



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. 5274/1014/2015

Dated:- 23-09.2016

In the matter of:

Shri Bijender Kumar,  
S/o Shri Suraj Dev Rai, 0354  
R/o H.No.6243, Block F, Sanjay Colony,  
Sector 23, Faridabad, Haryanas-121005.I

..... Complainant

**Versus**

AOC Records,  
Through : Senior Record Officer, 0355  
Officer-in-Charge,  
Pin-900 453  
C/o 56 APO.

..... Respondent

**Date of hearing : 18.07.2016**

Present :

1. Sh. Bijender Kumar, Complainant.
2. Sh. B.P. Singh, MEO/OS(Pers), on behalf of the Respondent.

### O R D E R

The above named complainant, a person with hearing impairment filed a complaint dated 30.09.2015 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 the 'Act' regarding non-recruitment to the post of Fireman under the Hearing Impairment category.

2. The complainant submitted that he attended and qualified test conducted by Ladakh Regimental Centre, Phyang, Leh (J&K) but has not been appointed as Fireman under HH Category of persons with disabilities quota till date. He filed an RTI application and was informed that no individual is meeting QR for Fireman post. As per him, though he was meeting all QR, but he was not appointed.

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

4. The respondent AOC Records vide letter dated 23.10.2015 have furnished their comments on the complaint of Shri Bijender Kumar. They have stated that on scrutiny of the disability certificate

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submitted by the complainant, it has been observed that he has 100 hearing disability. The nature of job for which individual has applied is completely related to fire fighting which is hazardous and require rapid mobility and incumbent should be functionally able to complete the assigned task. Inefficiency of an incumbent can result serious accident at crucial moments. Keeping in mind the nature of work assigned/performed by fire Staff in AOC, a person with 100% deaf can not be appointed as Fireman. They have further submitted that based on this Court's letter No.965/1011/13-14 dated 11.04.2013, LHQ of MoD (Army) has clarified the same issue vide letter No. A/23801/32/Policy/OS-8C(i) dated 29.07.2013 to this Court for compliance. They have sent a copy of the same letter.

5. A copy of letter dated 23.10.2015 received from the respondent was forwarded to the complainant vide this Court letter dated 26.11.2015 for his comments/rejoinder followed by reminder dated 29.02.2016.

6. The complainant vide his letter dated 16.03.2016 has submitted his rejoinder, inter-alia, stating that though he qualified the tests conducted by the above said Office's Recruitment Cell, but he has not been appointed till date. Therefore, he filed a complaint in this Court. He prayed for conducting a hearing at an early date to resolve his grievance.

7. The respondent by letter No.29861/FS/Appt/118 OMC/CA-6 dated 13.04.2016 clarified that the post of Fireman-cum-Cleaner mentioned in this Court's letter dated 26.11.2015 does not exists in Army Ordnance Corps (AOC). However, the post of Fireman existing in AOC is already identified suitable for HH as indicated at Sr. No.1464 of the list of Group 'C' posts notified vide Govt. of India, Ministry of Social Justice and Empowerment Notification No.16-15/2010-DD III dated 29.07.2013. Working conditions/remarks in respect of the post of Fireman as stipulated in the ibid Notification/List dated 29.07.2013 are "Work is performed outside. Worker works sometime in a group. Persons should have functional hearing and communication skills with aid and devices. Should be able to accomplish assigned task efficiently." Accordingly, there is no question of denying recruitment/appointment to such HH persons who are having functional hearing and communication skills with aids and devices and are able to accomplish assigned task (related to the post of Fireman in Ordnance/Ammunition Depots) efficiently. As mentioned in the aforesaid Notification dated 29.07.2013, Fireman is required to safely handle a fire, save any person in danger or trapped inside the infrastructure, handle the fire and putout the flames with as minimal damage as possible to the infrastructure and no personal harm.

8.. Upon considering the replies dated 23.10.2015, 09.12.2015, 10.03.2016 and 13.04.2016 of the respondent and complainant's rejoinder dated 18.12.2015 and 16.03.2016, a hearing was scheduled on 18.07.2016.

9. During the hearing, the complainant reiterated his written submissions and submitted that this post is identified suitable for hearing impaired persons. He qualified the test conducted by Ladakh

Regimental Centre, Phyang Leh (J&K) but has not been appointed as Fireman under HH category till date. He filed an RTI application and was informed that no individual is meeting QR for Fireman post. As per him though he was meeting all QR, but was not appointed. He further submitted that at various places in the Army 100% HH persons have been appointed and the post is identified. Therefore, he may be appointed on the post of Fireman.

10. The representative of the respondent submitted that in the Army, the post of Fireman is a sensitive post which requires swift mobility. The incumbent should be functionally able to complete the assigned task efficiently with aids and appliances, whenever necessary as laid down in Column 4 against Sr. No. 1464 of list dated 2013. Since 100% hearing handicapped cannot have functional hearing and communication skills even with aids and devices and hence he will not be able to accomplish assigned task of Fireman (in Ordnance/Ammunition Depots) efficiently. Rather, person with 100% hearing disability will be vulnerable to accidents which may cause serious injuries to him as well as his co-workers. In view of the facts and circumstances of the case, it is the considerable decision of this HQ that person with 100% hearing disability (i.e. Deaf and dumb) is not to be appointed as Fireman in AOC.

11. Department of Personnel & Training vide its O.M. No.36035/2012-Estt.(Res) dated 08.01.2014 had amended the Para 4 of its O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 relating to identification of jobs/posts and all the Ministries/Departments are now requested to utilize the list of identified posts specified in Annexure-C of the Ministry of Social Justice & Empowerment's Notification No.16-15/2010-DD III dated 29.07.2013. It is further stated that the list of jobs/posts notified by the Ministry of Social Justice and Empowerment is illustrative and the concerned Ministries/Departments can further supplement the list to suit their job requirements.

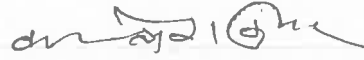
12. As Ministry of Social Justice & Empowerment, department of Disability Affairs' Notification No.16-15/2010-DD III dated 29.07.2013, the post of Fireman is identified suitable for HH category of disability.

13. Para 22 of DoP&T's O.M. No.36035/3/2004-Estt. (Res) dated 29.12.2005 provides relaxation of standard of suitability, 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.

14. Para 3 of DoP&T's O.M. No.36035/3/2004-Estt. (Res) dated 29.12.2005 provides that if any Department/Ministry considers it necessary to exempt any establishment partly or fully from the provision of reservation for persons with disabilities, it may make a reference to the Ministry of Social Justice and Empowerment giving full justification for the proposal. The grant of exemption shall be considered by an Inter-Departmental Committee set up by the Ministry of Social Justice and Empowerment.

15. After hearing the parties and perusal of the record available on the file, this Court directs the respondent to consider the candidature of the complainant and appoint him to the post of Fireman if, otherwise, found eligible. The Compliance Report may be sent to this Court within 30 days from the date of receipt of this Order.

16. The case is disposed off accordingly.



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

N.O.O.:

Copy to :- Record File.