



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.262/1021/12-13

Dated:-05.09.2014

In the matter of:

Shri Kumar Kartikey Awasthi,
97/16, BARC Colony,
Boisar, Post – TAPP,
Taluka – Palghar, Distt. Thane,
Maharashtra – 401 504.

..... Complainant

Versus

Bhabha Atomic Research Centre (BARC),
(Through the Director),
BARC, Central Complex,
BARC Trombay,
Mumbai – 400 085.

..... Respondent

Date of hearing : 06.06.2014

Present :

1. Shri Kumar Kartikey Awasthi, Complainant. on behalf of Respondent.
2. Ms. Avtar Kaur Dhingra, Advocate with Shri T.G. Raveendran, Administrative Officer, on behalf of the Respondent.

ORDER

The above named complainant, a person with 40% locomotor disability filed a complaint dated 30.07.2012 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding giving post facto approval of additional qualifications acquired by the complainant..

2. Briefly, following are the facts of the case:-

The complainant, Shri Kumar Kartikey Awasthi happens to be a person with locomotor disability (40%). He is working as Scientific Assistant 'B' at Bhabha Atomic Research Centre (BARC), Tarapur. He jointed his service in 2003 and applied for prior permission for doing M.Sc (Physics) in the year 2004 which was granted by the respondent vide their note No.A3F/NG/924/424/2004/317 dated 04.02.2004. Subsequently, in November, 2004, the complainant acquired locomotor disability (40%) in the wake of an accident. As a result of the disability, his ring finger and partial middle finger was amputated which resulted in restriction of movement of the right hand and during that period he was unable to right for long hours. This explains why he decided to pursue his M.Sc in Computer

Science in 2007 and according to him, he submitted a fresh application dated 01.10.2007 for permission to pursue M.Sc in Computer Science, receipt of which the respondent denied. The applicant alleged that the respondent did not acknowledge the receipt of his application in writing. Vide his application dated 03.02.2009, the complainant in the meantime had completed his M.Sc in Computer Science in 2008, applied for permission and for recognition of his additional qualifications on the plea that he was under the impression that the permission granted to him for pursuing M.Sc in Physics was enough and that was not required to seek fresh permission. Vide letter No. BARC(T)/924/424/2009/3978 dated 26.03.2009, the respondent stated as under:-

“Shri K.K. Awasthi, SA/C, AFFF BARC (T) may please refer to his letter dated 03.02.2009 regarding acquisition of additional qualification in M.Sc (Computer Science) in place of M.Sc (Physics).

It is informed that the competent Authority has not acceded to his request to take note of the acquisition of the said qualification for which no permission was granted and ordered not to consider qualification in M.Sc (Computer Science) for official purpose.”

3. Thus, while the complainant pressed for grant of ex-post facto permission, the respondent refused to do so alleging violation of CCS (Conduct) Rules, which state as follows:-

“Government of India decisions:

(1) Joining of Educational Institutions by Government servants outside normal office hours.

It has been brought to the notice of the Ministry on behalf of Government servants belonging to Scheduled Castes/Scheduled Tribes, that certain Ministries/Departments do not permit members of their staff belonging to these communities to join educational institutions outside the normal office hours.

2. As the Ministries are aware, it was proposed in this Ministry's OM No. 25/27/52-Estt. dated the 3rd May, 1952 (not reproduced) to issue general instructions on the subject. The replies received to that OM however revealed that while some Departments found that efficiency was suffering on account of Government servants attending a regular course of study for University Degree even outside office hours, a great majority of the Ministries was able to permit their employees to pursue such studies without detriment to official duties and that no serious problems had been created in most of the Departments by government servants joining educational institutions. It was, therefore, not considered necessary to issue any specific instructions on the subject. Ordinarily there can be no objection to the pursuit of knowledge by Government servants in their leisure hours. But this must be subject to the condition that such pursuit does in no way detract from their efficiency. Wherever found necessary, the administrative authorities may require that Government servants under their control should take prior permission before joining educational institutions or courses of studies for University Degrees as the joining of educational institutions involves advance commitment about attendance at specific hours and absence from duty during periods of examinations. Ordinarily, permission is to be granted but with a view to summarily dealing with cases where it is noticed that the Government servant has been neglecting his duties for the sake of his studies, a condition may be attached saying that the permission may be withdrawn at any moment without assigning any reason. This will, of course, be without

prejudice to any other departmental action being taken where mere withdrawal of the permission is not considered adequate.

3. *Government servants belonging to the Scheduled Castes/Scheduled Tribes may be allowed to take full advantage of the educational facilities subject to the policy stated above.*

4. *These instructions have been issued with the concurrence of the Comptroller and Auditor General in so far as persons serving under him are concerned.*

(MHA OM No.130/54-Ests.(A), dated 26.02.1955.)”

4. Reiterating his written submissions, the complainant contended that one Shri Mukesh Chaudhary who works in the same Division was granted ex-post facto permission for pursuing his B.Sc studies when he was working as Technician-C. Besides, the complainant also submitted that the M.Sc Computer Science is recognized as an additional qualification for the purpose of promotion vide Circular No.23/3(2)/2006-CCS/690 dated 20.10.2006 which states as follows:-

“Department of Atomic Energy has, from its inception, followed a policy of recruitment and promotion of officers in scientific and technical grades based on the need to develop a cadre of competent scientists and technologists.

2. *The said policy for scientific and technical personnel in the Department of Atomic Energy (DAE) has been a primary factor in the success of India’s atomic energy programme and sustaining excellence in science and technology in the country. This scheme which was first pioneered by DAE has withstood the test of time and its success is proven by the fact that over the years several other scientific departments of the Government of India have adopted similar schemes for their S&T personnel. With the experience gained in successful implementation of the aforesaid policy for more than four decades it was felt necessary to document the relevant aspect of the system in the form of an open document for use whenever felt necessary.*

3. *Towards this end, a Committee was constituted by this Department vide Office Order dated July 24, 2003 to document the relevant aspect of the system. The Committee after a series of meetings and detailed deliberations has prepared a comprehensive document on the subject. This document which was discussed in the Trombay Council in the presence of Heads of constituent units of DAE/their representatives, was further examined in this Department. Accordingly, a compendium which is in the nature of a consolidated document on the norms/procedures for recruitment and promotion of scientific and technical personnel is enclosed for dealing with the appointment/promotion cases in the department and its constituent units, for information and guidance. This will also be available on the DAE website.*

4. *This is only a compilation of various orders issued in the past and therefore does not supersede the earlier orders.*

5. *This issues with the approval of Secretary, DAE.”*

5. Reiterating her written submissions, the representative of the respondent stated that Shri M. Chaudhary being a new intent to the Department was not aware. He had also pursued the course even before joining the course while applying to the post. However, the complainant being already in employment of the Centre and having obtained approval for M.Sc (Physics) was very much aware of the requirement of prior approval. The complainant never obtained the approval of the Competent Authority for acquiring additional qualifications. Normally, the course of study i.e. Computer Science is not relevant to the field of work of the Division.

6. After hearing out both the parties and after meticulous perusal of the relevant records, this Court feels that while prima facie, there may have been unintentional aberration on the part of the complainant in the matter of relevant Conduct Rules, it would in keeping with the established norms of Natural Justice to keep in mind the fact that the complainant was not similarly placed with other employees on account of the unforeseen onset of disability in November, 2004 in the wake of an accident badly impacting and reducing his writing speed. It is indeed heartening that undeterred by the onset of the disability, the complainant went ahead of pursuing his M.Sc. It is also a fact that he did obtain prior permission for pursuing his M.Sc in Physics which eventually he could not do on account of onset of disability and, therefore, he switched over to M.Sc. (Computer Science) thinking that no fresh permission perhaps be required.

7. In the above view of the matter, this Court feels inclined to observe that it would only be fair and reasonable on the part of the respondent including the Trombay Council to reconsider the question of grant ex-post facto permission keeping in mind the extraordinary situation in which the complainant landed up and also keeping in mind the instance of Mukesh Chaudhary and the norms laid down in Circular dated 22.05.2009 issued to TC & TSC within a reasonable time frame under intimation to the complainant and this Court and if necessary, the Trombay Council (TC) and the Trombay Scientific Committee (TSC) may afford an opportunity to the complainant of being heard in person.

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

Sd/-

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