



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.423/1011/2013

Dated:- 12.06.2014

In the matter of:

Shri Manohar Singh,
Village – Pur, P.O. Bhankher,
Tehsil & District – Patiala,
Punjab – 147 103.

..... Complainant

Versus

Department of Personnel & Training,
Through the Secretary,
Ministry of Personnel, Public Grievances & Pension,
North Block, New Delhi – 110001.

..... Respondent

Date of hearing : 24.03.2014, 05.05.2014 & 02.06.2014

Present :

24.03.2014

1. Shri Manohar Singh, Complainant
2. None on behalf of Respondent.

05.05.2014

1. Shri Manohar Singh, complainant.
2. None on behalf of respondent.

02.06.2014

1. Shri Manohar Singh, complainant.
2. S/Shri Rao Vineet Kumar, S.O. & Surendra Singh, Assistant, on behalf of respondent.

ORDER

The above named complainant, a person with 100% locomotor disability, filed a complaint dated 09.09.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding allocation of Group 'A' service.

2. The complainant submitted that he qualified the Civil Service Examination, 2011 and got 906 rank out of 910 selected candidates and allocated AFHQ Group 'B' service. As per him, the vacancies exist for persons with disability in Central Group 'A' service like IRTS, IA&AS but the Cadre Controlling Authorities of these Group 'A' are not ready to take him as both of his legs are affected. He further

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submitted that this is injustice and violation of his rights as some candidates who also have both legs affected are allocated group 'A,' service like IDES, IDAS but he has been denied the allocation of Group 'A' Service.

3. Para 19 of the Department of Personnel & Training's O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 provides reservation for backward classes of citizens (SCs, STs and OBCs) is called vertical reservation and the reservation for categories such as persons with disabilities and ex-servicemen is called horizontal reservation. Horizontal reservation cuts across vertical reservation (in what is called inter locking reservation) and persons selected against the quota for persons with disabilities have to be placed in the appropriate category viz. SC/ST/PBC/General candidates depending upon the category to which they belong in the roster meant for reservation of SCs/STs/PBCs. To illustrate, if in a given year there are two vacancies reserved for the persons with disabilities and out of two persons with disabilities appointed, one belongs to a Scheduled Caste and the other to general category then the disabled SC candidate shall be adjusted against the SC point in the reservation roster and the general candidate against unreserved point in the relevant reservation roster. In case none of the vacancies falls on point reserved for the SCs, the disabled candidate belonging to SC shall be adjusted in future against the next available vacancy reserved for SCs.

5. The matter was taken up with the respondent vide letter dated 03.10.2013 followed with reminder dated 19.12.2013.

7. Upon non receipt of reply from the respondent despite reminder dated 19.12.2013, a hearing was scheduled on 24.03.2014.

8. On the date of hearing, none appeared on behalf of the respondent nor any intimation was received about their inability to attend the hearing despite the fact that the Notice of Hearing was sent on 13.02.2014 by speed post. The Court noted with serious concern, the utter disregard shown by the respondent by neither intimating their inability to attend the hearing nor cared to appear to explain their versions of the case.

9. Respondent was granted one more opportunity to appear and explain their versions in the case. A copy of the complaint filed by complainant dated 09.09.2013 forwarded vide this Court's letter dated 03.10.2013 and copy of complaint dated 24.03.2014 filed by the complainant during the course of hearing was forwarded to the respondent for filing their reply on or before 05.04.2014 in this Court and the case was fixed for hearing on 05.05.2014 at 03.00 p.m.

10. On the date of hearing on 05.05.2014, none appeared on behalf of the respondent nor any intimation was received about their inability to attend the hearing despite the fact that the Record of Proceedings intimating the next date of hearing were sent on 25.03.2014.

11. The complainant submitted a rejoinder dated 05.05.2014 to the reply of Department of Personnel & Training dated 1/15.04.2014. In the said rejoinder, the complainant submitted that the candidature of Shri Ashish Kumar Verma, Rank – 726 (LDCEP) has actually not been cancelled. He is

undergoing training at NIFM, Faridabad. Therefore, the information at serial no. 6 of the table in para 3(ii) of DoP&T's reply is not correct. He also submitted that Shri Bhimsen Hantal, Rank 784 (LDCP), sr. no. 8, who has been allocated IA&AS has not joined the service and the vacancy is lying unfilled. He further submitted that as per the judgment of Hon'ble Supreme Court 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 Blind & Ors., the reservation for persons with disabilities is computed against all the vacancies in identified posts. He also added that Ministry of Social Justice & Empowerment vide Notification No.16-15/2010-DD.III dated 29.07.2013 have identified the posts of Additional Comptroller & Auditor General and Principal CGA for persons with locomotor disabilities (BL) among other categories of disability whereas DoP&T in their reply have shown IA&AS identified only for OL, OLA, OA and not for BL. Since the post of Additional Comptroller & Auditor General of India or Principal CGA or Senior Admn. Grade posts are manned by the officers of IA&AS and the said posts have been identified by Ministry of Social Justice & Empowerment under Section 32 of the Persons with Disabilities Act, he pleaded that he is entitled to be allocated IA&AS.

12. It is also observed from the copy of the list of allocation of service to candidates with and without disability submitted by the complainant that candidates without disability with a lower rank have got a better service than candidates with disability like the complainant, in which case it is amply apparent that the fact of disability of the complainant has worked to his disadvantage thereby defeating the purpose and spirit of section 33 of the Persons with Disabilities Act. Besides, a situation of this ilk also appears to run counter to the established and recognized norms of propriety and natural justice.

13. In this light of the matter, the respondent is directed to submit the reasons as to why stipulation of para 7 of their O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 regarding adjustment of candidates selected on their own merit should not be invoked in case of complainant and similarly placed other candidates with disabilities. As the joining has already been delayed considerably, the respondent is advised to direct the concerned officers to be present on the next date of hearing alongwith the relevant documents/information so as to enable this Court to take a final view in the matter.

14. The matter was next heard on 02.06.2014 at 04.00 P.M. The parties were thereby directed to appear and present their case on the above date of hearing. In the event of non-appearance, this Court might be constrained to decide the complaint on the basis of available record.

15. During the hearing on 02.06.2014, reiterating his written submissions, the complainant highlighted the fact that many candidates who are lower in rank/merit than him and who belong to the unreserved/general category got recruited to Group 'A' services. The complainant further cited the example of a candidate, namely, one Shri Ashish Kumar Verma (Rank – 726), who is a person with locomotor disability, whose rank was 726, i.e. higher in merit than the complainant (complainant's rank being 906) was adjusted even by creating a supernumerary post in the Indian Defence Accounts

Services as there was only one vacancy in the said services which was allocated to one Shri Ashwani Kumar Pandey (Rank – 805) who is a general category person with locomotor disability. Thus, 2 candidates with disabilities, according to the complainant were accommodated against one vacancy. The complainant further challenged the respondent's contention contained in their letter No.13015/5/2014-AIS.I dated 15.04.2014 that no service was allocated due to cancellation of his (Shri Ashish Kumar Verma's) candidature. Citing yet another example, the complainant asserted that one Shri Mahesh Chander Saini (Rank – 887) who happens to be a person with disability (both legs) was allocated Indian Defence State Services with special permission as the said services are not identified for persons with disabilities (BL sub category). This explains why, the complainant contended that he was discriminated against by the respondent.

16. Reiterating their written submission, the representative of the respondent submitted that while allocating services to the complainant, he was allocated that service which fell within the balance listed references as per vacancy and his category and sub category of disability. Therefore, the respondent contended that no discrimination was meted out to the complainant.

17. In the above view of the matter, it would be in the fitness of things for this Court also to refer to Para 7 of DoP&T's O.M. No. 36035/3/2004-Estt.(Res) dated 29.12.2005 which is reproduced below:-

"7. Adjustment of candidates selected on their own merit : Persons with disabilities selected on their own merit without relaxed standards alongwith other candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with disabilities which will thus comprise physically handicapped candidates who are lower in merit than the last candidate in merit list but otherwise found suitable for appointment, if necessary, by relaxed standards. It will apply in case of direct recruitment as well as promotion, wherever reservation for persons with disabilities is admissible."

18. After hearing out both the parties and after a careful examination of the written submissions of the complainant and the respondent, it prima facie appears that the possibility of violation of the norms of propriety and natural justice against the complainant cannot be ruled out. It would also be of value to know how a similarly placed person without disability who belonged to the SC or ST community would have been treated. Would the complainant have been allocated the same Group 'B' service if he was a person without disability but belonged to SC/ST community is something which the respondent would do well to look into.

19. This explains why it would be expedient for the respondent to actively examine afresh the matter and take an expeditious decision keeping in mind the following within six weeks from the date of receipt of this order:-

- (a) How precisely a similarly placed person without disability belonging to SC or ST community would be treated?

(b) Are the example of candidates, namely, Shri Ashish Kumar Verma (Rank – 726) and another person Shri Ashwani Kumar Pandey (Rank – 805) correct? If yes, why is it that the complainant was treated differently?

20. The matter stands disposed off with the above observations.

Sd/-

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