jayalakshmi, was given promotion by reverting Smt. Jayalakshmi. Since the post of Chargeman has been declared as Group 'B' post, she could not be promoted later against PH quota. In the next year, she will be promoted to the post of Chargeman by virtue of her seniority.

15. After hearing the parties and after perusal of the available records in the file, this Court directs the respondent to consider the complainant for promotion to the post of Chargeman Grade-II w.e.f.

12.04.2010 as a continuance of her service as Chageman Grade-II w.e.f. 08.07.2008 and grant all consequential benefits to the complainant as per the norm from the said date. Compliance report may be submitted to this Court within 60 days from the date of receipt of this order.

16. The case is accordingly disposed off.



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