



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.624/1014/2013

Dated:- 11.08.2014

In the matter of:

Shri Monojit Banerjee,
16/4, David Hare Road,
Durgapur, Burdwan – 713 205,
District – Burdwan (West Bengal)

..... Complainant

Versus

Ordnance Depot,
Through the Commandant,
Fort, Allahabad
PIN – 908 778,
C/O 56 A.P.O.

..... Respondent

Date of hearing : 05.08.2014

Present :

1. Shri Monojit Banerjee, Complainant.
2. Ms. Shilpa Singh, Advocate with Lt. Sanya Minhas, on behalf of respondent.

O R D E R

The above named complainant, a person with 40% locomotor disability filed a complaint dated 03.10.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding employment or monetary compensation.

2. The complainant submitted that he appeared before the Commandant, Ordnance Department, Allahabad on 27.08.2013 for the post of Mazdoor as a PH candidate. He further submitted that recruitment Controlling Officer forced him to complete physical test. After completion of the physical test, he felt uneasy to work. On 28.08.2013, he attended written test with much difficulty. He went back to his temporary shelter by auto-rickshaw from examination hall but he fell down in the yard of wash-room and broke his hip joint. He remained under treatment and was unfit for two months from 03.9.2013.

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3. The complainant alleged that taking physical test forcefully by the Recruitment Controlling Officer was in violation of the instructions issued by Government of India vide 04-2/83 dated 06.08.1986. Due to the said act of the Recruitment Controlling Officer, he felt uneasy and in that uneasiness, his hip joint broke. He has requested this Court to get him the service or the monetary compensation for his future life.

4. As per Ministry of Social Justice & Empowerment's Notification No. 16-15/2010-DD.III dated 29.07.2013, the post of Mazdoor is identified for persons with OA, BL, OL, LV/B categories of disability.

5. Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, provides as under:-

“Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent 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.

6. Para 22 of DoP&T's O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 provides relaxation of standard of suitability, if sufficient number of persons with disabilities are not available on the basis of the general standard to fill up all the vacancies reserved for them. Para 23 of the said O.M. provides that in case of medical examination of a person with disability for appointment to a post identified as suitable to be held by a person suffering from a particular kind of disability, the concerned Medical Officer or Board shall be informed beforehand that the post is identified suitable to be held by persons with disability of the relevant category and the candidate shall then be examined medically keeping this fact in view.

7. The matter was taken up under Section 59 of the Act with the respondent vide letter dated 18.11.2013.

8. The respondent vide letter No. 114285/Rect/Adm dated 14.12.2013 submitted that Recruitment Process to fill 159 vacancies commenced with the publishing of advertisement in National dailies and other leading newspapers in April, 2013 and concluded in September, 2013. Around 50,000/- applications were received by the unit and meticulous arrangements were made in

order to ensure proper conduct of written, physical and skill tests. Assistance from DM, Allahabad and SSP was also sought so as to ensure smooth conduct of the event. All the events were conducted properly with no report whatsoever made by any applicant/candidate. The presence of female/male police, military police, instructors from other places and supervisors were on alert at various places to prevent any mishap. None of the candidates was forced to undergo any test that was not applicable to his/her category. Further, each candidate was given the option of rendering an "Unwilling Certificate" if he/she was not ready to appear in any test.

9. The respondent further submitted that the details of the complainant were checked and it was ascertained that the individual had appeared in physical test on 27th August, 2013 for the post of Mazdoor alongwith many other physically handicapped candidates. The test was conducted by an independent Board of Officers. The Board of Officers ensured that the tests were conducted as per Rules/Policies on the subject. A total of 113 disabled candidates appeared for physical test for the post of Mazdoor. No representation/complainant was received from any candidate during or on termination of the test. Those candidates who qualified in the physical test were called for written test on 29th August, 2013. Candidates qualifying in the mandatory test (i.e. physical and written) were called for interview. On termination of the mandatory tests, no point/complaint was received by the Board of Officers or Officer in Charge Recruitment Cell from any candidate. It was surprising to note that the individual approached the Court after a lapse of 35 days that too with false allegations. Candidates with similar handicaps were put under similar tests to work out suitability and merit. The deserving candidates as per the vacancies and merit list were identified under laid down policies on the subject. 4 vacancies were reserved for physically handicapped category which were further reserved for Visually Handicapped (VH) – 01, Orthopedically Handicapped (OH) – 02 and Hearing Handicapped (HH) – 01. The provisions of Persons with Disabilities Act, 1995 were complied with.

10. A copy of reply dated 14.12.2013 received from the respondent was forwarded to the complainant vide this Court's letter dated 17.01.2014 for his comments.

11. The complainant vide letter dated 25.04.2013 reiterated his written submissions made in his complaint. A hearing was scheduled on 09.05.2014 which was rescheduled on 05.08.2014 at request of the complainant.

12. During the hearing on 05.08.2014, reiterating his written submissions, the complainant stated that there is a provision for exempting persons with locomotor disability from physical test which was denied to him by the respondent. As per the call letter, he was required to appear only in the written test. Had the complainant been informed about the physical test, he would not have gone to Allahabad for the said recruitment examination.

13. Reiterating the written submissions, the Ld. Counsel for the respondent submitted that Paras 7 (b) and (c) of the brief of the case are particularly crucial, which read as follows:-

“7(b) As per para 16 of Standard Operating Procedure (SOP) on procedure to be adopted for Direct Recruitment (DR) of Gp ‘C’ & erstwhile Gp ‘D’ category in Ordnance Depot/units issued by the Director General Ordnance Services vide letter No. A/23801/32/Policy/OS-8C(i) dated 18 November, 2011, evaluation and preparation of merit of candidates should be carried by allotting separate marks in written test, Physical/practical Test and interview in the ratio of 40:40:20.

7(c) As per DOPT OM No.14016/1/85-Estt (SCT) dated 04 September, 1995, “candidates belonging to Physically Disabled Categories may be selected under the relaxed standards of selection subject to the fitness of these candidates for appointment to the posts in question.” . Accordingly, the Physically Handicapped candidates were given due concession in the physical tests strictly based on their physical condition and their sub-categories like Orthopedically Handicapped, Hearing Handicapped & Visually Handicapped.”

She also referred to item 3(b) of the relevant advertisement dated 20-26th April, 2013, as per which, “in case of Fireman, Cook, Messenger, Safaiwala, Barber, washerman and Mazdoor, the candidates will also have to appear for physical test and practical test as required for the post before appearing for the written test.” The complainant admittedly appeared in the written test which was conducted following the physical test. She further highlighted that all the candidates with disabilities had the option to submit an unwillingness certificate in case they did not wish to take the physical test. She further added that such act of opting out of the physical test would not render any candidate ineligible for selection. In addition to following the standard operating procedure to be adopted in such selection, the respondents have strictly followed the DoP&T’s O.M. No. 14016/1/85-Estt (SCT) dated 04.09.1985 which lays down that candidates belonging to physically disabled category may be selected under the relaxed standards of selection subject to the fitness of such candidates for appointment to the post in question.

14. It is observed that there has been no violation of any provision for the -Act or instructions issued by appropriate Government. The complainant was not able to produce a copy of the instructions stated to have been issued by Government of India vide No. 04-2/83 dated 06.08.1986. Besides, the complainant could not produce any other instructions issued by the Government or stipulation in the advertisement or in the call letter indicating that non-appearance of the candidate with disability in the physical test would render him ineligible for appearing in the written test and/or selection.

15. The respondent’s contention that the complainant never ever complained of use of force for compelling him to take physical test has some merit. It appears that the complainant cleared the physical test but was not eventually selected as some other candidates with disabilities who got selected must have been higher in merit.

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16. In the above view of the matter, this Court is unable to pass any directions to the respondent.

17. The matter stands disposed off accordingly.

Sd/-

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