



न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.974/1011/13-14

Dated:- 01.04.2014

In the matter of:

Shri Manish Sharma,
P.No.40-C, Bhagwati Nagar-I,
Near Govt. School,
Kartarpura, Jaipur (Rajasthan)

..... Complainant

Versus

Employees' State Insurance Corporation,
Through the Commissioner,
Panchdeep Bhawan, CIG Marg,
New Delhi.

..... Respondent

Date of hearing : 24.02.2014

Present :

1. Shri V.K. Roda, Dy. Director, Hqr. on behalf of Respondent
2. None on behalf of the Complainant.

ORDER

Shri Manish Sharma filed complaint dated 15.04.2013 through e-mail under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding violation of Section 33 of the Persons with Disabilities Act, 1995 by ESIC.

2. The complainant submitted that ESIC Dental College & Hospital, Rohini issued an advertisement on 28.03.2013 for recruitment of five posts of Tutor for three years tenure without providing 3% reservation to persons with disabilities. He also submitted that the advertisement was not issued as per the instructions of DoP&T.

3. As per Notification No.16-70/2004-DD-III dated 18.01.2007 issued by Ministry of Social Justice and Empowerment, the posts of University and College Teachers (Lecturer, Assistant Professor, Reader and Professor) in science stream are identified for persons with disabilities in the category of OA & OL.

.....2/-

4. As per Section 33 of the Persons with Disabilities Act, 1995, 3% of the vacancies are to be reserved for persons with disabilities of which 1% each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment, and (iii) locomotor disability or cerebral palsy, in the posts identified for each disability. Section 33 of the Act provides as under:-

“Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent for persons or class of persons with disability of which one percent each shall be reserved for persons suffering from –

(i) Blindness or low vision; (ii) Hearing impairment; (iii) Loco motor disability or cerebral palsy, in the posts identified for each disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such Notification, exempt any establishment from the provisions of this section.”

5. Para 25 of the Department of Personnel & Training's O.M. No.36035/3/2004-Estt. (Res) dated 29.12.2005 provides that the following should invariably be mentioned in all recruitment notices/advertisements in accordance with:

- i. Number of vacancies reserved for sub categories of disabilities – whether the vacancy is reserved for blind or low vision; persons suffering from hearing impairment; locomotor disability; or cerebral palsy;
- ii. In case of vacancies in posts identified suitable to be held by persons with disabilities, it shall be indicated that the post is identified for persons with disabilities, suffering from blindness or low vision; hearing impairment; and/or loco-motor disability or cerebral palsy, as the case may be, and that the persons with disabilities belonging to the category/categories for which the post is identified shall be allowed to apply even if no vacancies are reserved for them. Such candidates will be considered for selection for appointment to the post by general standards of merit.
- iii. In case of vacancies in posts identified suitable for persons with disabilities, irrespective of whether any vacancies are reserved or not, the categories of disabilities viz. blindness or low vision, hearing impairment and loco-motor disability or cerebral palsy, for which the post is identified suitable alongwith functional classification and physical requirements for performing the duties attached to the post shall be indicated clearly.
- iv. That persons suffering from not less than 40% of the relevant disability shall alone be eligible for the benefit of reservation.
- v. Relaxation in upper age limit, exemption from payment of examination fee etc.

6. The matter was taken up under section 59 of the Act with the respondent vide letter dated 20.05.2013 followed by reminder dated 10.09.2013 and 06.11.2013.

7. Despite reminders dated 10.09.2013 and 06.11.2013, no reply was received from the respondent and, therefore, the case was scheduled for hearing on 24.02.2014.

8. On the date of hearing, the representative of the respondent submitted that they have not received any details/papers including this Court's letter dated 20.05.2013 and the reminders dated 10.09.2013 and 06.11.2013. They received the notice of hearing dated 16.01.2014 only on 17.02.2014. They also tried to contact the complainant through their Jaipur Regional Office at the given address and learnt that there is no person by the name Manish Sharma and the address is only a vacant plot of land. Therefore, they have no idea about the details of complaint.

9. A copy of the complaint and letter dated 20.05.2013 was handed over to the representative of the respondent. However, it is observed that this Court has already passed an order dated 28.03.2013 in case No.719/1011/11-12, wherein the respondent was directed as under:-

“20. In the above view of the matter and in view of the fact that the complainant got deprived of his entitlement to be considered against a reserved vacancy, the respondent is directed to examine and consider the question of appointing him to the post of Associate Professor in Public Health Dentistry in line with the provision contained in the Notification of Dental Council of India dated 25.08.2011 quoted above, subject to the complainant submitting his Disability Certificate in proper format and subject to fulfillment of the eligibility criteria by him. The Court also observed that while the disability of the complainant appears to be obvious, the percentage of disability can be ascertained only by the Medical Authority which will be reflected in the proper certificate which the complainant has to obtain. The above directives be complied within 2 months from the date of receipt of this order by all concerned and be intimated accordingly.”

10. The respondent vide letter No.A-14/13/2009-Med.IV dated 26.09.2013 with reference to the above order in Case No.719/1011/11-12 has, among other things, informed that the candidature of Dr. Himanshu Dadlani, the complainant in that case would be considered on merits as and when he applies for the teaching post in the respondent's organization in future subject to his fulfilling all the eligibility conditions. In the light of this, it is presumed that the respondent has already treated the post of Dentistry as identified for persons with disabilities of the category OL and HH. The 5 vacancies advertised by the respondent on 28.03.2013 be taken into account for the purpose of computation for reservation for persons with disabilities and the vacancies be reserved for them and filled up accordingly. The respondent is also advised to ensure that the DoP&T's instructions with regard to reservation for persons with disabilities be followed scrupulously so that the rights and entitlements of persons with disabilities are not adversely affected.

11. The matter stands disposed off with the aforesaid observations.

Sd/-
(P. K. Pincha)
Chief Commissioner
for Persons with Disabilities