



सत्यमेव जयते

Extra

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.: 7606/1041/2017

Dated 14.07.2017

In the matter of:

Shri Chandan Singh,
Suit No.17, Officer's Hostel, R2937
Punnai Chak, Patna-800023
Email - 103108026singh@gmail.com

.... Complainant

Versus

Nuclear Fuel Complex,
Through: General Manager, R2938
Department of Atomic Energy,
PO: ECIL, Moula-Ali, Hyderabad - 500 062

.... Respondent

Date of hearing: 13.07.2017

Present:

1. Shri Chandan Singh, Complainant
2. Dr. R.P. Achajo, Dy. CE on behalf of Respondent

ORDER

The above named complainant, a person with 60% locomotor disability (both upper limbs) filed a complaint vide email dated 01.02.2017 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act', regarding denial of providing compensatory time to him and providing compensatory time to persons who are not disabled by hand, in Tier-I & Tier II examination conducted on 28.01.2017 and 29.01.2017 for the post of Work Assistant 'A'/Hospital Work Assistant 'A' and Upper Division Clerk respectively by Nuclear Fuel Complex, Department of Atomic Energy against its Advertisement No.NFC/01/2016.

2. The complainant submitted that on 14.01.2017 he received Admit Cards from the respondent for Tier-I & Tier-II written examination for the posts of Work Assistant 'A'/Hospital Work Assistant 'A' scheduled on 28.01.2017 and for Upper Division Clerk scheduled on 29.01.2017 against Advt. No. NFC/01/2016. In the

Admit Card the complainant found that respondent would not provide compensatory time to him. On 16th January, 2017 through email, he requested the Administrative Officer of the respondent to provide compensatory time in accordance with the guidelines for conducting written examination for persons with disabilities issued by Ministry of Social Justice & Empowerment, Department of Disability Affairs vide Office Memorandum F.No. 16-110/2003-DD.III dated 26.02.2013. On 17th January, 2017 the respondent called him on his mobile phone and told that they would provide scribe but not compensatory time. The complainant requested that he would write his exam himself and he needed compensatory time relating to normal time. On 29th January, 2017 he again told the respondent to provide compensatory time but the respondent refused to do so. The complainant requested this Court to direct the respondent to re-conduct the exam of Upper Division Clerk and provide compensatory time relating to normal time.

3. Clause XI of the guidelines issued by Department of Disability Affairs vide their OM No.16-110/2003/DD.III dated 26.02.2013 provide as under:

XI. The word "extra time or additional time" that is being currently used should be changed to "compensatory time" and the same should not be less than 20 minutes per hour of examination for persons who are making use of scribe/reader/lab assistant. All the candidates with disability not availing the facility of scribe may be allowed additional time of minimum of one hour for examination of 3 hours duration which could further be increased on case to case basis.

4. This Court vide letter No.10413929/2007 65/1041/12-13 dated 18.03.2013 has clarified in respect of above mentioned Clause XI that the facility of scribe/reader/lab assistant is meant for only those candidates with disabilities who have physical limitation to write including that of speed.

5. The matter was taken up under Section 59 of the Act with the respondent vide this Court's letter dated 17.03.2017

6. The respondent vide reply dated 12.04.2017 submitted that the complainant categorically stated that he would write the examination himself and declined to avail the help of scribe. His declining to avail the help of scribe clearly indicates that he was capable of writing himself within the time prescribed including compensatory time given. Shri Chandan Singh qualified in Tier-I examinations

held on 28.01.2017 and 29.01.2017 and became eligible for writing Tier-II examinations which indicates that he was capable of writing and he did not have any discomfort while writing. Clean reading of the Office Memorandum dated 26.02.2013 and the clarifications dated 18.03.2013 makes it clear that the point as brought out by the complainant is not at all stipulated in the clarifications. 'Need based flexibility' was relied upon and accordingly the facility of scribe was resorted to who opted for those and no differentiation was made based on the deformity of limbs as was claimed by complainant. It was open for the complainant to take the help of a Scribe as offered to him at the beginning itself, if he had felt that he was not comfortable in writing instead of questioning equal opportunity given as per the guidelines. As per general instructions of the guidelines the examination was conducted on the ground floor and the candidates were not put to trouble in climbing stairs etc. It was good lighting and flow of air with sufficient number of fans in the examination hall. The furniture used was also good for writing and there was no disturbance or discomfort to any one as claimed by the complainant. Except the complainant, no other candidate complained in any way. The complainant himself qualified in Tier-I examinations and became eligible for writing Tier-II examinations which indicates that he was capable of writing and he did not had any discomfort while writing. The process of recruitment of selected candidates was in final stage.

7. The complainant vide her rejoinder dated 04.05.2017 reiterated his complaint and furnished a copy of the Answer Sheet of Tier-2 Exam with the requested that the respondent be asked to provide a photocopy of the Answer Sheet of Tier-2 Exam for comparison. He also requested to reconduct the exam.

8. Upon considering the reply submitted by the respondent and rejoinder/comments of the Complainant, a personal hearing was scheduled on 13.07.2017.

9. During the hearing, the complainant reiterated his written submissions but stressed that suitable furniture was not provided to him and he was not comfortable to write his Tier-II exam. If the respondent provided him suitable furniture he would have performed better. He requested to reconduct the Tier-II Exam.

10. The representative of the respondent reiterated the reply already submitted by the respondent and added that the exam was conducted in accordance with the

general instructions and the guidelines issued vide Office Memorandum dated 26.02.2013 and reasonable accommodation was provided equally to the candidates. No complaint has been received about discomfort during Tier-II examination from any candidates except the complainant. Reconduct of examination is not possible as the selection process has been completed.

11. From the facts mentioned above and the documents submitted by the parties to the case, it is revealed that both the Tier-I and Tier-II exams were conducted at the same venue, namely, Convention Centre for Nuclear Fuel Complex, situated behind Kushiguda Police Station, Hyderabad. The complainant passed Tier-I Exam and qualified to appear in Tier-II exam. Since Tier-II exam was conducted under the same condition and environment including the same furniture at the very same centre of examination, the contention of the complainant, that he was not provided with the comfortable furniture for writing the Tier-II exam, is not tenable in this context as he had already qualified Tier-I examination under the same set of facilities and environment, without complaining. There is no dispute of providing scribe as the complainant had himself not opted for the same. He was provided compensatory time for writing the exam as per rule. As regards, providing compensatory time to other candidates, it is remarkable to notice that the complainant had not raised the complaint for Tier-I exam, in which he had qualified. Further, the concept of 'need based flexibility' should have been interpreted and applied by the respondent in the right earnest. Non-opting of scribe by the complainant be the subject matter of individual's discretion and has no relevancy to the applicability of the concept of 'need based flexibility'. Notwithstanding the above, the respondent must have rather applied this concept for providing facilities to the candidates with disabilities including the applicant specifically in context of conduct of examination. Further, due care is requisite to be taken in future to ensure that the provisions/guidelines prevailing on the subject be not interpreted vaguely, leading to discrimination or injustice caused to a select class even amongst the persons with disabilities. For this, the prevailing guidelines must be read and applied diligently with due care and caution.

12. It is opined by this Court that in the backdrop of the above mentioned facts, the respondent needs to be more sensitized towards the specific needs of the persons with disabilities and also to be more vigil towards interpretation / applicability of rules / guidelines, so as to ensure that no discrimination of persons

with disabilities is caused in any manner. However. Taking into account that the subject recruitment exercise was a 'Special Recruitment Drive for Persons with Disabilities', wherein 511 candidates were selected out of 900 candidates and none other than the complainant has complained about the recruitment process and / or facilities provided to the candidates at the examination centre, and also that the complainant had also qualified Tier-I stage of the said examination with the same set of facilities at the very same centre of examination while competing with the other candidates with disabilities appeared for that exam, there appears no reason for sustaining the present complaint of the complainant.

13. The case is accordingly disposed off.



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