



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.205/1021/11-12

Dated:-21-08-2014

In the matter of:

Shri N.C. Das,
Secretary,
Paradip Port Trust SC & ST Employees Welfare Association,
Qtr. No.MC/18, Madhuban,
Paradip Port,
Distt. Jagatsinghpur,
Odisha – 754 142.

..... Complainant

Versus

Paradip Port Trust,
(Thru Secretary),
Paradip Port,
Odisha – 754 142.

.... Respondent

Date of hearing : 22.12.2011, 21.02.2014, 18.07.2014

Present :

22.12.2011

1. Shri Anchal Das, Ex. MP, President and Shri Narayan Ch. Das, Secretary, PPT SC&ST's Employees Welfare Association for Complainant.
2. Shri B.C. Sahu, Dy. Secretary, PPT for Respondent.

21.02.2014

1. Shri N.C. Das, Complainant.
2. Shri Arjun Kumar Samal, Deputy Secretary on behalf of Respondent.

18.07.2014

1. Shri N.C. Das, complainant with Shri Anchal Das, Ex-M.P., President, PPTSC & ST.
2. Shri Arjuna Kumar Samal, Deputy Secretary on behalf of Respondent.

ORDER

The above named complainant, Secretary, Paradip Port Trust SC & ST Employees Welfare Association, Ordisha filed a complaint dated 12.09.2011 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding discrepancy and inequalities in implementation of reservation policy in Paradip Port Trust.

2. It was submitted that as per reservation roster for promotion to the post of Stenographer Gr. I, Group 'C' post, the first point is reserved for persons with disabilities and was not filled up. The application of Shri J. Panjigrahi, a person with 60% disability, who was a Stenographer, Grade-II was not considered for promotion to the post of Stenographer Grade-I since August, 2009.

3. The respondent vide letter dated 18.07.2011 in case No. 170/1021/10-11, which was initially tagged with this case, inter-alia, had submitted that Paradip Port Trust noted the suggestion of the Aid Centre and the Paradip Port Trust will take necessary care for celebration of International Disability Day on 3rd December every year. It has further been submitted that in accordance with the guidelines, the Paradip Port Trust has identified some of the posts in the categories of class I, II, III & IV and appointed 08 physically handicapped persons in the post of Assistant Engineer (Electrical), Assistant Engineer (Civil), Pharmacist, Assistant Teacher, Junior Assistant, Peon-cum-Chair Recaner. In accordance with the reservation policy issued by Government of India, 3% reservation for physically handicapped employees for promotion was being implemented. Some of the physically handicapped employees, available in the feeder grade, were promoted i.e. to the posts of Private Secretary to Chairman (Class-I post), Stenographer Grade III, Head Assistant and Assistant. Even though the Port Trust had not maintained separate roster register for the physically disabled persons but due care is being taken to identify some posts for PH persons and appoint them keeping in view the working environment and promote the incumbents, where the handicapped personnel were available in the feeder grade. Action had been taken to open a separate Roster Register for identified posts. Paradip Port Trust had appointed two Senior Officers of the Port Trust from the category of SC and ST to look after the reservation policy. Prior to filling up vacant post, SC/ST clearance was taken in each case. The said case No. 170/1021/10-11 was closed vide letter dated 27.03.2012 and the respondent was advised to take action in accordance with the provision of the Act and DoP&T's O.M. No. 36035/3/2004-Estt.(Res.) dated 29.12.2005.

4. Upon considering the reply dated 18.07.2011 of the respondent, the case was scheduled for hearing on 22.12.2011 alongwith Case No.170/1021/10-11.

5. During the hearing on 22.12.2011, Shri Anchal Das and Shri N.C. Das, the complainants appeared and submitted that primarily, they had two issues, namely, (i) Shri J. Panigraph, who is a person with more than 60% locomotor disability should be promoted to the post of Stenographer, Grade-I against the reserved quota for persons with disabilities; and (ii) the two Liaison Officers for SC/ST Cell who are also working as the Liaison Officers for persons with disabilities should be strengthened so that they can devote sufficient time for monitoring the implementation of reservation for persons with disabilities.

6. The representative of the respondent stated that Paradip Port Trust (PPT) did not issue any separate list of identified posts nor it deviated from the list of the identified posts issued by Ministry of Social Justice & Empowerment in 2007. As regards implementation of the instructions of DoP&T, he submitted that PPT was implementing the instructions both in direct recruitment as

well as in promotion. As per the information submitted by PPT, out of the 08 persons appointed in identified Group 'A' posts, none is a person with disability. Out of 35 vacancies filled in Group – 'B' posts, 03 were persons with disabilities. In Group 'C' posts, out of 542 appointments, none was a person with disabilities. In Group 'D' posts, one person with visual impairment was appointed against 24 number of appointments. Thus, as per the available information, there is backlog in Group 'A', 'B' and 'C' posts. However, the exact number of backlog reserved vacancies would have to be worked out by the respondent in accordance with the procedure prescribed by DoP&T. It was not clear whether the 04 persons with disabilities (03 OH in Group 'B' and 01 VH in Group 'D') appointed from 1996 to 31.12.2008, were appointed by direct recruitment or by promotion. Shri Sahu, however, undertook to submit the information in the prescribed format within a week.

7. As regards promotion of Shri J. Panigrahi, the representative of the respondent submitted that Shri Panigrahi was appointed in Group 'D' post on compassionate ground. He was promoted to the post of LDC and thereafter he was appointed as Stenographer, Grade-III on 22.09.1999 against PH quota through SSC on relaxed standards. Thereafter, he was promoted to the post of Stenographer Grade-II, a Group 'C' post in his own turn on 14.10.2005. There was no vacancy of Stenographer, Grade-II between 2002 and 2005. So, Shri Panigrahi could not have been promoted before 2005. Thus, he was not affected adversely due to not being promoted against a reserved vacancy. As per the Recruitment Rules for promotion to the post of Stenographer, Grade-I, a Stenographer, Grade-II with 03 years experience is eligible for consideration. Moreover, since it is a single post, reservation is not applicable. He submitted that PPT will prepare the rosters as per DoP&T's instructions and work out the backlog reservation, if any.

8. After hearing out the parties, the respondent was advised to consider Shri J. Panigrahi for promotion to the post of Stenographer Gr.I, if there was any reserved backlog vacancy for persons with disabilities in Group 'C' promotion posts within 60 days from the date of receipt of the record of proceedings, as he had become eligible in the year 2008. Since the reservation rosters are to be prepared for all the posts in a Group, non-applicability of reservation because of the Stenographer, Grade-I being a single post, would not be relevant. Moreover, there are no such instructions in respect of persons with disabilities. The respondent was also advised to intimate the backlog reservation in each Group (direct recruitment as well as promotion as applicable) along with the information for conducting Special Recruitment Drive for filling up the backlog reserved vacancies.

9. The respondent vide letter No.AD/RSC-22/60/2011(Pt.)/2515 dated 24.05.2012 submitted that Sri J. Panigrahi, Stenographer Gr.II was promoted to the post of Stenographer Gr.I reserved for PH in the scale of Rs.13,600-32,400 with usual IDA and other allowances as sanctioned by the Board from time to time vide Admn. Deptt. Office Order No. AD/RSC-22-60/2011/2060 dated 30.04.12, a copy of which was enclosed for ready reference. Thereafter, the case was scheduled for hearing on 21.02.2014.

10. During the hearing on 21.02.2014, the representative of the respondent reiterated his written submissions and stated that the process to compute the reserved vacancies for persons with disabilities was under way, which was to be done by the complainant, who was the dealing assistant for the subject.

11. The complainant stated that he had already calculated the vacancies and submitted to Port Authorities. As per him, there were backlog vacancies in promotion in Group 'C' posts since November, 1989 i.e. the year when reservation for persons with disabilities in promotion to Group 'C' and 'D' posts was introduced by Department of Personnel & Training. Unless the number of vacancies filled by promotion in Group 'C' posts since November, 1989 to the date Shri J. Panigrahi became eligible for promotion to the post of Stenographer Grade-I were known, it could not be conclusively ascertained whether there was indeed a reserved vacancy for persons with disabilities in Stenographer Grade-I. The respondent was, therefore, directed to submit the information in the prescribed proforma in respect of Stenographer Grade-I from November, 1989 to December, 2005 and from January, 2006 in respect of all the Group 'C' posts taken together. The information from 2006 was required in respect of all the Group 'C' posts as Department of Personnel & Training vide their O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 had decided that the reservation for persons with disabilities should be computed on the basis of total number of vacancies occurring in all 'C' and 'D' posts and separate 100 point Reservation Rosters should be maintained for the posts filled by direct recruitment and those filled by promotion.

12. The respondent vide letter No.AD/RSC-22/60/2012(Vol-II)/1685 dated 29.04.2014 enclosed the statement showing the vacancies that were filled up in the cadre of Steno Gr.-I from 1989 to 2005 and 2006-2009. The respondent further submitted that as the sanctioned strength of the Group 'C'/Class-III posts have been reduced as per implementation of Govt. Order for abolition of the posts, it was difficult to furnish the actual sanctioned strength of the Class-III posts since 1989-2005 and 2006 to December, 2013. The statement shows the backlog vacancies as 53 which had remained unfilled due to non-availability of candidates with disabilities in the feeder grades.

13. After considering the respondent's letter dated 29.04.2014 and no reply from the complainant, a hearing was scheduled on 18.07.2014.

14. During the hearing on 18.07.2014, It was observed from the information submitted by the respondent vide letter dated 29.04.2014 that until the year 2000, there were 3 sanctioned posts of Stenographer Gr.I (CL-III) and after 2001, a single post remained after upgradation of other 2 posts of P.A. Shri J. Panigrahi was appointed as Stenographer Gr. III on 22.09.1999 and was promoted to the post of Stenographer Gr.-II on 14.10.2005 as recorded in para 10 of the Record of Proceedings dated 30.12.2011. There was no vacancy of Stenographer Gr.II between the year 2002 and 2005. As per the Recruitment Rules for promotion to the post of Stenographer Gr.I, a

Stenographer Gr.II with 3 years experience is eligible for consideration. Shri Panigrahi became eligible for promotion to the post of Stenographer Gr.I on 14.10.2008. The representative of the respondent, therefore, contended that Shri Panigrahi could not have been promoted before 30.04.2011 when he was promoted on the directions of this Court clarifying that reservation could be given in the vacancy against a single post also. He further submitted that although the post of Stenographer Gr.I fell vacant on 19.08.2009, the promotion to the post could not be considered as the SC & ST Cell advised that the post may be filled up by direct recruitment by appointing a person to the Scheduled Castes category as quickly as possible. To this effect, he produced a copy of the note written by Liaison Officer for SC & ST Cell dated 25.09.2009. He further added that giving notional promotion retrospectively would amount to administrative impropriety. The said post fell within the SC quota and the dispute continued till December, 2011 when this Court vide its Record of Proceedings dated 30.12.2011 clarified that Reservation Rosters were to be prepared for all the posts in all the groups including for a single post. Since the clarity in respect of extending the benefit of reservation in promotion involving a single post came about only in December, 2011, the respondent could have filled up the vacancy of Stenographer Grade-I only when Shri Panigrahi was promoted.

15. The representative of the complainant on the other hand stated that since there is only one person with disability to be considered against the lone post of Stenographer Gr.I, his promotion from 2009 would not affect any employee adversely. Therefore, he should be promoted retrospectively on notional basis to the grade of Stenographer Gr.I from 2009 when the vacancy became available as Shri Panigrahi became eligible in the year 2008 itself. This would benefit him in his next promotion after 4 years i.e. in the year 2013 again on notional basis. They further submitted that since there is no reservation for SC/ST in single post, Shri Panigrahi can be considered from retrospective date on notional basis from 19.08.2009.

16. In view of the fact that there were no clear instructions/guidelines whether there can be reservation for persons with disabilities in a single post vacancy until this Court clarified and directed vide Record of Proceedings dated 30.12.2011 to consider the complainant against a single post vacancy, it would be appropriate for the respondent to obtain legal opinion in respect of this specific point, i.e. whether in the circumstances, Shri Panigrahi could be given notional promotion w.e.f. 19.08.2009 within six weeks and if the legal advice is in favour of the complainant, the respondent is directed to take immediate steps to consider the complainant for promotion on notional basis to the post of Stenographer Gr.I with retrospective effect and for further promotion, if any, to which he may be entitled to.

17. The matter is disposed off.

Sd/-

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

