



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.276/1021/12-13

Dated:- 16.04.2014

In the matter of:

Shri G. Padmanabhan,
Examiner/HS-II,
T.No./P. No. 8231/60034
O.Q./O.F.
Heavy Vehicles Factory,
Avadi, Chennai-800 054.

..... Complainant

Versus

Heavy Vehicles Factory
(Through Senior General Manager),
Avadi,
Chennai-600 054.

..... Respondent

Date of hearing : 21.03.2014

Present :

1. Shri G. Padmanabhan, Complainant alongwith S/Shri P. Karikalan, President, K. Selvarasu, General Secretary, S. Mark, Joint Secretary, HVF P.H. Association.
2. S/Shri V. Rajendran, CM, HVF and K. Vijaya Dat, Jt. GM on behalf of the Respondent.

ORDER

The above named complainant, a person with 68% locomotor disability filed a complaint dated 20.11.2012 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding his promotion under PH quota.

2. The complainant submitted that he was appointed in Heavy Vehicles Factory, Avadi as Examiner/SS on 24.05.1999. As per 5th CPC recommendations, under 3 grade promotion structures, he was designated as Examiner/SK and promoted to Examiner/HS during November, 2006. As per 4 grade promotion structures of 6th CPC recommendations, he was then considered for H.S.-II with Grade Pay Rs.2400/- on his own seniority. He stated that if reservation for persons with disabilities were implemented in Heavy Vehicles Factory, Avadi, he would have been promoted to H.S.-I with Grade Pay of Rs.2800/-. He being the senior most person with disability in the trade of Examiner, had made a representation during June, 2011 to the management of Heavy Vehicles Factory, Avadi requesting them to consider his name for H.S.-I under PH quota but was not considered for the said post.

.....2/-

3. Section 47(2) of the Act, inter-alia, provides :-

“No promotion shall be denied to a person merely on the ground of his disability provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

4. DoP&T introduced reservation for persons with disabilities in promotion in Group ‘C’ and ‘D’ posts for the first time vide their O.M. No.36035/8/89-Estt.(SCT) dated 20.11.1989 as per which there will be reservation in promotion within Group ‘D’, Group ‘D’ to Group ‘C’ and within Group ‘C’ for three categories of disabilities, namely, Visually Handicapped (VH), Hearing Impaired (HH), and Orthopedically Handicapped (OH).

5. The matter was taken up under Section 59 of the Act with the respondent vide letter dated 31.01.2013.

6. Joint General Manager/Admin-II, Heavy Vehicles Factory, Avadi, Chennai vide letter No.0901/LB/RECT/2013 dated 27.03.2013 informed that the complainant was not denied any rightful promotion due to him on the ground of his disability. The normal promotion that was due to him was granted based on his seniority i.e. he had been promoted from Examiner Skilled to Examiner Highly Skilled-II. DoP&T’s O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 superseded all previous instructions issued on the subject so far. The O.M. states that reservation is limited only to identified posts. He further submitted that even though the post of Examiner is identified by Ministry of Social Justice & Empowerment, the issue is under examination/scrutiny by their Headquarters, since Examiners are required to be deployed both indoor and outdoor to undertake inspection works (Visual, Dimensional/Mechanical Properties) related with components/assemblies and its performance in Armour Battle tanks. Only after identification of the post by OFB can promotion in Examiner trade from persons with disabilities be given under PwD category.

7. A copy of reply dated 27.03.2013 received from the respondent was forwarded to the complainant vide this Court’s letter dated 12.04.2013 for his comments.

8. The complainant vide letter dated 25.04.2013 submitted that the statement of respondent that rightful promotion was not denied to him on the ground of disability is totally wrong as he got the promotion on his own seniority and not under reservation. Regarding DoP&T’s O.M. dated 29.12.2005, referred to above, the complainant submitted that after 29.12.2005, the DoP&T issued another O.M. vide No.36035/8/2003-Estt.(Res) dated 26.04.2006 mentioning therein that 100 point reservation roster should be started from the year 1996 and the implementation of reservation should be in right earnest.

9. Upon considering respondent’s letter dated 27.03.2013 and complainant’s letter dated 25.04.2013, a hearing was scheduled on 29.10.2013.

10. During the hearing, the complainant informed that being the Treasurer of their Association viz. H.V.F. Physically Challenged People's Welfare Association, he had filed an O.A. before the Central Administrative Tribunal, Madras Bench which was heard on 19.11.2013. The complainant was asked to confirm whether the relief sought by him in his instant complaint and the relief sought in the OA are the same. As the complainant did not reply satisfactorily, he was directed to file a copy of the said OA and a certificate to the effect that the reliefs sought in the instant complaint and in the OA are not the same. The complainant requested for a date of hearing in the month of February, 2014. The respondent was directed to submit a Certificate from the Liaison Officer certifying that the reservation roster for persons with disabilities has been maintained from the year 1996 as per the instructions of Department of Personnel & Training. On the request of the complainant, the case was fixed for hearing on 12.02.2014 which was rescheduled for 21.03.2014.

11. On 21.03.2014, the representative of the respondent submitted that they had faxed the Certificate dated 07.02.2014 to the effect that reservation roster for persons with disabilities has been maintained in Heavy Vehicles Factory, Avadi from the year 1996 as per the instructions of the Department of Personnel and Training vide O.M. No.36035/3/2004-Estt(Res) dated 29.12.2005 and O.M. No.36035/8/2003-Estt(Res) dated 26.04.2006. They also certified that all the identified and non-identified posts are taken into account for calculating 3% reservation for persons with disabilities and promotions are being given against PwD quota in all the identified posts issued by Ordnance Factory Board, Kolkata. He further submitted that although 8 types of posts of Examiner have been identified by Ministry of Social Justice & Empowerment as notified in 2007, the job description of none of those 9 categories of posts of Examiner matches with the nature of job of Examiner in Heavy Vehicles Factory, Avadi. The nature of job of the Examiner in the Heavy Vehicles Factory, Avadi is as under:-

“Examiners are required to be deployed both Indoor and Outdoor to undertake Inspection Works (Visual, Dimensional/Mechanical Properties) related with components/Assemblies and its performance in Armour Battle Tanks”.

Therefore, the matter was taken up with the Headquarters Ordnance Factory, Kolkata, who have since identified the post of Examiner trade in Heavy Vehicles Factory, Avadi vide letter No.039/44/A/A dated 26.09.2013 for persons with OL, BL, HH. The said decision has been implemented with prospective effect. Since the complainant had already been promoted to the post of Highly Skilled Grade-I (HSS-I) and the next promotion post is that of MCM which is a Group 'B' post, the benefit of identification of the post cannot be applied to him.

12. The representative of the respondent also submitted a written brief, which reads as under:-
“The post of Examiner did not appear in the list of identified post circulated vide OFB letter No. 039/44/A/A dated 05.03.2007. Shri Padmanabhan, Examiner, Physically Handicapped gave a representation vide letter dated 07.06.2011 stating that Ministry of Social Justice & Empowerment had identified Examiner post for PH. There are 9 types of Examiner found in the Annexure-II of Ministry of Social Justice & Empowerment notification No.16-70/2004/DD.III

dated 18.01.2007 with the nature of work performed, described therein. The nature of the work done by Examiner in HVF did not match the nature of work performed with any of the 9 Examiner mentioned in the annexure-II to the letter of Ministry of Social Justice & Empowerment. Shri Padmanabhan again submitted representation letter dated 30.09.2011 enclosing a copy of letter of Ministry of Social Justice & Empowerment received through RTI in which it has been stated that Examiner post is identified. The matter was taken up with the Ordnance Factory Board, forwarding the copy of the above letter of Ministry of Social Justice & Empowerment. In response, OFNB vide their letter dated 18.12.2012 asked for details of the nature of the work done by the Examiner in HVF for their further action in the matter. After obtaining the details of nature of work done by the Examiners from the Quality Wing of HVF dealing with the Examiners, the same was forwarded to OFB vide HVF letter dated 12.03.2013. OFB vide their letter dated 26.09.2013 intimated that the post of Examiner is an identified post for PH. As per the above referred OFB letter dated 26.09.2013, promotions within Group C posts were given under PH quota to the available eligible Examiners. Shri A. Arivuvoli has been benefited from this Order who was promoted from Skilled grade to High Skilled grade II w.e.f. 01.11.2013 under PH quota. The petitioner Shri Padmanabhan is already in Highly Skilled grade I and his next grade of promotion is MCM grade which is Group B post. As per DoP&T O.M. No.36035/A/89-Estt.(SCT) dated 20.11.1989 reservation under PH quota is applicable for promotion to Group C and Group D post only. Therefore, Shri Padmanabhan could not be considered for promotion to MCM grade under PH quota. In the event of his case being recommended by the Court that he is to be considered for promotion under PH quota from the date of eligibility from HS-II to HS-I with retrospective effect, then the department may have to review the date of promotion to HS-I.

However, it is submitted for information that on direction from this Court vide letter dated 01.07.2005, the promotion of Shri V. Ramesh Babu, a person with disability was considered for promotion. Shri Ramesh Babu and 5 other similar employees were given promotion with retrospective date vide Factory Order No.1681 dated 23.09.2005. Whereas local accounts did not approve the pay fixation of these employees stating that the promotion cannot be effected with retrospective date and submitted that according to Government of India, Department of Personnel & Training O.M. No.22011/8/87-Estt.(D) dated 09.04.1996 all promotions should be only with prospective effect. Therefore, the promotion given with retrospective date were cancelled vide Factory Order No.376 dated 14.02.2008. The employees went to Hon'ble CAT against cancellation of their promotions and plead to restore the promotions from retrospective date. CAT has dismissed the OA."

13. The complainant submitted a copy of O.A. No.865 of 2012 filed by Thin Oorthy Thozhilaga Maatru Thiran Udaiyor Nala Sangam vs. Union of India & Others before the Central Administrative Tribunal at Madras. The reliefs sought in the said O.A. are as under:-

- “A. Implement the 3% reservation based on the Office Memorandum issued by the 1st Respondent vide No.36035/8/89-Estt. (Sct) dated 20.11.1989 retrospectively from the date of issuance of above Office Memorandum.
- B. Implement 3% reservation in promotions under Group A and Group B posts.
- C. Implement equal method of promotions irrespective of availability of vacancy in their specific Department.
- D. Identify the posts suitable for the differently abled category as identified by the Ministry of Social Justice and Welfare.”

14. The complainant also submitted that the Order of Hon'ble CAT, Madras Bench is under challenged by 4 employees including the complainant and hence the matter is sub judice in the Madras High Court.

15. It is observed that the issue of promotion from retrospective date is sub judice before the Hon'ble Madras High Court. The implementation of 3% reservation in accordance with the O.M. No.36035/8/89-Estt.(SCT) dated 20.11.1989 of DoP&T from retrospective date is also pending before the Hon'ble CAT at Madras. The said OM of DoP&T pertains to reservation of 3% vacancies for persons with disabilities in promotion to Group 'C' and 'D' posts. If the applicants in the said OA succeed, the complainant would also be benefited. In view of the fact that both the issues are sub judice in the Madras High Court and in the Madras Bench of the Central Administrative Tribunal respectively, no direction by this Court can be given. Moreover, it would be in fitness of things for this Court to point out that in pursuance with this Court's directions, the post of Examiner already stands identified and promotions have been effected accordingly.

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

Sd/-

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