



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. 6664/1014/2016

Dated: 3rd May, 2017

In the matter of :

Shri Ashutosh Ajay Soman. R1154
73, Rakshak CHS, Pimple Nilakh Road
Aundh Camp, Pune-411027
Email: ar.ashutoshsoman@hotmail.com

Complainant

Versus

Union Public Service Commission R1155
Dholpur House, Shah Jahan Road
New Delhi.

Respondent No. 1

Central Public Works Department. R1156
Nirman Bhawan
New Delhi.

Respondent No. 2

Date of Hearing: 07.04.2017

Present:

1. Group Captain A.G. Soman, Father of the complainant on behalf of complainant.
2. Shri R.K. Roy, Under Secretary on behalf of UPSC, Respondent No.1
3. Mrs. N. Gaur, Deputy Director on behalf of CPWD, Respondent No. 2
4. Shri Diwakar Nakode, ASO on behalf of CPWD, Respondent No. 2

ORDER

Shri Ashutosh Ajay Soman, a person with 100% hearing impairment filed a complaint dated 19.07.2016 before the Court of the Chief Commissioner for Persons with Disabilities (CCPD) submitting that UPSC vide their Special Advertisement No. 51/2016 published on 16th January, 2016 for Vacancy No. 16015104716 Item 4, 22 posts of Assistant Architects in CPWD, Ministry of Urban Development (SC-03, ST-01, OBC-06 & UR-12) of which one post each was reserved for physically challenged persons with disability viz. Hearing Impairment (Partially Deaf). He registered his name online for the said vacancy and his application was accepted. He appeared for the test on 20.03.2016 and qualified for the interview. As desired by UPSC, he submitted his documents for verification. Subsequent to verification of his documents, he was shortlisted for the interview. At the time of interview on 18.07.2016 and verification of his documents, he was informed that he is not eligible to attend the interview as he has disability of 100% and not permitted to face the interview. He has further stated that his assessment has been done purely on the percentage of his disability and not on his merits and working capacity.



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2. The matter was taken up under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 with the Secretary, Union Public Service Commission (UPSC), New Delhi vide letter dated 16.08.2016
3. UPSC vide letter dated 30.08.2016 submitted that the complainant had applied for the recruitment of 22 posts of Assistant Architect in CPWD, Ministry of Urban Development published on 16th January, 2016 vide Special Advertisement No. SPL/51/2016. Of the 22 posts, 02 posts were reserved for Physically Challenged Persons with disabilities. Of the 02 posts reserved for Physically Challenged Persons with Disabilities, one post was reserved for Physically Challenged Persons with disability viz. Orthopedically Handicapped/Locomotor Disability/Cerebral Palsy with One Leg Affected (Right or Left) (OL) and remaining one post is reserved for Physically Challenged Persons with disability viz. Hearing Impairment [Partially Deaf (PD)].
4. UPSC further submitted that online applications were invited for the recruitment of said post by ORA (Online Recruitment Application) Cell where there are in-built checks in ORA system in accordance with the RRs etc. relating to Age, Caste, PH, Fee, Govt. Servant etc. The ORA system does not allow submission of application if the details given by the applicants do not meet the conditions laid down through checks/filters. Since, the applicant himself mentioned his PH status as **partially deaf**, his application was accepted by the ORA system. Subsequently, he was called for interview on 18.07.2016 along with original documents in support of his claim with regard to PH status as partially deaf for verification. During the course of verification of documents (PH Certificate, educational qualification etc.) before interview, it was found that his percentage of disability was 100% as against the partially deaf status submitted by him in his online ORA application. Since the post was reserved and suitable for Hearing Impairment (**Partially Deaf**), he was not allowed to appear in the interview. He was also informed accordingly at the time of verification of his documents. It is thus clear that no discrimination has been done with the complainant. They have further submitted that final result of the post has been declared by the Commission on 29.07.2016 and recommendation letter to the concerned Department/Ministry has also been issued on 02.08.2016.
5. The complainant vide his rejoinder dated 12.09.2016 has submitted that UPSC has violated the contents of the Ministry of Social Justice and Empowerment, Deptt. Of Empowerment of Persons with Disabilities (Divyangjan)'s Notification No. 16-15/2010-DD.III dated 29.07.2013 which identified the posts for OL & HH and there is no specification about the Deaf or Partially Deaf



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as per specification. Further, the PwD Act does not specify any specification for Hearing Handicapped like Deaf or Partially Deaf. Thus, UPSC has erred in advertising the post as HH (Partially Deaf).

6. UPSC vide letter dated 17.11.2016 furnished their comments on the rejoinder of the complainant and submitted that UPSC conducts recruitment in accordance with the Requisition received and Recruitment Rules furnished by the Indenting Department. Further, the advertisement is also published as per the Requisition received and RRs of the concerned posts. In the instant recruitment case also, they strictly followed the RRs as received from CPWD, Ministry of Urban Development. The requisition received from CPWD wherein it is clearly mentioned that Deaf candidates are not eligible for this post and only Partially Deaf candidate is suitable for this post. Thus, UPSC has completed recruitment process as per RRs for the post. Thus, it is clear that no discrimination has been done with the complainant. Rather he has tried to mislead the Commission. His candidature was cancelled in view of the RRs of the post and the Medical Certificate produced by him at the time of interview which was not in accordance with the requisite suitability of PH for this post mentioned in the advertisement.

7. The complainant vide his reply dated 22.12.2016 submitted that UPSC have now transferred the onus on the CPWD. This clearly indicates that the Advertisement drafted and forwarded by the CPWD is not in line with the PwD Act, 1995 which does not distinguish or discriminate between Partial / Profound Disability. Further, it is also not in line with DoP&T OM No. 36035/3/2004-Est(Res) dated 29.12.2005.

8. On the basis of reply of the complainant, this Court made CPWD as Respondent No. 2 in the matter and fixed the matter for hearing on 07.04.2017. While sending the Notice of Hearing to the parties, CPWD was advised to furnish their comments on the replies of UPSC's letters dated 30.08.2016 and 17.11.2016 respectively.

9. On the date of hearing on 07.04.2017, the father of the complainant represented him and submitted an Authorization Letter which was taken on record. The father of the complainant narrated the complaint of his son in detail. He submitted that when his son was shortlisted for the interview and at the time of interview and verification of his documents, he was informed that he is not eligible to attend the interview as he has disability of 100% and not permitted to face the interview is not acceptable to him. He further stated that his assessment has been done purely on



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the percentage of his disability and not on his merits and working capacity. Moreover, in the advertisement it has been mentioned that the post is suitable for Hearing Impairment (Partially Deaf).

10. The representative of UPSC submitted during the hearing that UPSC conducts recruitment in accordance with the Requisition received and Recruitment Rules furnished by the Indenting Department. In the instant recruitment case also, they strictly followed the RRs as received from CPWD, Ministry of Urban Development. The requisition received from CPWD clearly mentioned that Deaf candidates are not eligible for this post and only Partially Deaf candidate is suitable for this post and, as such, they are not at fault.

11. During the hearing, the representative of CPWD submitted a copy of D.O. dated 05.04.2017 of Shri Harnam Singh, Dy. Director General (HQ), CPWD addressed to Shri U. Venkateswarlu, Joint Secretary (Admn. & Coord), Ministry of Social Justice and Empowerment wherein they have sought the view of the Department to the following:-

"The post of Assistant Architect is a Group 'B' post (Rs.4800 Grade Pay) whereas it is mentioned as a Group 'A' post in your Ministry's Notification dated 29.07.2013. As per the works defined for Assistant Architect, a person with 100% hearing disability may not be suitable for selection to the post of Assistant Architect in CPWD. Therefore, the extent of HH admissible for applying and selection to the post needs to be defined.

Since this Department is required to file a reply in the Court of Chief Commissioner for PwDs, a very early reply in the matter is requested."

12. During the hearing, when it was pointed out to the representative of CPWD that while sending the Indent for the post, they have mentioned that the post is reserved for Hearing Impairment (Partially Deaf), they should mention that the post is reserved for Hearing Impairment or Partially Deaf (PD) and not Hearing Impairment (Partially Deaf). She submitted that they will check the position in their Department and if found otherwise, they will consider to re-advertise the post.



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13. After hearing the parties and perusal of the available records, the Court directed to Central Public Works Department, Respondent No. 2 to check the Indent sent to the UPSC regarding the disability of the post and if found that it has been mentioned as Hearing Impairment (Partially Deaf), they should re-advertise the post of Assistant Architect at the earliest.

14. The case is accordingly disposed off.

(Dr. Kamlesh Kumar Pandey)
Chief Commissioner for PwDs