



सत्यमेव जयते

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.910/1011/12-13

Dated:-07.05.2014

In the matter of:

Shri Deepak Kumar,
Deepak.ks1978@gmail.com

..... Complainant

Versus

Central Warehousing Corporation,
Through the Chairman,
4/1, Siri Institutional Area,
August Kranti Marg, Hauz Khas,
New Delhi-110016.

..... Respondent

Date of hearing : 21.04.2014

Present :

1. S/Shri Ramesh Chand, AGM (Estt./Liaison) and Kamlesh Kumar, SAM (R&P) on behalf of Respondent.
2. None appeared on behalf of Complainant.

ORDER

The above named complainant filed an e-mail complaint dated 19.11.2012 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding reservation to persons with disabilities.

2. The complainant submitted that Central Warehousing Corporation published an advertisement for various posts and in the advertisement, they have not given proper reservation criteria for persons with disabilities. He further submitted that there is no mention of category of disability for which a post is reserved for.

3. Section 33 of 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;*

.....2/-

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.”

4. Section 36 of the Act provides as under:-

“Where in any recruitment year any vacancy under Section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government.”

5. Para 16 of the Department of Personnel & Training’s O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 provides as under:-

“16. INTER SE EXCHANGE AND CARRYING FORWARD OF RESERVATION IN CASE OF DIRECT RECRUITMENT:

- (a) Reservation for each of the three categories of persons with disabilities shall be made separately. But if the nature of vacancies in an establishment is such that a person of a specific category of disability cannot be employed, the vacancies may be interchanged among the three categories with the approval of the Ministry of Social Justice & Empowerment and reservation may be determined and vacancies filled accordingly.
- (b) If any vacancy reserved for any category of disability cannot be filled due to non-availability of a suitable person with that disability or, for any other sufficient reason, such vacancy shall not be filled and shall be carried forward as a ‘backlog reserved vacancy’ to the subsequent recruitment year.
- (c) In the subsequent recruitment year the ‘backlog reserved vacancy’ shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that disability is not available, it may be filled by interchange among the three categories of disabilities. In case no suitable person with disability is available for filling up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability. If the vacancy is filled by a person with disability of the category for which it was reserved or by a person of other category of disability by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation. But if the vacancy is

filled by a person other than a person with disability in the subsequent recruitment year, reservation shall be carried forward for a further period upto two recruitment years whereafter the reservations shall lapse. In these two subsequent years, if situation so arises, the procedure for filling up the reserved vacancy shall be the same as followed in the first subsequent recruitment year.”

6. Para 25 of the Department of Personnel & Training's O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 provides 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.

7. The matter was taken up under Section 59 of the Act with the Chairman, Central Warehousing Corporation, New Delhi vide letter dated 14.03.2013.

8. Deputy General Manager (Personnel), Central Warehousing Corporation, New Delhi vide letter No.CWC/XXIV-12/PH>Returns/Rectt./2010/469A dated 10.05.2013 submitted that the respondent is fully committed to the implementation of relevant provisions of the Persons with Disabilities Act and the instructions of DoP&T are kept in view both in recruitment and in the promotions wherever applicable. As required under the above instructions, Rosters in the prescribed format in respect of recruitments made in Group A, B, C and D and promotions with regard to Group C and D are maintained by them. As desired, a statement in the prescribed proforma indicating the

position as obtaining as on 01.01.2013 is enclosed. As can be seen from the same in Group C level, where there is maximum recruitment and promotions, adequate representations of persons with disabilities had been achieved to certain extent. Against 171 recruitment made in Group C since 1996, ideal representation would be 2 VH, 2 HH and 2 OH (total 6 for PWD). Against the requirement of 6 PWD, 5 PWD persons (4 OH and 1 HH) have already been positioned. Rule 16 of DoP&T's OM cited above provides for inter se exchange between sub categories and carry forwarded of reservation. Thus, there is one backlog being carried forward. Every effort will be made to wipe out this carried forward reservation by a VH person at the earliest, possibly during the current year. Coming to Group C posts filled by promotion, in all, 2472 posts in Group C were filled by promotions since 1996. As per the Rosters, the requirement of PwD persons is 75 (25 VH, 25 HH and 25 OH). Against this, after allowing inter se exchange as provided under the rules, 60 OH and 1 VH are already in position. Every effort will be made to make up the shortage of 14 VH persons in future promotions subject to availability of PwD persons in the feeder category. In Group D, recruitment is very rare and far in between. Only 4 recruitments have been made since 1996 in Group D and only 21 promotions have been made in this level during the relevant period. The roster requirement is 1 PwD each in recruitment as well as promotion. As recruitment in Group-D, cadres like Safaiwala, Chowkidar etc. have been frozen since long and no recruitment has taken place in these cadres. Moreover, the services of Safaiwala, Chowkidar etc. have since been outsourced and there is no likelihood of filling up any vacancies but these are being carried forward to be taken care of when next recruitment/promotion is resorted to at this level.

9. In Group B level, only 14 appoints have been made since 1996, out of which 1 post was earmarked for PwD. In Group A, in all, 75 appointments were made since 1996 out of which 3 were earmarked to PwD persons. It may be mentioned here that CWC had advertised 26 posts of management trainees during the year 2008, out of which 02 posts were earmarked for PwD vide advertisement dated 24.09.2008. However, no PwD person was found suitable even after applying relaxed standard as applicable under the rules. Coming to the specific complaint, it is submitted that CWC reviewed the position of backlogs. In Group A, 2 posts and in Group B, 1 post as earmarked to PwD persons are required to be filled up. Efforts will be made to fill up these vacancies during the ensuing recruitment schedule during the current year. A copy of this letter is also being sent to the complainant.

10. The complainant vide e-mail dated 22.05.2013 submitted that Central Warehousing Corporation published an advertisement for various posts and in the advertisement, they had not given proper reservation criteria for persons with disabilities. He further submitted that there is no mention of category of disability for which a post is reserved.

11. Upon considering the reply dated 10.05.2013 of the respondent and the complainant's rejoinder dated 22.05.2013, a hearing was scheduled on 21.04.2014.

12. On the date of hearing, reiterating their written submissions, the representative of the respondent stated that they are complying with the provisions of section 33 of the Persons with

Disabilities Act, 1995 and also with the relevant instructions of Department of Personnel & Training, Government of India. In the course of the hearing, it was clarified to the respondent that the Ministry of Social Justice & Empowerment, Department of Disability Affairs, Government of India has from time to time identified posts which can be reserved for persons with disabilities under section 32 of the Persons with Disabilities Act and the list which was notified in the year 2013 is the latest in the series.

13. It is not out of place to mention that the respondent has submitted different advertisements published in "The Hindu", Chennai dated 11.12.2013 which they have advertised. They have reserved the posts as per the Govt. instructions and have followed the mandate of Persons with Disabilities Act, 1995.

14. A scrutiny of the papers and reply submitted by the respondent in response to the complaint reveal that the respondent has not responded to the complainant's grievance in respect of the advertisement issued by the respondent in November-December, 2012 vide which the last date of submission of applications was 10.12.2012. In all, the respondent's reply vide letter No.10.05.2013 is a case in point.

15. It is also pertinent to place on record that the respondent vide letter No.CWC/I-DR/Rectt/2014/385A dated 31.03.2014 has submitted a copy of a different advertisement published in Hindu, Chennai dated 11.12.2013 and not the one the complainant had referred to in his complaint, which seeks to reserve 2 vacancies of Group 'A' posts (Management Trainees) in favour of persons with disabilities. Here, it would be in the fitness of things for this Court to discuss that prima facie, it appears that there is a backlog to be filled up and the said backlog is as follows:-

(a)	Group 'A' (By direct recruitment)	:	3
(b)	Group 'B' (By direct recruitment)	:	1
(c)	Group 'C' (By direct recruitment)	:	1
(d)	Group 'C' (By promotion)	:	14
(e)	Group 'D' (by direct recruitment)	:	1
(f)	Group 'D' (by promotion)	:	1

It is thus seen that there is a violation of Section 33 of the Persons with Disabilities Act, 1995 as also of the relevant provisions of the Office Memo No.36035/3/2004-Estt(Res) dated 29.12.2005 of Department of Personnel & Training and even the advertisement dated 11.12.2013 does not properly reflect the sub-category of disability for which a given vacancy is reserved.

16. It is also apparent that out of total of 61 promotions of persons with disabilities made against a backlog of 75 promotions, 60 happens to be persons with locomotor disabilities and one person with visual disability. Thus no person with hearing impairment appears to have been promoted against the backlog of promotions. Evidently, this is a situation of imbalance as the ratio under the law and the relevant instructions has to be 1% each in favour of persons with blindness and persons with low vision, persons with hearing impairment and persons with locomotor and cerebral palsy respectively.

17. The representative of the respondent, in the course of their deposition before this Court has submitted that the backlog of vacancies in Grade-I post of 2 posts out of 3 is being filled up as the recruitment process for this purpose has already been initiated vide Advertisement dated 11.12.2013 and the backlog of one Group 'A' vacancy and one Group 'B' vacancy will be advertised in the insuring recruitment process which is likely to be happened in the month of June, 2014 and July, 2014.

18. In the light of the foregoing, the respondent is hereby directed to strictly adhere to the provisions of section 33 of the Persons with Disabilities Act, 1995 and the corresponding instructions of Department of Personnel & Training contained in O.M. dated 29.12.2005 and to fill up the backlog as per their solemn commitment. The respondent is further directed to also fill up the backlog in promotions at the earliest opportunity. This Court also directs the respondent to intimate compliance of this order in general and also of the outcome of the recruitment process initiated vide advertisement dated 11.12.2013 within two months from the date of receipt of this order by them.

19. The matter stands disposed of with the above directions.

Sd/-

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