



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.386/1024/2013

Dated:-18.09.2014

In the matter of:

Shri S.K. Vadiraj,
Emp # BR/961/188,
RCR/BRIT/DAE,
Board of Radiation & Isotope Technology,
KMIO Campus Hosur Road,
DRC College Post Office,
Bangalore – 560 029.

..... Complainant

Versus

Department of Atomic Energy,
(Thru the Secretary),
Anushakti Bhavan,
C.S.M. Marg,
Mumbai – 400 001.

..... Respondent

Date of hearing : 30.04.2014 & 07.08.2014 .

Present :

30.04.2014

1. Shri S.K. Vadiraj, Complainant alongwith his wife Vatsala Vadiraj.
2. Dr. R.P. Acharya & S.S. Prasad Rao, AO-III on behalf of the Respondent.

07.08.2014

1. Shri S.K. Vadiraj, Complainant alongwith his wife Vatsala Vadiraj.
2. S/Shri K. Parameshwar, Advocate & S.S. Prasad Rao, AO-III on behalf of the Respondent.

ORDER

The above named complainant, a person with 60% locomotor disability filed a complaint dated 20.08.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding providing him with an alternative employment and protection of his salary and allowances.

2. The complainant submitted that he was appointed as Driver Grade-1 on 06.10.1988 at RC BRIT, Bangalore. On 10.06.1995, while he was traveling to his friend's house in Bangalore, he met with an accident and his right arm was amputated. He reported for duty after availing 110 days for his treatment. The then Chief Executive created a post and reappointed him as Helper 'B' at Bangalore office. Therefore, he was once again put on probation for a period of one year. His salary as Driver Grade I was protected till August, 1998. At the time of reappointment, his pay band was brought down to that of Helper A/T which resulted in reduction of basic salary. The difference in his salary was

.....2/-

recovered in subsequent months. He brought this to the notice of concerned officials, but went in vain. The complainant had also approached the State Commissioner for Persons with Disabilities, Government of Karnataka on 30.06.2012 with his grievance of harassment. The State Commissioner for Persons with Disabilities took the matter with the Chief Executive, BRIT/DAE vide letter dated PDA:SEC62:01:2012-13/479 dated 07.08.2012. During that time, he learnt about the provision of Section 47 of the Act. But after several follow ups through letters and his personal visit to Mumbai office, he was given to understand after a gap of nearly one year that the matter has been closed by their Office vide letter no. BRIT/General/2012/836 dated 15.09.2012 written to the State Commissioner for Persons with Disabilities, Government of Karnataka stating therein that the complainant has been provided not only with alternative employment but his salary and allowances at par with what he drew earlier as Driver Grade I were also protected.

3. Section 47(1) of the Persons with Disabilities Act provides as under:-

“No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.”

4. Further as per DoP&T's O.M. No.36035/3/2009-Estt.(Res) dated 10.06.2009, DoP&T had clarified that their O.M. No.36035/3/2005-Estt.(Res) dated 29.12.2005 does not make any distinction between persons acquiring disability before or after entering into service. An employee who acquires disability after entering into service will be entitled to get the benefit of reservation as a person with disability as provided in the instructions contained in the above referred O.M. from the date he produces a valid certificate of disability.

5. The matter was taken up with the respondent vide this Court's letter dated 29.10.2013.

6. The respondent vide letter no.BR/961/188/789 dated 27.11.2013 submitted a point-wise reply to the following effect:-

(i) That Shri Vadiraj was initially appointed on 06.10.1988 at Regional Centre, BRIT, Bangalore as Driver Grade-I. Subsequently he met with an accident on 10.6.1995 due to which his right arm was amputated. This accident has taken place while he was not on duty and not during office hours but during his personal visit to his friend's house. After the accident he was on Earned Leave/commuted leave for 110 days and joined duty with medical certificate issued by Competent Medical Authority. On joining duty, the complainant requested for rehabilitation. Keeping in view the recommendations made by the Medical Authority that Shri Vadiraj is fit for retention for further service on a post of less laborious character than what he had been doing and by taking into cognizance of his prima facie role in maintaining his family during the dire adverse circumstances, he was appointed as Helper 'B'

(Trade) w.e.f. 06.02.1996 to mitigate his hardship by downgrading one vacant Tradesman's post as no helper post was available at that point of time. His pay was also protected on par with his earlier grade of Driver Grade I.

(ii) That besides above, he was also promoted as Helper 'D' (Trade) w.e.f. 01.05.2006. However, consequent on implementation on 6th Pay Commission, he was re-designated as Work Assistant/B w.e.f. 01.07.2009 on pay with other helpers of similar grade and accordingly his pay was fixed on the revised pay scale. Further, in accordance with the provisions contained in DoP&T's O.M. dated 19.05.2009, he was granted MACP-II w.e.f. 06.10.2008 with Grade Pay as Rs.2,000/- instead of 1,900/- in the grade of H/D(T) and redesignated as Attendant 'C' w.e.f. 01.01.2010 and further as Work Assistant 'C' w.e.f. 01.07.2011. Therefore, the contention that he was not provided with alternate employment and his salary was not protected at the time of appointment to the grade of Helper/B(T) is not true.

(iii) That from the copy of Pay Slip, it is seen that the basic pay for the month of August, 1998 is shown as Rs.3,500/- and his designation as Driver (LVD) which is not in order as it can be seen from the same page that pay slip for the month of September, 1998 reflects his designation as Helper with basic pay as Rs.3,440/- which is in order and the same pay slip also reflects excess pay and allowances of Rs.1,078/- recovered. The respondent has enclosed the attested copy of due drawn statement of P&AO indicating clearly the pay due during 01.10.97 to 31.08.98 as Rs.3,440/- but drawn as Rs.3,500/- which resulted in excess payment of Rs.2,1256/-. Hence, the same was recovered in two equal monthly instalments of Rs.1,078/- from September, 1998 & October, 1998 salary.

(iv) That Shri Vadiraj is making a deliberate attempt to mislead this court by suppressing the material facts in his case.

(v) That the subject matter was also taken up by the complainant with the State Commissioner by persons with Disabilities, Govt. of Karnataka. A reply given by their office letter dated 15.09.2012 with full details was given with a request to close the matter once for all as the allegations made by Shri Vadiraj were not true. However, there was no further correspondence from his end till date.

(vi) That all the provisions applicable to the persons with disabilities are made applicable in respect of Shri Vadiraj without making any distinction, nothing has been deprived to Shri Vadiraj. All the necessary steps to safeguard and protect the interest of the complainant have been taken care by their department, no violation has taken place since Government of India order on the subject have been meticulously followed in true letter and spirit while providing alternate employment and protecting his pay and allowances.

7. The copy of reply of the respondent dated 27.11.2013 was forwarded to complainant vide this Court's letter dated 06.12.2013 for submission of his comments/rejoinder, if any.

8. The complainant vide letter dated 09.12.2013 submitted that the respondent have not given the complete picture of loss sustained by him on his rehabilitation on 06.02.1996 onwards. The department provided him less laborious character of job in the department, the subsequent entitlements to protection of pay scale/pay and other subsequent entitlements and benefits under the 6th Pay Commission have not been granted correctly to him. His pay and pay scales have been

downgraded to his disadvantage and an amount of Rs.2,156/- has also been recovered from his pay. As his pay scale which was revised in 5th Pay Commission from 01.01.1996, this scale of pay was required to be further revised by protection of this pay scale/pay in the 6th CPC w.e.f. 01.01.2006. On the contrary, the department by memorandum dated 19.02.1996 reduced the pay scale and thereafter in the 5th CPC, pay scale was reduced. This has been further revised in 6th CPC scale reducing his pay/pay scale as well as grade pay. This action will adversely put affect on his pension and pension benefits on superannuation.

9. After considering respondent's letter dated 27.11.2013 and complainant's letters dated 09.12.2013 and 12.12.2013, a hearing was scheduled on 30.04.2014.

10. After detailed discussion during the hearing on 30.04.2014, the complainant sought three weeks time to consult some expert and ascertain from him/her whether there is any rule/instructions under which the benefit of Section 47 of the Persons with Disabilities Act, 1995 can be given to him even though the said Act came into effect from 07.02.1996 whereas the complainant acquired disability on 10.06.1995. The complainant was granted the time as requested.

11. The complainant vide his letter dated 12.05.2014 and e-mail dated 24.05.2014 submitted that after the re-appointment, he was performing the job of less laborious character as dispatch/postal works, payment of telephone/electricity bills, purchase of office items, accompanying driver to airport for collection of consignments, book keeping, Xerox/fax machine operation, muster maintenance, leave records, preparation of imprest bills and special advance, performing RIA related works such as counting of tubes etc. and attending phone calls etc. He has also taken guidelines from DoP&T vide Office Memorandum No.36035/3/2009-Estt. (Res) dated 31.03.2014, through their website and informed his reporting officer that I could be allowed to continue the job that he was performing all these for 18+ years. But he was forced only to take up the house keeping activities. He was not able to tolerate the harassment and the same has put his family in stress. He requested for restoring the jobs which had proven all these 18+ years and to provide a barrier free environment for discharging his duties.

12. After considering complainant's letter dated 12.05.2014 and e-mail dated 24.05.2014, a hearing was scheduled on 07.08.2014.

13. During the hearing, referring to his written submissions dated 12.05.2014, the Ld. Counsel, based on the judgments of Hon'ble Supreme dated 04.01.2008 in Civil Appeal No. 8 of 2008 and a number of judgments of Hon'ble High Court, wherein the Hon'ble Courts have enunciated the principle that regardless of the date of on-set of disability of a Government employee, protection of Section 47 of Persons With Disabilities Act, 1995 could be available to Government employee provided the decision/order to dispense with, or reduce in rank of an employee is taken after the said Act i.e. 07.02.1996. In the instant case, the Ld. Counsel brought to the Notice of this Court that respondent issued the employment Memorandum appointing the complainant to the post of Helper (B Trade) in a lower pay scale than Driver Grade-I on 19.02.1996.

14. The representative of the respondent reiterated the written submissions and confirmed that they have received the rejoinder dated 12.05.2014 submitted by the complainant. He further submitted that if there is a settled law on the subject, the respondent would do the needful.

15. On perusal of the record submitted by the complainant, particularly the Memorandum dated 19.02.1996 and the judgments cited by the complainant and after hearing out the parties, it is amply clear that the complainant could not have been deprived of the benefit of Section 47(1) of the Persons with Disabilities Act, 1995 regardless of the date on which he acquired disability since the impugned Memorandum was issued on 19.02.1996 i.e. after the PwD Act, 1995 came into force w.e.f. 07.02.1996. While the Memorandum dated 19.02.1996 seeks to appoint the complainant as Helper (B Trade) retrospectively i.e. w.e.f. 06.02.1996, i.e. just one day before the Persons with Disabilities Act came into force, one cannot lose sight of the fact that at the time of joining his duty on 06.02.1996, the complainant joined as a Driver Grade-I and had no idea that he would subsequently be retrospectively appointed as Helper (B Grade) carrying a lower pay scale and lower rank. It would be quite in context for this Court to observe that Persons with Disabilities Act is a socially beneficial piece of legislation for the advancement of persons with disabilities and confers the benefits to such persons and its provisions, more particularly, very crucial provisions like those envisaged in Section 47 of the said Act should be interpreted with sensitivity. It is of relevance for this Court to further observe that the impugned action of the respondent occurred after the commencement of this Act and this gives reasons enough to this Court to direct the respondent to appropriately adjust the complainant in accordance with the provisions of Section 47(1) of the Act so as to ensure that he is neither reduced in rank nor for that matter in pay scale/service benefits/other service benefits w.e.f. 06.02.1996. All consequential benefits should be made available to him w.e.f. 06.02.1996.

16. The above directions be implemented by the respondent within three months from the date of receipt of this Order under intimation to this Court.

17. The matter stands disposed off accordingly.

Sd/-

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