



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.128/1013/12-13

Dated:- 13.06.2014

In the matter of:

Shri Naresh Chandra,
S/o Shri Jagannath Singh,
RZF-774/24, Raj Nagar Part II,
Palam Colony, New Delhi.

..... Complainant

Versus

Commander Works Engineer (AF),
Through the Commander,
Headquarters,
Palam, Delhi Cantt. - 110010

..... Respondent

Date of hearing : 09.01.2014, 06.05.2014, 23.05.2014

Present :

09.01.2014

1. Shri Naresh Chandra, Complainant.
2. Col. Y.S. Bhadorya on behalf of the Respondent.

06.05.2014

1. Shri Naresh Chandra, Complainant.
2. None on behalf of the Respondent.

23.05.2014

1. Shri Naresh Chandra, Complainant.
2. Shri Balkar Singh, Offg. A.O. on behalf of the Respondent.

ORDER

The above named complainant with 60% visual impairment filed a complaint dated 27.02.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding unfair selection to the post of Mate SSK by HQ-CWE, AF Palam.

2. The complainant submitted that he appeared in the written examination conducted by HQ, CWE, AF Palam for the post of Mate SSK under visually impaired quota and after qualifying the written test, he appeared in the interview on 24.11.2012. There were 106 posts and as per Section 33 of the Act, 03 posts were to be reserved for persons with disabilities. He was the only candidate under visual impairment category who appeared for the interview but was not selected and the quota was filled by locomotor disability as per his knowledge.

.....2/-

3. As per Notification No.16-70/2004-DD-III dated 15.03.2007 issued by Ministry of Social Justice and Empowerment the post of Mate is identified for persons with disabilities (OL, HH & LV).

4. Section 33 of the 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;

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.

5. The matter was taken up under section 59 of the Act with the Commander Headquarters, Commander Works Engineer (AF), Palam, Delhi Cantt. vide letter dated 11.04.2013.

6. The respondent vide letter dated 03.05.2013 submitted that Shri Naresh Chandra was not the only candidate under VH category who appeared for interview. There were 02 VH candidates out of total 19 candidates called for interview under persons with disability category and the other candidate Shri Jitender scored marks more than Shri Naresh Chandra. As such, Shri Naresh Chandra was otherwise also not eligible for selection. He further submitted that as per Standard Operating Procedure for recruitment of Group ‘C’ and ‘D’ employees issued vide Engineer-in-Chief’s Branch, Army HQs, New Delhi’s letter dated 30.05.1997 issued list of jobs suitable for blind and partially blind category which is as under:-

Blinds:

- 1. Cane weaving.
- 2. Chair caning.
- 3. Drilling.
- 4. Lathe Operator.
- 5. Digging.
- 6. Levelling.
- 7. Manuring.
- 8. Sowing seeds
- 9. Watering.
- 10. Charpoy Stringer.
- 11. Lift Attendant.
- 12. Binding.
- 13. Copier Machine Operator.
- 14. Photostat Machine Operator.

Partially Blinds :

- 1. Despatch Clerk (T)
- 2. Gestetner Operator (T&A)

3. Peon.
4. Sweeper
5. Liftman (with Digital Controls)
6. Driller

The respondent recruited Mate (SSK) in Electrician, Refg. Mechanic, Fitter General Mechanic, Carpenter, Mason, Pipe Fitter & Painter. None of the trades for which recruitment was made is identified for persons with blindness and low vision as per the above mentioned Standard Operating Procedure. The respondent further submitted that out of the total vacancies, horizontal reservation was done @ 3% for PH category and 10% for Ex-Servicemen category as per laid down policy.

7. A copy of the reply 03-05-2013 received from the complainant was forwarded to the complainant vide letter dated 24.05.2013.

8. The complainant vide rejoinder dated 25.10.2013 submitted that as per recruitment policy, 1% low vision person were to be recruited but the respondent did not recruit any low vision person. The respondent should, therefore, be directed to appoint him as Rajmistri under low vision category.

9. Upon considering the reply dated 03.05.2013 of the respondent and the complainant's rejoinder dated 25.10.2013, a hearing was schemed on 09.01.2014.

10. During the hearing, reiterating his written submissions, the complainant alleged that the respondent CWE, Air Force, Palam, Delhi has failed to adhere to the provisions of Section 32 and 33 of the Act since no person with low vision has been appointed as Mate against 106 vacancies, of which 2 persons with low vision should have been appointed.

11. Taking forward their written submissions, the representative of the respondent highlighted that the post of Mate (semi skilled) is not identified going by the Standard Operating Procedure (SOP) issued by the Engineer-in-Chief, Army Headquarters, New Delhi. Hence, the respondent contended that there was no violation of any provision of the Act.

12. In response to a query by this Court in respect of the contents of the corresponding advertisement, the representative of the respondent stated that this will have to be cross checked. The queries of this Court included question around whether the corresponding advertisement was in conformity with the relevant guidelines issued by the DoP&T, Government of India and whether it was specifically and distinctly indicated in the corresponding advertisement as to which post was advertised for which category/categories of disability. In response to another query, the representative of the respondent stated that 200 point Roster instead of 100 point Roster as envisaged by the relevant guidelines of DoP&T dated 29.12.2005 was being maintained in respect of persons with disabilities. The representative of the respondent further clarified that another candidate with low vision, Shri Jitender who secured higher marks than the complainant, was also not appointed.

13. It was observed that a look at the corresponding advertisement as well as the Roster being maintained by the respondent in respect of the persons with disabilities was necessary. It appears there could also be violation of the Section 36 of the Act as the reserved vacancy apparently meant for person with low vision has been filled by a person with locomotor disability. The respondent was directed as follows:-

- (i) To submit copy of the corresponding advertisement.
- (ii) To submit copy of roster maintained in respect of persons with disabilities.
- (iii) Detail of posts filled up in the establishment from 01.01.1996 in Group 'C' and 'D' as per the enclosed proforma.
- (iv) To clarify the level at which the roster is maintained.
- (v) To clarify whether the SOP was drafted covering the instructions contained in DoP&T's O.M. No.36035/3/2004-Esttt(Res) dated 29.12.2005 which supersedes all previous instructions on reservation for the persons with disabilities so far.

14. As the information was not received from the respondent, despite lapse of sufficient time, a hearing was scheduled on 06.05.2014.

15. On the date of hearing on 06.05.2014, none appeared on behalf of the respondent nor any intimation was received about their inability to attend the hearing despite the fact that the notice of hearing was sent on 10.03.2014 by speed post. Though the respondent had responded to the record of proceeding dated 20.01.2014 of this Court vide letter No.1267/Rect/11-12/514/EIO dated 22.02.2014 yet the same was incomplete and ambiguous. The respondent was, therefore, advised to submit a fresh reply alongwith a copy of 100 point roster.

16. The matter will be next heard on 23.05.2014 when the complainant asserted that he was deprived of his entitlement for appointment to the post of Mason, Carpenter or Fitter General. He contended that the respondent was supposed to reserve four vacancies for persons with disabilities. As per the Model Roster prescribed by DoP&T, the first reserved vacancy should be given to persons with blindness and low vision. Therefore, two vacancies should have been reserved for persons with low vision in this case and one vacancy each for persons with locomtor disability and hearing disability. He reiterated that the vacancies for persons with low vision were diverted to persons with locomotor disability in contravention of section 36 of the Act.

17. The representative of the respondent submitted a copy of the advertisement for the post of Mazdoor for the year 2000 and Mate (SSK) for the year 2013, the details of posts and vacancies filled since 1996 among other information.

18. It is observed that a separate 100% reservation roster for persons with disabilities is not being maintained by the respondent. In the advertisement published in Employment News dated 31st December, 2011 – 6th January, 2012, the respondent advertised the posts of Mate (Electrician), Mate (Refrigeration Mechanic), Mate (Carpenter), Mate (Mason), Mate (Fitter General Mechanic), Mate (Pipe Fitter) and Mate (Painter). The post of Mate (Carpenter), Mate (Mason) and Mate (Fitter

General) have been identified for persons with low vision. The respondent advertised 6 vacancies of Mate (Carpenter) and 3 vacancies of Mate (Mason). Since 106 vacancies were advertised, the respondent was required to reserve 4 vacancies for persons with disabilities against point no. 1, 34 and 67 of cycle no.1 and against point no. 1 of cycle-II of reservation roster. However, the respondent appointed two persons with locomotor disability and one person with hearing impairment. No person with low vision was appointed though the complainant and at least one more person with low vision were called for interview. While both the candidates with low vision could have been appointed, remains a question, it is amply clear that at least one of them could have been appointed. It is also observed that the respondent did not specify the number of vacancies to be reserved for each of sub category of disability as stipulated in para 25 of DoP&T's O.M. No. 36035/3/2004-Estt.(Res.) dated 29.12.2005. The advertisement also mentions that there would be 3% horizontal reservation for PH category with provision for inter-se exchange of vacancies. It has, however, not been clarified either in the advertisement or in the submissions of the respondent whether the provision of section 36 of Act for carry forward of the reserved vacancies and inter-se exchange amongst sub categories of disability was followed. From the available record and submissions of the respondent, it is apparent that applicants with low vision for the post of Mate in the identified trades were deprived of their entitlements to be considered for appointment if otherwise they were found fit.

19. In above view of the matter, the respondent is directed to consider the complainant and other persons with low vision based on their inter-se merit for appointment to the post of Mate in the identified categories of trades in next recruitment process when such vacancies arise. While considering them for such appointment, they will not be rendered ineligible for the post on account of change in the qualification criteria and other eligibility conditions such as age. Besides, those candidates with low vision who appeared in the recruitment process in question, should not be required to apply again in the next recruitment process as stated above. Respondent shall also intimate to this Court and complainant and other such similarly placed candidates with low vision immediately on receipt of vacancies released for recruitment by the concerned authorities. The vacancies that may be released for recruitment to the above mentioned identified posts for persons with low vision in the next recruitment process will be advertised only after considering the complainant and any other such candidate with low vision who were similarly deprived in the recruitment process in question. The respondent is further directed to follow the list of identified posts notified by the Department of Disability Affairs, Ministry of Social Justice & Empowerment vide their Notification no. 16-15/2010-DD.III dated 29.07.2013 and the instructions issued by the DoP&T vide their O.M. dated 29.12.2005. Accordingly, Engineer-in-Chief, Integrated HQ. of MOD (Army), Army Headquarters, Kashmir House, Rajaji Marg, New Delhi-110011 to whom a copy of this Order is marked, is advised to issue appropriate and comprehensive instructions on implementation of reservation of vacancies for persons with disabilities to all concerned within two months from the date of receipt of this order.

20. Action taken in respect of the above directions be intimated to this Court within two months from the date of receipt of this order.

.....6/-

21. The matter stands disposed off.

Sd/-

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

Copy to:-

Engineer-in-Chief, Integrated HQ. of MOD (Army), Army Headquarters, Kashmir House, Rajaji
Marg, New Delhi-110011