



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.217/1021/11-12

Dated:- 16.09.2014

In the matter of:

Shri S. Murugan,
General Secretary,
All India Central Government Deaf Employees' Association,
#11-3-386/1A, Srinivas Nagar,
Secunderabad – 500 061 (A..P.)

..... Complainant

Versus

South Central Railway,
(Through General Manager (P))
Headquarter Office,
Rail Nilayam,
Secunderabad – 500 071.

..... Respondent

Date of hearing : 15.07.2013, 09.09.2014

Present :

15.07.2013

1. Shri S. Murugan, alongwith Smt. T.Parvathi, affected person and Ms. T. Lavanya, Interpreter.
2. None on behalf of respondent.

09.09.2014

1. Shri S. Murugan, alongwith Smt. T.Parvathi, affected person and Shri Gourav Verma, S.L. Interpreter.
2. None on behalf of respondent.

O R D E R

The above named complainant, Shri S. Murgan, General Secretary, All India Central Government Deaf Employees' Association filed a complaint dated 11.11.2011 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding promotion of Smt. T. Parvathi, Daftry to the post of Junior Clerk-cum-Typist.

2. The complainant submitted that Smt. Parvathi, a person with hearing impairment, was working as Daftry in the office of Senior Divisional Personnel Officer, South Central Railway, Secunderabad Division, Secunderabad, had passed the examination for promotion but was not promoted on account of low merit. The complainant also submitted that Smt. B. Sudhira Reddy, Junior Clerk and Sri V.N. Prasad, Junior Clerk may be considered for promotion to Senior Clerk though they have failed in examination for filling up vacancies of Senior Clerk.

3. Para 2(ii) of DoP&T's O.M. No.36035/3/2004-Estt. (Res) dated 29.12.2005, 3% of the vacancies in case of promotion to Group D and Group C posts; in which the element of direct

recruitment, if any, does not exceed 75%, shall be reserved for persons with disabilities of which one percent 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. Para 22 of said O.M. also provides for relaxation of standard of suitability, if sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them.

4. The matter was taken up under Section 59 of the Act with the respondent, namely, the General Manager (P), South Central Railway, Secunderabad vide this Court's letter dated 17.04.2012.

5. The respondent vide letter No.SCR/P-HQ/209/EP/Clerk dated 26.11.2012 submitted that the complainant qualified in the written examination and she did not come up for promotion to the post of Junior Clerk against 33-1/3% quota since falling short of requisite standards as assessed by Selection Board. There was no discrimination of promotion merely on the ground of disability.

6. A copy of the reply received from the respondent dated 17.04.2012 was sent to the complainant vide this Court's letter dated 26.02.2013 for his comments/rejoinder.

7. The complainant vide letter dated 06.03.2013 submitted that she was appointed as Peon on 22.11.1993 and posted as Daftry on 17.03.2006. She is working in South Central Railway for the last 20 years. She is helping other Clerks who have heavy job in Personnel Department as well as taking out Xerox papers till date. She is the senior most in the seniority list. The selection board never considered the deaf person in the panel-cum-seniority. She has passed the examination held on 06.08.2011 for filling up the vacancies of Jr. Clerk cum Typist against 33-1/3% departmental promotional quota on Secunderabad Division. Unfortunately, she was not selected in selection proceeding by the Selection Committee Members. The selection board ignored her seniority and rules regarding seniority in selection and selected persons who are junior to her for the post of Jr. Clerk cum typist.

8. After considering respondent's letter dated 26.11.2012 and the complainant's letter dated 06.03.2013, a hearing was scheduled on 15.07.2013.

9. On 15.07.2013, none appeared on behalf of the Respondent.

10. During the hearing, the complainant reiterated her earlier submissions that the affected person, Smt. T. Parvathi was appointed as Peon on 22.11.1993 and was posted as Daftry on 17.03.2006. She is working in South Central Railway for the last 20 years and helping other Clerks by taking out xerox copies and doing other miscellaneous jobs who have heavy workload in Personnel Department. She is senior-most in the Seniority List. The Selection Board never considered Deaf persons in the panel-cum-seniority. She has already passed the written test held on 06.08.2011 for filling up the vacancies of Junior Clerk-cum-Typist against 33-1/3% Departmental Promotional Quota in Secunderabad Division but she was not selected by the Selection Committee. The Selection Board ignored her seniority and relevant rules regarding seniority in selection as a result the persons who were junior to her have been selected for the post of Jr. Clerk-cum-Typist.

11. In the above view of the matter, the respondent, General Manager, South Central Railway, Headquarter Office, Secunderabad – 500 071 was hereby directed to furnish the following clarifications within 15 days from the date of receipt of this Record of Proceedings with a copy thereof to the complainant:-

- (a) Marks obtained by Smt. T. Parvathi, the affected person as well as other candidates in the written examination who have been finally selected for promotion to the post of Junior Clerk.
- (b) Apart from written examination, what were the other parameters of selection i.e. skill test, interview etc.
- (c) As per General Manager's Office of South Central Railway letter No.SCR/P-HQ/209/EP/Clerk dated 26.11.2012, Smt. T. Parvathi could not come up for promotion to the post of Junior Clerk because she was falling short of requisite standards. But the area and the type of test has not been mentioned where she was not upto the standard.
- (d) In the letter dated 26.11.2012, it transpires that the Railway Board was following their instructions issued vide letter No.E(NG)I-99/PM1 dated 06.10.1999. It is not clear as to why the DoP&T's O.M. No. 36035/3/2004-Estt.(Res) dated 29.12.2005 was not followed despite clear instruction as per G.I. Railway Board's letter No. E(NG)II/2006/RC-2/6, Policy dated 11.8.2006.
- (e) Office of Divisional Railway Manager (P)'s letter No.CP/176/Admn./Section/G-Pool/Vol.III dated 11.08.11 states that "As a result of the written examination held on 06.08.2011 and on perusal of Service Records (SRs), total 15 employees were finally found suitable for the promotion to the post of Junior Clerk-cum-Typist. The assessment of SRs of Smt. T. Parvathi and the other candidates who were selected for the promotion should be furnished to this Court.

12. The respondent vide letter No.SCR/P-HQ/209/EP/Clerks dated 15.10.2013 submitted his response which is reproduced as under:-

"With reference to 'record of proceedings' in the above case, the following clarifications are submitted to the Hon'ble Court of Chief Commissioner for Persons with Disabilities:-

- (a) *Marks obtained by Smt. T. Parvathi, the affected person as well as other candidates in the written examination who have been finally selected for promotion to the post of Junior Clerk.*

Clarification: A copy of evaluation sheet showing marks obtained by Smt. T. Parvathy and other candidates in the written examination and record of service, i.e., assessment of Service Registers for selection to the post of Jr. Clerk-cum-typist is enclosed.

- (b) *Apart from written examination, what were the other parameters of selection, i.e., skill test, interview etc.*

Clarification: The selection consists of written examination (85 marks) and record of service (15 marks). 12-UR vacancies have been assessed. Smt. T. Parvathi is a UR candidate.

In terms of instruction issued vide Railway Board's letter No.E(NG)/1/2008/PM7/4SLP dated 19.06.2009, in cases of promotion to general posts in which candidates are called from different categories, whether in the same department or from different departments and where zone of consideration is not confined to three times the number of staff to be empanelled, panels should be strictly prepared as per merit, with reference to marks obtained by the candidates in professional ability and record of service. As there were only 12 posts for UR, that twelve employees who secured more marks than Smt. T. Parvathi were empanelled.

- (c) As per General Manager's Office of South Central Railway's letter No.SCR/P-HP/209/EP/Clerk dated 26.11.2012, Smt. T. Parvathi could not come up for promotion to the post of Junior Clerk because she was falling short of requisite standards. But the area and the type of test has not been mentioned where she was not up to the standard.

Clarification: It can be seen from the assessment sheet enclosed, that all the 31 candidates are 'suitable' for the post of Jr. Clerk-cum-Typist. However, since there are only 12-UR vacancies and Smt. T. Parvathi is not coming up within the 12-UR vacancies as per; merit she could not be empanelled.

- (d) In the letter dated 26.11.2012, it transpires that the Railway Board was following their instructions issued vide letter No.E(NG)I-99/PM1 dated 06.10.1990. It is not clear as to why the DoP&T's O.M. 36035/3/2004-Estt. (Res) dated 29.12.2005 was not followed despite clear instruction as per G.I. Railway Board's letter No.E(NG)II/2006/RC-2/6, Policy dated 11.08.2006.

Clarification: Board's letter No.E(NG)II/2006/RC-2/5 Policy dated 11.08.2006 (copy enclosed) clarifies that the instructions contained in DoP&T's O.M. dated 29.12.2005 referred to in their OM dated 26.04.2006 should be taken as applicable to Railways only to the extent the same relate to reservation for the persons with disabilities in posts filled by direct recruitment from open market.

In view of the above, it is to clarify that there is no reservation for the persons with disabilities in posts filled by promotion.

(c) Office of Divisional Railway Manager (P)'s letter No.CP/176/Admn./Section/G-Pool/Vol.III dated 11.08.2011 states that "As a result of the written examination held on 06.08.2011 and on perusal of Service Records (SRs), total 15 employees were finally found suitable for the promotion to the post of Junior Clerk-cum-Typist. The assessment of SRs of Smt. T. Parvathi and the other candidates who were selected for the promotion should be furnished to this Court.

Clarification: The assessment sheet, which contains marks awarded under the head 'written examination' as well as under the head 'record of service' i.e. as per entries in Service Register of Smt. T. Parvathi and other candidates who were selected for the promotion is enclosed.

The criteria followed by the selection committee for awarding marks under the head 'record of service' is in recorded proceedings of the selection committee (copy enclosed)."

13. A copy of reply dated 15.10.2013 received from the respondent was forwarded to the complainant for his comments/rejoinder.

14. The complainant vide his letter dated 24.02.2014 submitted that the railways have denied for relaxing the standards to make up the deficiency in the reserved quota subject to fitness of the employees. He submitted that the Liaison Officer has not been maintaining the Roster Registers. The Board recommended sixteen employees for empanelment to the post of Jr. Clerk-cum-Typist against 33-1/3% Departmental Promotional quota on Secunderabad Division. The employment of 16 employees is on the condition of their passing the prescribed typing speed test within a period of 2 years. Railway Administration called the empanelled employees for typing test on 31.01.2014. Some employees who failed in typing test were called again 2-13 times. Vide notification dated 05.04.2011, 07.06.2011 and 20.07.2011, a written examination was held for the post of Clerk-cum-typist against 33-1/3% Departmental quota for Group 'D' employees on 06.08.2011 and results were declared on 09.08.2011.

15. After considering respondent's letter dated 15.10.2013 and the complainant's letter dated 24.02.2014, a hearing was scheduled on 09.09.2014.

16. None appeared on behalf of the respondent nor any intimation received about their inability to attend the hearing on 09.09.2014 despite the fact that the notice of hearing was sent on 25.07.2014.

17. The complainant reiterated her written submissions made by her in the original complaint and the rejoinder. She was appointed on compassionate grounds. She has been a sports person of National Level and played a number of games such as Javlin throw, short put, 100 meters and 200 meters race.

18. On perusal of the written submissions dated 15.10.2013 of Southern Railway, it is observed that the last person, namely, Ms. T. Vijaya Laxmi (12th in merit amongst Unreserved), promoted against the unreserved vacancy had obtained 79 marks (68 in Professional ability out of 85 and 11 in record of service out of 15 marks). The complainant got 76.57 marks (67.57 in professional ability and 9 marks out of record of service).

19. This Court has also noted that the selection for promotion process does not comprise any oral interview. It is thus observed that while the policy of railways in relation to not extending the benefit of reservation in promotion despite the DoP&T's orders can be a matter of further clarification, there prima facie appears to be no discrimination when one examines the matter keeping in mind the policy which is perused by DoP&T and Railways. However, as this Court has reiterated in number of cases

in the past that the Railways should follow the policy/instructions of DoP&T which is the nodal Department in relation to extending the benefit of reservation in promotion in Group 'C' and 'D' posts as is being followed by the rest of the Ministries/Departments/establishments of the Government of India. It goes without saying that if the same policy is also followed by the Railways, persons with disabilities including the complainant will get the benefit.

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

Sd/-

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