



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.96/1041/12-13

Dated:-10.02.2014

In the matter of:

Shri Krishna Bhowmick,
Qtr. No. 292, Unit – 4,
Area Development,
Post – Kharagpur,
District – Paschim Midnapur (WB)

..... Complainant

Versus

South Eastern Railway,
Through Sr. Divisional Personnel Officer,
Kharagpur Division,
Kharagpur Station Building,
Kharagpur – 721301

.... Respondent

Date of hearing: 19.11.2013, 27.12.2013

Present :

19.11.2013

1. Shri Krishna Bhowmick, Complainant & Shri Subhash C. Vashishth, Advocate.
2. Ms. Rashmi Singla, Advocate, S/Shri D.K. Nanda, Chief OS and Anup Panda, O.S. on behalf of the Respondent.

27.12.2013

1. Shri Krishna Bhowmick, Complainant & Shri Subhash C. Vashishth, Advocate.
2. Shri N. Singh, APO, Ms. Rashmi Singla, Advocate, S/Shri D.K. Nanda, Chief OS and Anup Panda, O.S. on behalf of the Respondent.

ORDER

The above named complainant, a person with 75% visual impairment filed a complaint dated 26.03.2013 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 denial of Scribe in the Departmental Examination for promotion to be held on 30.03.2013 by the respondent.

2. The complainant submitted that his request to provide the Scribe was refused by the Department on the ground that no post was reserved for person with disabilities. He also submitted that there was no reservation for persons with disabilities in the Departmental Promotion Examination in Railways.

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3. Ministry of Social Justice & Empowerment vide O.M. No.16-110/2003-DD.III dated 26.02.2013 issued guidelines for conducting the examination. Clauses-III and XI of the said guidelines are reproduced below:-

“Clause – III :

The facility of Scribe/Reader/Lab Assistant should be allowed to any person who has disability of 40% or more if so desired by the person.

Clause – 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. The post of Clerk General is identified for OA, OL, OAL, BL, B, LV & HH categories and the post of Lower Division Clerk is identified for BL, OL, B, LV and HH categories of disabilities as per the Ministry of Social Justice & Empowerment’s Notification No.16-70/2004-DD.III dated 15.03.2007.

5. DoP&T introduced reservation for persons with disabilities in promotion in Group ‘C’ and ‘D’ posts for the first time vide their OM No.36035/8/89-Estt.(SCT) dated 20.11.1989 as per which there is reservation in promotion within Group ‘D’, Group ‘D’ to ‘C’ and within Group ‘C’ in three categories of disabilities namely Visually Handicapped (VH), Hearing Impaired (HI) and Orthopaedically Handicapped (OH).

6. The matter was taken up with the Senior Divisional Personnel Officer, South Eastern Railways, Kharagpur Division, Kharagpur (West Bengal) vide this Court’s letter dated 28.03.2013.

7. The Senior Divisional Personnel Officer, Kharagpur, S.E. Railway vide Fax dated 01.04.2013 intimated that the complainant was allowed to appear in the Departmental Examination for promotion to the post of Junior Clerk cum Typist with scribe facility as well as other admissible facility taking into consideration his disability of 40%. He also intimated that a separate written examination of the above staff would be held as per procedure preferably within a fortnight and it would be ensured that the above staff was not deprived of his legitimate rights being a person with disability. However, the complainant informed this Court on telephone that he wanted to utilize the services of a Scribe/Amanuensis of his own choice so that he did not have any grievance with regard to ability of the scribe to take dictation from him correctly.

8. This Court informed the Senior Divisional Personnel Officer, South Eastern Railway vide letter dated 18.04.2013 that as per para IV of the O.M. of Ministry of Social Justice & Empowerment, Department of Disability Affairs, the candidate should have the discretion of opting for his own scribe or request the Examination Body for the same.

9. The complainant vide his e-mail dated 28.04.2013 addressed to the Senior Divisional Personnel Officer, South Eastern Railway, Kharagpur inter-alia informed that Senior Divisional Personnel Office had refused to allow his own scribe instead had directed to give a scribe.

10. The respondent vide Fax letter No. E/Genl/Admn/PB/KB/Writer/2013 dated 26.04.2013 intimated that the complainant is not a blind employee and is visually impaired with 75% disability as per the Disability Certificate No.64 dated 30.10.2010 issued by Kalna S.D. Hospital, Government of West Bengal. The respondent also intimated that as per the Disability Certificate, he can travel without assistance of escorts. However, the complainant would be provided a writer during the supplementary written examination which would be held on 04.05.2013 for promotion to the post of Jr. Clerk-cum-Typist as requested by him vide his appeal dated 05.03.2013.

11. This Court vide letter dated 01.05.2013 advised the respondent to allow the complainant to have the scribe of his own choice in accordance with the guidelines of the Ministry of Social Justice & Empowerment, Department of Disability Affairs. The respondent was advised to submit action taken report by 02.05.2013 as the examination was fixed for 04.05.2013.

12. The complainant vide fax dated 09.05.2013 inter-alia intimated that the Assistant Personnel Officer-I (APO) did not hand over the question paper in his scribe's hand. The APO read the questions and he answered and the scribe wrote those answers. The APO did mentally hackle him again and again without any cause saying scribe would not write his own words. The scribe was puzzled about the activities of APO. In addition to the above, the complainant also enclosed a copy of the letter dated 02.05.2013 of the respondent issued to him regarding the exam of Jr. Clerk-cum-Typist mentioning therein certain directions to be followed by him and the scribe.

13. This Court vide letter dated 14.06.2013 forwarded the copy of complainant's fax dated 09.05.2013 to the Senior Divisional personnel Officer, South Eastern Railways, Kharagpur advising to submit the action taken by 01.07.2013.

14. The Senior Divisional personnel Officer, South Eastern Railways, Kharagpur vide letter No.E/Genl/Admn/PB/KB/Writer/2013 dated 28.06.2013 inter-alia submitted that Shri Krishna Bhowmick was allowed his own choice scribe named Sri Subhabrata Rath along with other eligible candidates held on 04.05.2013. The allegations made by him have no basis. The question paper was duly handed over to the scribe and as per dictation given by the candidate, the scribe accordingly wrote down in the answer sheet. He submitted that the exam was held smoothly and no complaint was raised by the complainant during or after the examination. The complainant himself stated that he would be unable to read, so handing over of question paper was not necessary, though question paper was handed over to his scribe at the time of examination. The question paper was hand written. The allegation that APO hackled the complainant was completely baseless. APO did not know the complainant and everyone has sympathy with a person with disability. APO did not have any personal enmity with the complainant. Of course, scribe's duty is only to write down what the person with disability dictates and if examinee/Scribe tries to cheat, any invigilator would have to take steps to

stop him. Examination was held in an open hall and other officials besides APO and other examinees were present in the hall. So there was no way that APO could have hackled the examinee.

15. The complainant vide his letter dated 17.09.2013 inter-alia submitted that the examination authority taken the work report of three years after 16.08.2013 from his office. After checking up the work report the authority informed his office in-charge verbally that the complainant had passed. The authorities also asked for his service sheet. He heard that the office had made a panel of 24 candidates for 25 vacancies on 13.09.2013 excluding him. This was the second time the Railway authorities deprived him of promotion.

16. Upon considering the replies dated 01.04.2013, 26.04.2013 and 28.06.2013 of the respondent and the rejoinder/comments dated 17.09.2013 of the complainant, a hearing was scheduled on 19.11.2013.

17. During the hearing on 19.11.2013, reiterating his written submissions, the complainant submitted that the concerned officials of the respondent did not want him to appear in the Departmental Promotion Examination for Group 'C' post. Subsequently they did not want him to use the services of a scribe of his own choice. When the Scribe of his choice was allowed on the intervention of this Court, the purpose of providing a scribe was defeated as the scribe was not given the question paper and the Assistant Personnel Officer (APO) read out the questions to him. Due to frequent disturbance by the APO, he could not write the examination properly which was held on 04.05.2013. The fact that the APO did not hand over the Question Paper to his scribe was intimated to this Court through fax dated 09.05.2013. The APO also directed the scribe not to write anything on his own and due to frequent interruptions, the scribe got puzzled. He was also not given extra time. He also alleged that the APO did not read out the questions to him appropriately, which led him dictate wrong answers to some of the questions.

18. The Ld. counsel for the complainant further added that examination process stood vitiated due to the fact that the complainant was not given the mandatory extra time of 20 minutes per hour of exam. Also, the fact that the examination paper which was handwritten and zeroxed one, was not handed over to the scribe which led to a situation where the answers were attempted wrongly. For example, the short essay dictated by the complainant to the scribe was without the knowledge as to how many words the essay needs to be written in. In these circumstances, the complainant was pitted unequally against other competing candidates. The Ld. Counsel, therefore, prayed that the entire exercise of examination in respect of the complainant should be re-conducted. This could be done in the presence of independent invigilators. He even suggested that the respondents could even video record the examination.

19. The Ld. Counsel for the respondent reiterated the written submissions and vehemently refuted the contention of the complainant that the scribe was not handed over the Question Paper. It was at the request of the scribe that the APO read out the Question Paper to him and the same was handwritten and zeroxed. She further submitted that the Department had prepared a panel of scribes on 01.05.2013 on the complainant's letter dated 05.03.2013. All the 5 persons included in the panel

were Graduate and designated as Senior Clerks in the Department and on 02.05.2013, the letter was communicated to him. But he preferred to have his own scribe and he was permitted to write the exam through his own scribe and the AAO-I handed over the question paper to the scribe and on the request of the scribe, he read over the paper to him. The APO only instructed the scribe not to put his own words. He could write whatever the complainant narrated. In no manner, he harassed the complainant. Moreover, APO had no enmity or ill-will towards the complainant. He read over the paper in sympathy only and it is further submitted that the complainant has chosen his own scribe due to the reasons so that he can litigate after the paper also. The result had been declared to fill the vacancies in question except one vacancy which is reserved for ST.

20. The Ld. Counsel for the respondent opposed the new submissions made by the Ld. Counsel during the hearing as the complainant had prayed to investigate and to stop the panel of Junior Clerk-cum-Typist on 17.09.2013, though, he had come to know that he had not been selected and the selected candidates had already joined which is amply clear from the letter dated 17.09.2013 sent to this Court.

21. In the light of the conflicting submissions of the parties, the respondent was directed to submit the question paper, the answer sheet of the complainant and the marks obtained by the complainant and the other candidates for the Departmental Promotion Examination in question. The matter was scheduled for hearing on 27.12.2013. A copy of the Record of Proceedings were directed to be faxed as well as e-mailed to the respondent at the Fax No.03222255504 (Senior Divisional Personnel Officer) given by the representatives of the respondent present during the hearing.

22. On the next date of hearing on 27.12.2013, the Ld. Counsel for the complainant reiterated his written submissions and the statement he made during the hearing on 19.11.2013. He particularly pointed out the fact that the complainant was not given extra time for which he was entitled to and that the APO who was a very Senior Officer read out the question paper (in place of the scribe reading it out). Consequently, the complainant got puzzled. The question paper was not handed over to the scribe. He further submitted that the question paper was handwritten which the complainant could not be read even with the help of magnifying glass as he is a person with low vision. All this adversely affected his performance in the examination. The complainant also submitted that he is a Graduate which he brought to the notice of the authorities. He was, however, not sure whether that qualification had been included in his Service record or not. He further clarified that at the time of his appointment for the post of Khalasi for which the minimum educational qualification was Eighth pass, he submitted his 10+2 Certificate thinking that this would suffice.

23. Referring to the documents submitted by the respondent vide letter No.E/CC/Engg./C.P.D. Court/96/1041/12-13/KBdated 11.12.2013, the Ld. Counsel for the respondent submitted that the complainant had completed all the questions and he got his marks lesser due to wrong answers specifically in English segment and he was not harassed by the APO and he handed over the paper to the scribe and the fact of his getting lesser marks is attributable to his wrong answers, more particularly in English segment. He was not harassed by APO as alleged and the question paper was handed over to the scribe also and APO read out the Question Paper to the complainant to facilitate

the comprehension by the complainant. He did not inform the Department about the behaviour of APO till the Department received the letter dated 14.06.2013 from this Court. He complained to this Court as per his letter dated 17.09.2013. Now the result had been declared and 24 candidates had already joined. The complainant got 58 marks out of 100 in the written examination, 5 marks for his Service Record which is the maximum given to all and 8 marks for his qualification for his Higher Secondary. His overall score was 62.3 and his position among the Scheduled Castes candidates is 12 whereas persons from Sr. No. 1 to 6 in the Scheduled Caste category have been promoted.

24. During the course of interaction with the parties, it is apparent that the complainant was not given extra time of 20 minutes per hour in the written examination to which he is entitled to vide O.M. No.16-110/2003-DD.III dated 26.02.2013 of Ministry of Social Justice & Empowerment, Department of Disability Affairs, Government of India. It also transpired during the course of hearing that the Railways do not adhere to the DoP&T's instructions regarding reservation in promotion to Group 'C' and 'D' posts for persons with disabilities albeit this issue does not form part of the substantive grievance of the complainant as envisaged in his original complainant dated 19.03.2013. However, the Ld. Counsel for the complainant mentioned this fact vide his e-mail dated 26.03.2013. From the perusal of the question paper and corresponding answer scripts, it is seen that the complainant had attempted all the questions. There does not appear to be major discrepancy in evaluation of his answers and his placement in the Merit List. It is, however likely that had the complainant been allowed extra time and a hassle free preparation for the examination, there could be a possibility of the complainant getting a better score than he got in the written examination. However, based on the available facts and the circumstances of this case, it is not possible to reach a conclusive assertion as to whether the complainant could have actually made his way to the selection zone, more particularly, in view of the fact that some 5 candidates had scored higher marks than him who too could not be selected. Therefore, it would not be possible to give direction to hold a fresh examination for the complainant. However, this Court fails to understand as to why the respondent did not fully adhere the guidelines for conduct of examination envisaged in O.M. dated 26.02.2013 of Ministry of Social Justice & Empowerment. Further, it is not clear as to why the establishments coming under the Ministry of Railways do not comply (like the rest of the establishments) with the DoP&T's instructions allowing for the reservation in promotion for persons with disabilities in Group 'C' and 'D' posts. It is fairly likely that if the said instructions of the DoP&T were complied with, the complainant who has been in service for the last 14 years or so without being promoted could have been promoted even with the kind of score which he has scored in the examination in question.

25. In the above view of the matter, the respondent is advised as follows:-

- (i) To strictly adhere to the guidelines contained in OM No.16-110/2003-DD.III dated 26.02.2013 of Ministry of Social Justice & Empowerment, Department of Disability Affairs, Government of India.
- (ii) To follow the DoP&T's instruction with regard to reservation in promotion in 'C' and 'D' categories posts and persons with disabilities.

- (iii) To ensure that railway staff is appropriately sensitized in respect of the needs and capabilities of persons with disabilities in an attempt to do away with any possible case of harassment to persons with disabilities.
- (iv) To disseminate to all railways, the relevant instructions including the relevant Office Memorandums of the Ministry of Social Justice & Empowerment, Government of India and Department of Personnel & Training etc. to all the Establishments and such dissemination should be done by the Railway Board and other appropriate authorities.

26. A copy of this Order be marked to the Secretary, Railway Board for necessary follow up action as advised above under intimation to this Court.

27. The matter is disposed off accordingly.

Sd/-

(**P.K. Pincha**)
Chief Commissioner
for persons with Disabilities

Copy to:-

The Secretary, Railway Board, Ministry of Railways, New Delhi-110001.