



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.150/1021/10-11

Dated:- 20.06.2014

In the matter of:

Shri Daityary Nayak,
Administrative Officer,
LIC of India,
Rourkela Branch office,
Sector – 19,
Rourkela,
Orissa – 769 005.

..... Complainant

Versus

Life Insurance Corporation of India,
Through the Executive Director, Personnel,
Central Office,
Yogakshema,
Jeevan Bima Marg,
Mumbai – 400 021.

..... Respondent

Date of hearing : 12.05.2014

Present :

1. Shri Daityary Nayak, complainant.
2. S/Shri Ajay Grover, Secy (Per) and N.P. Nidara, Secy (Legal), on behalf of respondent.

O R D E R

The above named complainant, a person with 50% locomotor disability filed a complaint dated 22.09.2010 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding non-implementation of the provisions meant for persons with disabilities relating to his posting, promotion and other benefits.

2. The complainant submitted that he was promoted to the cadre of Assistant Divisional Manager (ADM) in the year 2009 and was posted as Manager Administration at Betul Branch under Bhopal Division which is about 1500 kms. from his present place of posting. He had represented to higher authority requesting for a modified posting on the ground of his disability. The higher authority, however, cancelled his promotion without considering his problems. He requested that he may be promoted to the cadre of ADM from the date of his eligibility with posting at Rourkela Branch, given transport allowance in lieu of conveyance allowance and other special benefits like special disability leave, special casual leave, special allowance for child care etc.

.....2/-

3. The matter was taken up under section 59 of the Act with the respondent vide letter dated 10.03.2011 followed by reminder dated 04.03.2013.

4. The respondent vide letter No.PER/ADM/PWD/1213/190 dated 09.04.2013 submitted that the promotion to various cadres is effected as per the Life Insurance Corporation of India (Staff) Regulations, 1960 of the Corporation. As per practice, the evaluation of merit and suitability for the higher post is undertaken on the basis of the record of work and conduct during the tenure of the officers concerned in the feeder cadre as reflected in the Confidential Reports. Since promotions are based on selection of relatively meritorious officers limited to available vacancies, there are chances that officers who could not be promoted, possess satisfactory work record, but on relative merit of work record, could not figure within the given vacancies in the merit list. He stated that Shri Nayak was first considered for promotion to the cadre of Assistant Divisional Manager in the year 2008-09. The complainant was promoted to the cadre of Assistant Divisional Manager in the year 2009-10. Since he did not join the promotional posting, his promotion was cancelled. In the year 2010-11 and 2011-12, he was not found suitable for selection, while in the year 2012-13 he was promoted as Assistant Divisional Manager and posted in the same Zone. : However, since the complainant did not join the promotional posting, his promotion was cancelled. The representations against non-promotion in 2008-09 and 2010-11 were considered but could not be acceded to. The Class I Officers in all cadres in LIC are transferable on all India basis. While effecting the postings of the officers after promotion, the Corporation takes into consideration primarily, the vacancy position and then many other factors of the officer like the growth potential, past experience, aptitude, duration of stay at a particular station, their suitability and age criteria.

5. Regarding Special Conveyance Allowance, the respondent submitted that the ceiling for persons with disabilities was Rs.400/-. This is in addition to the transport allowance payable to the employees in the cadre of Administrative Officer @ Rs.800/- p.m. Grievance Redressal Cells are specially constituted at Divisional zonal and Central Offices of the Corporation for the benefit of employees belonging to the category of persons with disabilities. The Liaison Officers for persons with disabilities are also designated. There is no provision in the Corporation to give other benefits like special disability leave, special casual leave, adhoc allotment of quarters to persons with disabilities, special allowance for child care to women employees.

6. A copy of the reply received from the respondent was forwarded to the complainant vide this Court's letter dated 27.06.2013 for his comments/rejoinder, if any.

7. The complainant vide his rejoinder dated 09.08.2013 and 11.03.2014 submitted that there has been clear infringement of the rights vested upon the persons with disabilities as well as SC and ST persons by the Constitution of India and statutory provisions made in the Persons with Disabilities Act as well as provisions made under UN CRPD. He has been denied his legitimate promotion as well as other genuine claims since 2008 and forced to continue in the same cadre for more than fourteen years and that too in a stagnated stage since 2008 (last normal grade increment was released in 2007). As per him, juniors to him by five/six years are promoted. A total of 3626

Administrative Officers were promoted to the cadre of Assistant Divisional Manager from the promotion round 2008-09 to promotion round 2013-2014 in 12 round of promotion. His Fundamental Rights have been violated. Implementation of Protection Clause vide DoP&T's O.M. No.36028/21/2003-Estt.(Res) dated 29.01.2004 is common to all Govt. officers including Public Sector Undertakings. In view of the DoP&T's aforesaid O.M. of protection clause, he should have been promoted to the cadre of ADM in the year 2008-2009 by extending him the benefits of protection clause available to SC & ST officers in the matter of promotion within Group A. and since the errors in not applying Protection Clause while dealing promotion process has been accepted by LIC Management in the promotion round 2008-09, his promotion must be effective along others from 2008. Since reasonable accommodation was not given to him in his promotion in 2009-10 as well as promotion in the year 2012-13, international obligation was violated. The complainant therefore prayed that he may be posted at his present place of posting i.e. Rourkela Branch office on the ground of his disability and the authority should issue necessary circulars to provide other benefits as prayed earlier on his said representation.

8. After considering respondent's letter dated 14.03.2013, 09.04.2013 and complainant's letters dated 25.07.2011, 15.12.2011, nil and 11.03.2013, a hearing was scheduled on 12.05.2014..

9. During the hearing on 12.05.2014, the complainant reiterated his written submissions and submitted that in 2009, there was a vacancy at Sambalpur Division where he could have been promoted. However, he was not posted there. The complainant emphasized that his promotion was due in 2008 and denying him the promotion on the basis of un-communicated adverse ACR was wrong. He further submitted that in 2007, there were three posts in Sambalpur Division. The LIC merged all three posts and has mentioned only two posts in 2008 and further reduced to one post in 2009 to his disadvantage. The complainant asserted that in 2009, there was a vacancy of Manager (Claims) at Sambalpur Divisional Office where he could have been accommodated suo motu by the respondent in the light of the DoP&T's O.M. No. AB14017/16/2002-Estt. (RR) dated 13.03.2002. Thus, there has been a violation of the said O.M. by the respondent.

10. Reiterating their written submissions, the representatives of the respondent submitted that the promotion in LIC is based on merit, suitability of the candidate for a particular post and seniority. In 2008-09, the Committee did not find the complainant suitable for the post of ADM on account of the above criteria. As per LIC Rules, only the "below average" ratings are communicated as adverse remarks to the employees. Since the rating of the complainant was "Very Good", the same was not communicated. However, the ratings of those who got promoted during the said period, were relatively better than that of the complainant.

11. Responding to the complainant's charge of merging three posts into two and then one, the representatives of the respondent stated that that was a purely administrative decision which is routinely taken depending upon the bulk of business and service requirement. When the complainant was promoted in 2009, he was posted in Betul but he declined to go there and instead wanted to be posted to Rourkela itself by creating a fresh post of Manager (Admn.). This could not be accepted. In

2012, the complainant was again promoted and posted in Ranchi which was declined by the complainant although Ranchi and Sambalpur where he wanted to posted, happened to be equal distance.

12. After hearing out the parties, it is observed that prima facie, the complainant has not been able to conclusively establish violation of promotion policy. It would be quite in context not to lose sight of the fact that the complainant did not ask for posting on promotion to any place closer to his home such as Sambalpur but instead specifically insisted on being posted to Rourkela where according to the respondent, no vacancy existed. There appears to be no violation of DoP&T's O.M. dated 13.03.2002 as alleged by the complainant as DoP&T have already clarified in the said O.M. which, read with their O.M. dated 10.05.1990 provides that employees with disabilities holding Group 'A' and Group 'B' posts be also given posting, as far as possible, subject to administrative constraints near their native place. It is also relevant to note that the complainant requested for a transfer in 2011 and was accordingly transferred to Bhubaneswar where he finally did not go but in 2012, according to the complainant, he wanted to go to Bhubaneswar which could not be accepted by the respondent. It is thus clear that the complainant wanted posting only and solely on his own terms. In the course of the hearing, it was also brought to the notice of this Court that two disciplinary proceedings, one in the year 2007 and the other in the year 2013 respectively were initiated and as a result, penalty was imposed on the complainant.

13. It would also be appropriate for this Court to briefly dwell upon the O.M. dated 29.01.2004 referred to in para 7 above. The said O.M. of DoP&T provides that the Scheduled Castes and Scheduled Tribes officers when considered for promotion by selection to posts within Group 'A', and who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that Select List provided they are not considered unfit for promotion. The said O.M. dated 29.01.2004 is, therefore, not relevant to the instant case of the complainant.

14. Regarding the complainant's prayer in respect of Special Disability Leave, Special Casual Leave, Transport Allowance in lieu of Conveyance Allowance, Special Allowance for child care for women with disabilities, the respondent may like to take the matter with appropriate authorities for a final decision within a reasonable time frame under intimation to this Court and the complainant.

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

Sd/-

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