



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.677/1011/11-12

Dated: 18.09.2014

In the matter of:

Shri Dhirendra Kumar Singh,
S/o Shri Satyawan Singh,
Village & Post – Itbahara, Gaur-Basti(U.P.)

..... Complainant

Versus

Department of Posts,
Through the Secretary,
Dak Bhawan,
New Delhi-110016.

..... Respondent

Date of hearing : 28.08.2014

Present :

1. Shri Yamuna Singh, on behalf of Complainant.
2. Shri Surender Kumar, ADG(GDS) on behalf of Respondent.

O R D E R

The above named complainant, a person with 40% locomotor disability filed a complaint dated 15.11.2011 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding non selection for the post of Post Master.

2. The complainant submitted that he had applied in response to the recruitment notice for more than 40 posts of GDS BPM (Branch Post Master). His name appeared at Sr. No. 73 of the merit list. However, no reservation was provided to persons with disabilities.

3. Section 33 of Act provides as under:-

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

.....2/-

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.”

4. As per Notification No.16-70/2004-DD-III dated 18.01.2007 issued by Ministry of Social Justice and Empowerment, the post of Post Master is identified for OA, OL, LV and HH categories.

5. The matter was taken up u/s 59 of the Act with the Secretary, Department of Posts, New Delhi vide this Court's letter dated 27.01.2012.

6. The respondent vide letter dated 03.08.2012 and 10.12.2013 submitted that Superintendent of Post Office, Barabanki Division, Barabanki, U.P. issued notification calling for the applications for the only post of Gramin Dak Sevak Branch Postmaster, Lodhaura in account with Bahramghat Sub Post Office under No.A-133/EDA/Rectt. Dated 13.12.2010 specifying clearly the post as unreserved under para 8 thereof. 90 applicants including the complainant applied for the said post. In accordance with the prescribed method of engagement to GDS posts, Ms. Poonam Tiwari having the highest 81.85% marks in matriculation was selected to the post and she was engaged effective from 11.06.2011 after completion of due formalities vide SPOs, Barabanki Memo dated 03.06.2011. the complainant stood at serial no. 73 of the merit list securing 49.67% marks. A case was filed by representative of the said Shri Dhirender Singh namely Shri Udai Pratap Singh before the Court of CCPD which is registered under case No.725/1011/11-12. The Department also took up the issue of exemption of posts/establishment from the purview of Section 33 and 47 of PwD Act, 1995. As per the minutes of the Inter Departmental Committee dated 09.12.2009 circulated by Ministry of Social Justice & Empowerment, Joint Secretary (DoP&T) observed that GDS cannot perhaps be treated as Government employees. However, the outcome of the consultation with DoP&T is not possible to be commented upon at this juncture as the relevant file is not currently traceable despite best efforts.

7. A copy of the reply of the respondent dated 10.12.2013 was forwarded to; the complainant vide this Court's letter dated 01.03.2013 for submission of his comments/rejoinder.

8. The complainant vide letter dated 14.03.2013 submitted that the submissions made by the respondent to reject the complaint is against the constitution. He also submitted that since DG, Posts instructions in Annexure A-3 stated to give preference to persons with disabilities in recruitment to E.D. posts, Superintendent of Post Offices, Barabanki should have appointed the applicant to the post of Postmaster, Lodhaura on preferential basis over other candidates. Therefore, appointment of other candidate made by Superintendent of Post Offices Barabanki is against the rules and constitution and deserves to be quashed and also the complainant may be appointed to the post of Postmaster, Lodhaura as he is entitled to be appointed under the Rules and Constitution.

9. Upon considering the respondent's letters dated 03.08.2012 and 10.12.2013 and complainant's letter dated 14.03.2013, the hearing was scheduled on 28.08.2014.

10. During the hearing, the representative of the complainant, Shri Yamuna Singh submitted that the letter dated 22.04.1994 of the Department of Posts provides that the other things being equal, preferably the persons with disabilities will be appointed as GDS. The said letter also says that the representation of persons with disabilities is inadequate. The similar provision exists for persons belonging to the vertical categories, namely, SC, ST and OBC and Department of Posts should make efforts to ensure their adequate representation. He, therefore, contended that similar treatment should also be given to persons with disabilities as well. He further highlighted that if a person with disability can work as Postmaster, Postman and in Group C posts, the persons with disabilities can also work as GDS. The representative of the complainant further added that there are large number of vacancies of GDS in Basti Division, therefore, the complainant should be considered against one of the posts of GDS as it would not be appropriate to remove the employee who is already working in Lodhaura.

11. Reiterating his written submissions, the representative of the respondent emphasized that GDS are outside the regular civil posts and they are not considered as Government servants as held by the Hon'ble Supreme Court and DoP&T. However, the Department of Posts has sought clarification from Ministry of Social Justice & Empowerment and requested for exemption from the purview of Section 33 and 47 of the Persons with Disabilities Act. Ministry of Social Justice & Empowerment vide note dated 26.08.2014 recorded on the file of Department of Posts, have decided to refer the matter to this Court for opinion, following which they will communicate their decision to the Postal Department.

12. The arguments put forth by the representative of the complainant that equitable treatment should be given to persons with disabilities at par with vertical categories for the purposes of making efforts to ensure adequate representation stands to reason. In view of this, regardless of whether the GDS is treated as a regular civil post or not, the respondent should consider ensuring adequate representation of persons with disabilities in the post of GDS respecting the letter and spirit of the instructions contained in their letter dated 22.04.1994.

The matter stands disposed off

Sd/-

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