



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.4761/1021/2015

Dated:-14.06.2016

In the matter of:

Shri Ram Prasad Regar,
R. No. 207, 2nd Floor, 0130
HRD & ESI Complex,
BHEL HRDI, Plot No. 25,
Sector 16-A,
NOIDA-201301

..... Complainant

Versus 0131

Bharat Heavy Electricals Limited,
(Thru Chief Managing Director),
BHEL House,
Siri Fort,
New Delhi-110049.

..... Respondent

Date of hearing : 23.05.2016

Present :

1. Ram Prasad Regar, Dy. Manager, Complainant..
2. S/Shri Anil Kapur, GM(I/C), Augustin Xaxa, Smt. Margaret Antony & Ms. Rachna Shekhar on behalf of Respondent.

ORDER

The above named complainant, a person with 40% locomotor disability filed a complaint dated 15.07.2015 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 his promotion, posting etc.

2. The complainant has submitted that he was promoted as Manager on transfer to BHEL HEEP, Haridwar vide Order No. 3797082 dated 25.06.2015 with condition that the promotion will be effective only after joining at new unit within 15 days of issuance of the order. He made a representation for considering his promotion and posting at BHEL HRDI Noida quoting clause 6 of BHEL Promotion Policy 2015. In response to his representation it was informed vide letter dated 08.07.2015 that his request for promotion and posting at BHEL HRDI, Noida was outrightly rejected. It was also mentioned in the letter that his case was reviewed by the competent authority and it has been decided that the unit environment is more suitable and secure considering his personal health and disability issues. He has requested to intervene in the matter and redress his grievance by promoting him as Manager by posting at BHEL HRDI, Noida only with effect from 25.06.2015. All discriminating actions based on his caste and disability taken/initiated by Shri K.K. Seth, ED (HRDI, NIC and CPG), Shri Babu Lal, GM, HRDI and Shri Anshu Shailayan AGM (HR and CSR) in his matter in violation of

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Persons with Disabilities Act, 1995, Government of India's OM dated 31.03.2014, special orders of Disability Commissioner PCR Act, 1995, POA Act, 1989 and BHEL policies shall be considered as their personal acts and requested this Court to take appropriate action against them as per these laws, acts, OMs, policies etc. and to give appropriate orders to competent authority in BHEL for not harassing and victimizing him in future.

3. The matter was taken up with the respondent vide this Court's letter dated 30.07.2015.

4. The General Manager (HR), BHEL vide his letter No. AA/HR/CLG/18 dated 02.09.2015 stated therein that the complainant's initial posting as Engineer Trainee was in BHEL-ISG, Bangalore, which was his first preferred place of posting. After his joining, he requested for his transfer to Delhi/Noida or Haridwar Unit. Due to the intervention of CCPD, he was posted from Bangalore to BHEL-Hyderabad in 2005. He served at BHEL-Hyderabad Unit for 6 years. In 2011, there were requirement of manpower in BHEL, HRDI at Noida. The complainant applied for his transfer to BHEL-Noida and he was considered and transferred to Noida in September, 2011. He was then transferred to Haridwar as per his option. The complainant who was a First Timer candidate in June, 2015 had only 2 outstanding ratings in his 11 years of service and as such was not meeting the requirements for first time promotion. He further submitted that out of 66 number of young executives who were transferred under Job Rotation Scheme, 12 executives have not moved to their new place of posting and have forgone their promotion and since the policy has to be implemented uniformly across units of BHEL. It is stated that due to large scale repercussions and with a view to maintain consistency in policy, it will not be possible to restore his promotion if he is not willing to move to Haridwar. The General Manager (HR), BHEL vide his letter No. AA/HR/CLG/18 dated 23.09.2015 has stated some queries raised by the complainant as well as the reply given by them to him.

5. The complainant vide his rejoinder dated 24.10.2015 has submitted that he was given accommodation at BHEL, Bangalore in BTM layout which is 20 Kms away from the office instead of BHEL Township which is adjacent to his office there. The Commissioner for Persons with Disabilities, Government of Karnataka passed a direction to BHEL to consider the representation of the complainant and transfer him to Delhi. BHEL replied that the complainant can be considered for his posting in Trichy, Hyderabad and Chennai as there is no vacancies in Delhi at that time. The complainant was assured that once he joins at Hyderabad, his request for transfer to Delhi will be considered within 2-3 months of his joining but he was not transferred to Delhi after 3 months of his

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posting at Hyderabad. The complainant further submitted that about 117 Executives and 1141 Executives had joined BHEL's New Delhi/ Noida offices by transfers, lateral induction etc. during the period 01.09.2003 to 31.03.2005 and 01.04.2005 to 31.12.2010 respectively in various functions. The respondent's submission is totally false as per the complainant. He further submitted that he did not give any consent for transfer to HEEP, Haridwar or other three choices. He had only 2 marks less compared to Ms. Komal inspite of unfair and discriminating performance appraisal assessment by my seniors in my case. He has submitted that there is manipulation of leave of Shri Anshu Shailayan by the Management. He is now fully settled in HRDI, Noida since 13.09.2011. The complainant further submitted that now his transfer to Haridwar by misusing rotation scheme is violation of GOI's directives.

6. The copy of the complainant's rejoinder letter dated 18.01.2016 was forwarded to the respondent vide this Court's letter dated 01.02.2016 for furnishing the comments and to intimate about the basis on which a criteria of 75/100 as qualifying marks have been fixed for persons with disabilities to this Court but no reply was received from the respondent.

7. Upon considering respondent's replies dated 02.09.2015 and 23.09.2015 and complainant's rejoinder dated 24.10.2015, a hearing was scheduled on 23.05.2016.

8. On 23.05.2016, the complainant reiterated his written submissions and submitted that at present he is working at BHEL HRDI, Noida. He is a person with above 40% locomotor disability and also belongs to Scheduled Castes category. He has been promoted as Manager on transfer to BHEL HEEP, Haridwar vide Office Order dated 25.06.2015 with condition that the promotion will be effective only after joining at new Unit within 15 days of issuance of the order. He submitted representation to the Director (HR), BHEL through his controlling officer AGM(HRD) on 26.06.2015 for considering his promotion and posting at BHEL HRDI, Noida only because of personal, health and disability issues. He also quoted clause 6 (Job rotation) of BHEL Promotion Policy – 2015. His transfer was done under inter-unit job rotation. The job rotation policy has not been uniformly adopted by BHEL. His controlling officer recommended his representation for consideration. Vide letter dated 08.07.2015, my request for promotion and posting at BHEL HRDI, Noida was outrightly rejected by stating that his case has been reviewed by competent authority and it has been decided that the unit environment is more suitable and secure considering his personal, health and disability issues. While Anshu Shailayan and Rishi Agarwal were given promotion here. In view of the above,

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it is a clear case of transferring him to BHEL HEEP, Haridwar on promotion and clear violation of Persons with Disabilities Act, 1995 and its amendments, O.M. dated 31.03.2014 of DoP&T, POA Act, 1989, Special Orders of the Disability Commissioner, BHEL Promotion Policy, 2015. There is wide discrimination based on disability and caste in the BHEL in recruitment, promotion, unit-wise and grade-wise. His Promotion on Transfer to BHEL HEEP, Haridwar has been done on malafide intention to harass him and his family and he has been victimized by these orders/acts to his case and disability and prayed to redress his grievance by promoting him as Manager by posting at BHEL HRDI, Noida only with effect from 25.06.2015.

9. The respondent submitted that the complainant joined BHEL in 2003 as Engineer Trainee in BHEL-ISG, Bangalore which was his first preferred place of posting. After his joining, he requested for transfer to Delhi/Noida or Haridwar Unit citing the reasons that food and climate of these places are suitable for him unlike in Bangalore. He also stated that sections of family are living in or near to Delhi, Haridwar, Noida. Simultaneously, he also represented in the Ministry of Social Justice and subsequently with Commissioner for Persons with Disabilities, Bangalore for his transfer in 2003. However, since he could not be accommodated in Delhi due to non-availability of requirement, in the joint meeting with the Commissioner wherein he agreed to be posted in Hyderabad Unit of BHEL. Accordingly, he was transferred from BHEL-ISG, Bangalore to BHEL- Hyderabad in 2005. In 2011, requirement of manpower in BHEL, HRDI at Noida was circulated and applications of interested employees were invited. On receipt of the application of the complainant, his request for transfer to HRDI, Noida was considered and he was transferred to Noida in September, 2011. As per Job Rotation Scheme under Promotion Policy in BHEL, all Executives in E1, E2 and E3 grades who were being considered for promotion in 2015 were required to give their option for preferred place of posting alongwith a declaration that in case selected for promotion and rotated to another unit, the promotion will be effected only on joining the new Unit. The complainant submitted the declaration form and gave Haridwar as the preferred place of posting. His promotion from Dy. Manager (E3) to Manager (E4) was approved as a first time candidate and his Promotion Orders were issued on 26.06.2015. He also submitted that BHEL Haridwar being a major manufacturing place, all the facilities such as BHEL Hospital, Schools and other infrastructural facilities are available within the well developed township of BHEL and, therefore, any apprehensions of putting the complainant into discomfort/difficulty is unreal. In fact Unit environment at Haridwar is more secure for him since he will have to commute daily to workplace within 3-4 Kms of his residence in BHEL Township, whereas presently he is residing at Greater Noida and has to travel more than 25 Kms. to come to his

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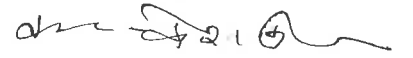
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

workplace. The employees covered under Job Rotation Scheme and transferred to other location are given conditional promotion. Since this promotion with transfer was in line with the stated guidelines of Government and internal policy, the allegations that discrimination was done with him, is baseless and unfounded. His promotion and transfer cannot be treated as personal acts of few officials since the entire process of promotion is based on the laid down policy and decisions regarding rotation are taken on a company wide basis at a central level, keeping in mind the requirement of various Units.

10. After hearing both the parties, this Court observed that complainant was not discriminated nor there appears any violation of Government instructions in the matter. This Court also observed that the complainant was promoted to the post of Manager and had to join the new post at BHEL HEPP, Haridwar by 09.07.2015. The complainant instead of joining the post at his new place of posting, had made representation to his office for retaining him at the Noida office. The said application was rejected by the respondent. It is also seen from the respondent's reply that out of 66 number of young Executives who were transferred under Job Rotation Scheme, 12 Executives have not moved to their new place of posting and have foregone their promotion. Since the Policy has to be implemented uniformly, there is no violation of guidelines for promotions in respect of Executives upto E-7 Grade for the year 2015 modified by the BHEL Limited.

11. In view of above, no further direction can be given to the respondent and the case is disposed off.



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