



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.946/1011/2013

Dated:- 12.08.2014

In the matter of:

Shri Shiwam Kumar,
R/o D-2/148, First Floor,
Sector-11, Rohini,
Delhi-110085.

..... Complainant

Versus

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

..... Respondent

Date of hearing : 04.07.2014

Present :

1. Shri Shiwam Kumar, Complainant
2. None on behalf of Respondent.

O R D E R

The above named complainant, a person with blindness, filed complaints dated 05.03.2013 and 12.04.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding to identify Indian Revenue Service (Income Tax) & Indian Revenue Service (Customs & Central Excise) as suitable for persons with visual impairment and 1% reservation each year in the Civil Services Examination.

2. The complainant submitted that he cleared the Civil Services Main Examination held during October/November, 2008 and was called for Personality Test on 23.04.2009. When the final result declared in May, 2009, his name was not figured in the final result of successful candidates. As per him, only 4 candidates with visual impairment were declared successful in the Civil Services Examination, 2008. As per the mandate of the Persons with Disabilities Act, 1% of the total seats/posts should have been filled up with candidates with visual impairment but instead of 8 seats/posts i.e. 1% of 791 or 9 seats/posts i.e. 1% of 881, the UPSC selected only 4 candidates with visual impairment and later on it was found that the marks of all the candidates with visual impairment were equal to the candidates with General Category. He secured 1040 marks and in the main list of 791 successful candidates in Civil Services Examination, 2008, there were 6 candidates whose marks

.....2/-

were lower than him. The complainant prayed that DoP&T may calculate the correct backlog of vacancies in different Civil Services Examinations and appoint him in the Indian Administrative Service or any other Civil Service as per; his merit and choice alongwith his seniority and increments at par with his batch mates. He also requested this Court to direct the concerned authority to identify the Indian Revenue Service (Income Tax) and Indian Revenue Service (Customs & Central Excise) for the persons with visual impairment and direct the DoP&T to appoint him in the IRS in case no backlog vacancies of IAS are available with them.

3. Ministry of Social Justice and Empowerment (DD-III Section) vide letter No.33-15/2007-DD-III dated 18.04.2011 enclosing therewith the copy of the Minutes of the meeting held on 23rd November, 2007 in the conference room of the Ministry of Social Justice & Empowerment relating to rationalization/standardization of physical requirements/functional classification in respect of services participating in the Civil Services Examination(CSE) conducted by the Union Public Service Commission. They also enclosed the list of services showing the categories, sub categories of persons with disabilities and the physical requirements. As per the list, the IAS service is identified for OH with sub categories OA, OL, OAL and BL.

4. Section 33 of the Persons with Disabilities Act, 1995 provides as under:-

“Section 33. 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.”

5. The matter was taken up with the respondent vide letter dated 09.07.2013 followed with reminders dated 30.12.2013 and 27.3.2014.

6. Upon non receipt of reply from the respondent despite reminders dated 30.12.2013 and 27.3.2014, a hearing was scheduled on 4.07.2014.

7. 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 06.06.2014 by speed post.

8. Reiterating his written submissions, the complainant narrated the entire trail in respect of the matter as to how, according to him, injustice was meted out to him and how he was discriminated against, with the result that he had to fight a long drawn legal battle which, so far, has not yielded any tangible results despite the Central Administrative Tribunal deciding the case in his favour. He highlighted, among other things, the fact that he was not appointed despite securing marks higher than some other candidates who got appointed securing marks lower than what the complainant had secured.

9. It goes without saying that this Court obviously cannot adjudicate upon the matter which has already been decided/adjudicated upon by the Hon'ble CAT. However, there appears some merit in the complainant's contention that certain other issues which according to him were outside the scope of the case he had filed with the CAT and which affects persons with disabilities in general may be taken cognizance by this Court.

10. In the above view of the matter, this Court, after hearing out the complainant felt that two issues merit particular attention, namely, (a) the issue of identification of IRS as a service suitable for persons with blindness and low vision; and (b) the issue of extending the benefit of 3% reservation in favour of persons with low vision and blindness as envisaged in Section 33 of the Persons with Disabilities Act, 1995 with effect from 1996 against the total number of vacancies.

11. It would be quite in context for this Court to also place on record the complainant's submission that in the meantime the Department of Personnel & Training in accordance with the Rules published in the Gazette of India dated 31st May, 2014 and advertised by the UPSC, has already identified IRS(IT) as a service suitable for persons with low vision and blindness. He further added that this benefit of identification should be extended to persons with visual disability with effect from 1996.

12. Here it would be in fitness of things for this Court to state that this Court has already put forth its observations in respect of identifying IRS as a service suitable for persons with low vision and blindness in its Order in Case No.925/1011/12-13 dated 31.10.2013 and, as such, it is expected that appropriate decision in respect of identifying IRS as a whole in the light of the said observations would be taken by the appropriate authorities.

13. As far as the issue relating to extending the benefit of reservation in favour of persons with disabilities across all grades of posts, the DoP&T, one understands, is already in the process of implementing the judgment dated 08.10.2013 of the Hon'ble Supreme Court in the case of Union of India & Anr. Vs. National Federation of the Blind & Ors.[Civil Appeal No.9096 of 2013(arising out of SLP (Civil) No.7541 of 2009). In the said judgment, the Hon'ble Supreme Court, among other things, has stated as follows:-

“Para 53(ii) We hereby direct the “appropriate Government” to compute the number of vacancies available in all the “establishments” and further identify the posts for disabled persons within a period of three months from today and implement the same without default.”

14. A copy of this Court’s Order No.925/1011/12-13 dated 31.10.2013 in respect of identification of IRS as a service suitable for persons with visual disability be appended to this Order.

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

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