



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.: 692/1024/2013

Dated: 17.08.2017
Dispatch No.....

In the matter of :

Shri Khaled Shoyib,
B 323, ITI Limited,
T/S Mankapur Dist.,
Gonda,
Uttar Pradesh – 271 308

.....Complainant

Versus

ITI Limited,
(Through Chairman and Managing Director)
201-2012, Rohit House,
Tolstoy Marg,
New Delhi – 110 001

.....Respondent

Dates of Hearings : 12.01.2017, 13.02.2017, 17.03.2017, 17.04.2017, 15.06.2017

Present :

1. Shri Khaled Shoyib, Complainant along with Dr. Fahim Khaled – Present
2. Shri Y.S. Chowhan, HR-Head and Shri R.S. Rai, Officer-HR(Law) - on behalf of Respondent – Present.

ORDER

The above named complainant, a person with 60% locomotor disability had filed a complaint dated 09.11.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, regarding discrimination caused in his promotion by his establishment.

2. The Complainant submitted that he had been working in Pathological Laboratory of the Hospital of ITI Limited, Manakpur, Dist. Gonda, U.P. since 08.11.1985. He has been discriminated by the management. He gave number of representations to his establishment, but no action was taken on his representations. He has done P.G. Diploma in Hospital Administration from ISSR, Vellor in 1993. One Shri R. Sriraman who has done same course from ISSR, Vellor in 1993 is an Administrative Officer in the same Hospital at Manakpur in 1994 and was transferred to Bangalore. The Complainant further submitted that he was not promoted in place of Shri Sriraman in 1994 when the latter was transferred to Bangalore. The Complainant's contention is that he was denied promotion being a Muslim as well as a person with disability. He submitted that he should have been in grade one in 1984 in place of Shri R. Sriraman as Assistant Hospital Administrative Office and now he should have been working in grade six. He had faced five PRC since 2004 but only two persons with disabilities were promoted.

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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)

3. The matter was taken up with the respondent under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 vide letter dated 25.02.2014 and followed by reminder dated 16.05.2014;
4. The Chief Manager-Human Resources (P&S), ITI Limited, Bangalore vide his letter no. ITI/COHR(ER)/Min/1717 dated 13.05.2014 submitted that the Complainant joined ITI Manakpur Unit on 08.11.1985. He stated that the comparison made by the Complainant with Shri R. Sriraman is not tenable because induction levels of both the employees were different. The Complainant was recruited in CAT 'E' in non-Officer cadre while Shri R. Sriraman was recruited as Asstt. Administrative Officer on 06.05.1001. He submitted that there is no discrimination of any employee on the basis of caste, creed or religion in their establishment. As per the Respondent, the Complainant is in the habit of making representations to higher authorities without any rhyme or reason. The Complainant was issued a Show Cause Notice on 31.01.2013 for making representation directly to higher authorities which is misconduct under the Company's CDA Rules. The Complainant had tendered an unconditional apology to the management vide his letter date 17.02.2013.
5. The Complainant vide his reply dated 30.06.2014 submitted that many employees were promoted to the post of Officers in ITI Limited, Manakpur. As per the Complainant, his qualifications and experience is not recorded properly by his establishment. The qualification of Shri R. Sriraman is totally hidden. The Complainant submitted that Shri A.K. Mishra is not a qualified Technician as he has not diploma/certificate course in Clinical Pathology at the time of interview and joining time while he has more work experience and still he was denied the promotion. The Complainant once again reiterated that he should have been promoted back in 1994 in place of Shri R. Sriraman whereas he was transferred.
6. Upon considering respondent's replies dated 13.05.2014, 30.05.2014 and complainant's rejoinder dated 30.06.2014, a hearing in the matter was scheduled on 12.12.2016 which was later rescheduled to 12.01.2017 vide letter of this Court dated 08.12.2016 being a closed holiday on 12.12.2016.
7. During the hearing on 12.01.2017, the complainant reiterated his written submissions made in his complaint and submitted that after the year 1997 he has not been granted any promotion till date. He prayed before this Court that as per law, he should be promoted in grade First in the year 1994 and thereafter in the next grade from the year 2012.

8. The representative of the Respondent submitted a copy of the existing Promotion Policy applicable on the complainant, which was taken on record. He further submitted that the reservation benefit for PwD in promotion is not applicable for Group 'B' employees and promotion is vacancy based and subject to individual's potential, ACR Ratings, requirements of the Company and performance in the interview, which is assessed by a Committee consisting of Senior Officers of the Company, as provided in the Career Plan.

9. After hearing the parties, the Court directed the Respondent to submit the following documents to this Court one week before the next date of hearing:-

- (i) Copy of Reservation Roster w.e.f. 01.01.1996 in respect of Group A, B, C and D alongwith Certificate of Liaison Officer certifying that the Reservation Roster has been maintained as DoP&T's instructions.
- (ii) Detail of vacancies filled since 01.01.1996 (direct recruitment as well as promotion in respect of Group C and D) in the enclosed format.
- (iii) To calculate the backlog of vacancies and submit alongwith action to be taken to fill up the backlog vacancies.

10. The next date of hearing was scheduled for 13.02.2017 at 1100 Hrs.

11. During the hearing on 13.02.2017, the Complainant reiterated his written submissions made in his Complaint and submitted that after the year 1997 he was not granted any promotions till date. He prayed before this Court that as per law, he should be promoted in grade first in the year 1994 and thereafter in the next grade from the year 2012.

12. The representative of the Respondent submitted that they had not received the copy of the Record of Proceedings dated 17.01.2017 of this Court because it was sent to their R.O. Office, new Delhi. Their R.O. Office, New Delhi sent the copy of this Record of Proceedings to them through e-mail but the format was not attached. Due to this reason, the information asked by this Court could not be sent. They are now providing the exact address to this Court with a request to send further communication on this address and a copy to their Unit at Mankapur, District Gonda. The representative of the Respondent prayed for some time for submission of the information which was agreed to by the Court.

13. The next hearing in the matter was scheduled on 17.03.2017.at 11:00 Hrs.

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14. During the hearing on 17.03.2017, the complainant submitted a written submission dated 17.03.2017, stating that he should have been promoted to the next Grade in 1994 after the transfer of Shri R. Sriraman who was working as Administrative Officer in Grade 1, from Mankapur unit to Bangalore unit in 1994. He submitted that promotion should be given by ITI Limited as per seniority and qualification after 4 years to the next grade i.e. Grade 2. Both Shri R. Sriraman and himself have same qualification. Both have done P.G.D.H.A. from ISSR, Vellore. The complainant submitted that the management of ITI Limited denied his promotion because of his disability. He submitted that he was offered the post of Chief Administrative Officer in 29.03.2000 in one of the best Hospitals in India, i.e. Tata Memorial Hospital, Mumbai. The complainant submitted that he has completed 31.5 years of service and as per government rule, he should have got four promotions, i.e. from Grade 1 to Grade 5. The complainant was not given any promotions till date although he received four upgradation within 12 years of his service, i.e. upto 1997. The complainant further submitted that he is going to retire from service in December 2018 and, therefore, requested to take needful steps in the matter as soon as possible.

15. The respondent vide letter no. HR/LEGAL/361 dated 11.03.2017 has expressed their inability to attend the hearing scheduled on 17.03.2017.

16. The Court exempted the complainant from appearing in the next hearing.

17. The case was adjourned for 17.04.2017 at 11.00 Hrs.

18. During the hearing the complainant submitted that that he was given promotion from Category E to Grade I on the basis of time bound upgradation promotion. He has completed 31 ½ years of service. Till date he has not given any promotion whereas as per government policy an employee should be given promotion every six years. The complainant submitted that under Section 33 and in accordance with the direction of the Hon'ble Supreme Court in its judgment dated 08.10.2013 in the matter of Civil Appeal No. 9096 of 2013 (arising out of SLP (Civil) No.7541 of 2009) titled Union of India & Anr. Vs National Federation of the Blind & Ors., para 14 of the said OM dated 29.12.2005 was amended to the following extent :-

" Reservation for the persons with disabilities in Group 'A' or Group 'B' posts shall be computed on the basis of total number of vacancies occurring in direct recruit quota in all the Group 'A' posts or Group 'B' posts respectively, in the cadre."

The complainant submitted that his company has failed to give reservation to employees with disabilities and it is not following the reservation policy for persons with disabilities.

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19. During the hearing on 17.04.2017, the representatives of the respondent submitted documents as directed vide this Court's Record of Proceedings dated 17.01.2017. The representatives of the respondent stated that the complainant was appointed as Lab Technician in Category 'E' on 08.11.1985. He worked as Sr. Lab Technician from 01.01.1987. He was promoted to Head Lab Technician in Category 'G' on 01.07.1989. On 01.01.1992 he was promoted as Chief Lab Technician in Category 'H'. He worked as Chief Lab Technician from 01.01.1992 in Category 'H'. On 01.04.1997 he was promoted to Executive Grade I. After these promotions he came under the Career Plan for executives. Previously he was under the Career Plan for 'non-executives'. Previously promotion was time bound now the promotion is performance based. The representatives of respondent submitted that the complainant was not discriminated in his promotion on the basis of his disability as they have already given promotions to many employees with disabilities based on their performance. They denied that he was being discriminated being a person with disability.

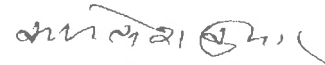
20. The next hearing was rescheduled for 15.06.2017 at 11.00 Hrs.

21. During the hearing dated 15.06.2017, the Complainant reiterated his earlier submission that he was denied promotion for the last 30 years by his establishment.

22. Representative of the respondent also reiterated their submissions made by them during the hearing on 17.04.2017. The representative of respondent also requested this Court to correct the date mentioned in the first para of ROP dated 08.05.2017 to 01.01.1992 instead of 01.01.1982.

23. After hearing both the parties and scrutiny of the documents placed on record, the Court came to the conclusion that there is no violation of any Right of Persons with Disabilities, as provided under the Act.

24. The case is accordingly disposed off.



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