



सत्यमेव जयते

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.930/1011/12-13

Dated:- 07.05.2014

In the matter of:

Shri Kiran Kumar Kaul,
F/o Ravesh Kaul,
#2865/1,
Chandigarh Housing Board Flats,
Sector – 49D,
Chandigarh .

..... Complainant

Versus

Bharat Heavy Electricals Ltd.,
Through the Senior Manager (HR),
HR Department, Main Admin Building,
Heep, BHEL, Ranipur,
Haridwar – 249403 (Uttarakhand)

..... Respondent

Date of hearing : 20.03.2014

Present :

1. Shri Kiran Kumar Kaul. Complainant.
2. S/Shri Alok C. Kerketta, Sr. Manager, Praveen Naik, Sr. Executive, Mrs. Margaret Antony, AGM & A.K. Roy, A/W on behalf of Respondent.

O R D E R

Shri Kiran Kumar Kaul father of Shri Ravesh Kaul, who has 54% hearing impairment filed complaint dated 21.01.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding Engineer Trainee Recruitment 2012-13 in BHEL.

2. The complainant submitted that his son, Shri Ravesh Kaul applied for the post of Mechanical Engineering Graduate in BHEL under HH category. He appeared in GATE 2012 examination and was declared qualified under PH category. As per the information given to him under RTI Act, 57 posts (including 49 backlog) were kept for persons with hearing impairment and locomotor disability. After GATE 2012 results, BHEL shortlisted the candidates for next process of personal interview by applying cut off on GATE scores for various categories. He alleged that whereas the cut off score in case of Gen/OBC/SC/ST was fixed in a manner that the number of applicants getting shortlisted is 3

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times the number of posts available for them, but in case of candidates with disabilities the cut off was fixed by giving a relaxation of 20% on the cut off for the Gen/OBC/SC/ST category without ensuring 3 times the number of vacancies reserved for them. The cut off GATE score for general category was 800 and for candidates with disabilities it was 640.

3. As per him, there is no policy giving fair and equal representation to each category of disability indicated suitable for the advertised position of Engineering Trainees. Out of 09 candidates shortlisted by the BHEL, 08 were candidates with locomotor disability and just 01 candidate was with hearing impairment. BHEL in their reply to his RTI application informed him that no HH category candidate could get short listed for interview because none crossed the approved cut off GATE score.

4. As per para 22 of Department of Personnel and Training's OM No.36035/3/2004-Estt. (Res) dated 29.12.2005, if sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post/posts in question.

5. The matter was taken up under section 59 of the Act with the respondent vide letter dated 03.04.2013.

6. Manager (HR), Human Resource Department, Bharat Heavy Electricals Limited, Ranipur, Haridwar vide letter No.HR/RTX/ET2012/12100316 dated 24.05.2013 submitted that the recruitment of Engineer Trainees 2012-13 has already been completed in accordance with the advertised selection criteria which, inter-alia, indicates a relaxation of 20% in the cut-off marks in the respective categories for candidates with disabilities. Accordingly, the candidates have also joined the organization after due process of selection. Any action taken to further relax the standards for candidates with disabilities, for the selection of Engineer Trainees 2012-13, at this stage would amount to retrospectively amending the selection process after completion of the same. However, the advice of the Court for relaxing the standards further, in respect of candidates with disabilities, has already been taken into cognizance and it has been decided this year to have a relaxation of 50% in the cut-off marks in their respective categories for candidates with disabilities.

7. Copy of the reply of the respondent dated 24.05.2013 was sent to the complainant vide this Court's letter dated 19.06.2013 for his comments.

8. The complainant vide rejoinder dated 20.08.2013 submitted that BHEL authorities have conveyed that they are not giving 50% relaxation in the cut off marks for the applicants belonging to PwD category in the ET recruitments for the year 2013. Indeed the advertisement and recruitment details issued for the recruitment of ETs for the year 2013 in January, 2013 mentions about it, but the

process of offering this relaxation has been kept as same as previous years i.e. relaxation of 50% from the cut off marks decided for the parent category of Gen, OBC, SC & ST. He further submitted that as per the information furnished by the BHEL authorities under RTI the number of posts available for persons with disabilities in backlog happen to be 49 (OH and HH). If the current vacancies be added to it, numbers of posts available for persons with disabilities are bound to be increased to more than 50. The BHEL had advertised 500 vacancies in the discipline of Mechanical, Electrical and Electronics Engineering which was revised to 200 vacancies at the time of short listing. In the last para, he requested to instruct the BHEL authorities to give further relaxation in the ET-2013 cut offs for PwD category so that backlog posts for PwDs are filled without further delay.

9. The complainant vide letter dated 04.12.2013 has clarified that the basis of his complaint was neither 20% nor 50% relaxation. The basis of his complaint was that if a particular number of vacancies of Engineering Trainees are available for the persons with disabilities, why should not the process of relaxation be made in such a way so as to pave the way for getting those vacancies filled from amongst the duly eligible candidates with disabilities. Year after year, the vacancies are left unfilled and carried over endlessly or lapsed even when eligible candidates are rejected under the pretext of cut off. For 56 available vacancies of persons with disabilities, BHEL shortlisted only 57 candidates with disabilities whereas for the remaining 144 vacancies they shortlisted 624 candidates i.e. more than 4 candidates for each available vacancy.

10. Upon considering the replies dated 24.05.2013 and 11.11.2013 of the respondent and the complainant's rejoinder dated 20.08.2013 and 04.12.2013, a hearing was scheduled on 20.03.2014

11. Reiterating his written submissions, the complainant contended that the BEHL must streamline its recruitment process for persons with disabilities so that the process of recruitment should be in consistent with the number of vacancies available. No vacancy should be allowed to go alleging for reasons of illogical short listing criteria. Taking forward his submissions, the complainant cited a comparative analysis when he stated that his son Ravesh Kaul whose GATE score was 32 as against the minimum cut off score of GATE 32.33 (which is pre-requisite score for being called for oral interview for his vertical social category) did not get shortlisted for the interview although the corresponding cut off for physically handicapped ST category was fixed as below as 19 for the purpose of being called for interview. Bringing out this irony, the complainant stressed the need for averting the situation of this ilk in an attempt to secure a fish pool for all candidates with disabilities on a uniform scale irrespective of their vertical social category. The complainant further added that the ratio of 1:3 should have been uniformly followed in respect of candidates with disabilities as well as was done in the case of candidates belonging to other categories. He, however, stated that in the event this not being possible for want of adequate number of candidates with disabilities, then all the candidates with disabilities should be called for interview without any cut off percentage in the GATE marks. He highlighted that cut off marks are prescribed as a process of elimination and that the cut off marks do not form part of the eligibility criteria.

12. Elaborating the written submissions, the Ld. Counsel for the respondent submitted that the respondent organization is a public sector undertaking and is bound by the Government's directives and policy as well as by the law laid down by the Apex Court on the issue of reservation. They further contended that they have come out with an advertisement for the year 2012-13 and 2013-14 respectively for recruitment of Engineering Trainees with clear guidelines mentioned in the respective advertisement on the process of selection. They further stated that the complainant was well aware of the advertisement process prior to applying for the post and has filed the present complaint only after the complainant has found himself to be below that percentage cut off required for being called him for the interview. It is also submitted that in the advertisement for the year 2012-13, in addition to the Central Government guidelines, the respondent company has granted the relaxation in the age by 10 years for the general category, 13 years for OBC and 15 years for ST category in case of PH +candidates. In the advertisement of 2012-13 and after relaxation of 20% in the cut off marks so additionally provided for in each category for the PH candidates. Looking into the fact that the respondent was unable to observe the required number of candidates in the year 2012-13, the respondent relaxed the percentage by 50% as against 20% in the previous year so that the requisite number could be attained and accommodated. In the year 2013-14, the original vacancies were for 500 candidates which subsequently had to be reduced to 200 owing to the prevailing market conditions. This has to be done as a matter of policy. The submissions made by the complainant comparing a general candidate with that of ST candidate, would amount to comparing amongst incomparable because it would violate the basic principle of reservation. The respondent submits that it has complied with the Government directives with regard to reservation prescribed in cases of PH candidates.

13. In the light of the foregoing, it would be in the fitness of things for this Court to observe that while prima facie there appears to be no violation of any norm, nothing could stop the respondent, among other things, from further relaxing the minimum cut off criteria (relating to GATE Score), more particularly, in the face of the fact that the complainant's son Shri Ravesh Kaul was not a short listed for oral interview despite his GATE score 32 against the prescribed GATE score of 32.33 in his vertical social category. The Office Memorandum of DoP&T dated 29.12.2005 in general and Para 22 of the said O.M. in particular, is a case in point. The said O.M. read together with the relevant provisions of PwD Act, 1995 makes it obligatory on the part of every establishment to ensure that the purpose of Section 33 is not defeated.

14. It may be noted here that the minimum cut off criteria was relaxed by 20% in respect of the recruitment process relating to the year 2012-13 whereas the said criteria was further relaxed so as to make it 50% in respect of the recruitment process of the year 2013-14. therefore, there perhaps, is further relaxation to ensure that the quota meant for persons with disabilities goes to such persons. As of now, it appears that the total backlog of vacancies with the respondent organization in relation to persons with disabilities stands at 33 as the said organization has, in the meantime, recruited 24 persons out of which 23 have already joined and one has declined the offer. The respondent organization, however, could not give the break-up of vertical social categories of persons of disabilities so appointed nor could they immediately furnish the total number of candidates with

disabilities. This explains why it is out of for this Court to ascertain as to whether the ratio of 1:3 in the context of short listing candidates for oral interview could be followed.

15. Moreover, it is also pertinent to observe that since horizontality of reservation of employees adjusting the selected persons against the vertical social category to which he/she belongs, this Court is not influenced by the argument put forth by the respondent as a counter to the ironical situation cited by the complainant wherein a person with disability with GATE score of 32 is disqualified for being short listed for oral interview although a person with disability belonging to ST category and having a GATE score of 19.83 is qualified for similar short listing. One possible reason while the Hon'ble Supreme Court declared reservation for persons with disabilities as horizontal reservation could perhaps to be ensured that the total number of vacancies reserved does not exceed 50%. However, in another judgment (SLP No. 7541 of 2009 titled as Union of India & Anr. Vs. National Federation of Blind & Ors.), the Hon'ble Supreme Court has, among other things, stated as follows:-

“36. Admittedly, the Act is a social legislation enacted for the benefit of persons with disabilities and its provisions must be interpreted in order to fulfill its objective. Besides, it is a settled rule of interpretation that if the language of a statutory provision is unambiguous, it has to be interpreted according to the plain meaning of the said statutory provision. In the present case, the plain and unambiguous meaning of Section 33 is that every appropriate Government has to appoint a minimum of 3% vacancies in an establishment out of which 1% each shall be reserved for persons suffering from blindness and low vision, persons suffering from hearing impairment and persons suffering from locomotor or cerebral palsy.”

16. It is, therefore, abundantly clear that all out efforts need to be made to ensure that persons with disabilities get the benefit of reservation of not less than 3% as provided for in section 33 of the Persons with Disabilities Act and that no backlog of vacancies is allowed to be accumulated. The respondent, therefore, is hereby advised to appropriately modify their policies from the time of the next round of recruitment.

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

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