



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.150/1015/12-13

Dated:-04.02.2014

In the matter of:

Shri Pushpinder Kumar,
Flat No. 604, Plot No.7,
The Royal Residency Co. Society,
Sector – 45,
Gurgaon (Haryana)

..... Complainant

Versus

Ministry of Law & Justice,
Through the Secretary,
Department of Legal Affairs,
Shastri Bhawan,
New Delhi-110001.

..... Respondent

Date of hearing : 12.09.2013, 24.01.2013

Present :

12.09.2013

1. Pushpinder Kumar, complainant.
2. Shri Ravinder Kumar, Deputy Secretary, Department of Legal Affairs, on behalf of Respondent.

24.01.2013

1. Pushpinder Kumar, complainant.
2. Shri Ravinder Kumar, Deputy Secretary, Department of Legal Affairs, on behalf of Respondent.

ORDER

The above named complainant, a person with 60% locomotor disability filed complaint dated 05.11.2012 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding his appointment to the post of Dy. Govt. Counsel (Grade-III of Indian Legal Service) in the Department of Legal Affairs, Ministry of Law & Justice.

2. The complainant submitted that he applied for the post of Dy. Govt. Counsel (Grade III of Indian Legal Service) in the Department of Legal Affairs against the advertisement published in the Employment News dated 14-20 July, 2007 by the Union Public Service Commission (UPSC). He was called for interview on 08.06.2009 and accordingly he appeared in the interview. After more than a

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year he came to know from a reliable source that result had been declared and no candidate with disability was found suitable. As per the complainant, the applications were again invited through internet and a provision for written examination was made as well. The complainant did not apply for the said post for want of knowledge. Further the respondent was of the opinion that since the respondents were not willing to fill up the post on the basis of interview, they could not have made the appointment by conducting written examination.

3. 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 –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 in such Notification, exempt any establishment from the provisions of this section.”

4. The matter was taken up with the respondent vide letter dated 31.01.2013 followed by reminder dated 21.03.2013. As no reply was received, hearing was scheduled on 12.06.2013.

5. Deputy Secretary, Department of Legal Affairs, Admn.I(LA) Section vide letter No.A.60011/27/2013-Admn.I(LA) dated 29.04.2013 submitted that information was required to be collected from various units/branches under the Ministry of Law & Justice and requested that some more time may be allowed to furnish the information sought by this Court vide letter dated 31.01.2013.

6. During the course of hearing on 12.09.2013, the complainant reiterated his written submissions and vehemently opposed diversion of the post from direct recruitment quota to promotion quota as the same would adversely affect his interest as a candidate with disability. The complainant also submitted that the respondent may be restrained from diverting the reserved vacancies to promotion quota and to keep the post unfilled till this case was decided.

7. The representative of the respondent submitted that the Department of Legal Affairs reserved and appointed more than 3% persons with disabilities and, therefore, it was not correct to say that the Department was against reservation for persons with disabilities. He also requested some more time to file a comprehensive response to the complaint. However, if the information with regard to the details of Group 'A' and 'B' posts filled up in various establishments in the Department of Legal Affairs since January, 1996 was required, the same may take time as the same also needs to be collected from the subordinate offices in the country.

8. Since it was not the complainant's case that the Department of Legal Affairs or its subordinate offices were not reserving the vacancies for persons with disabilities, the information in respect of subordinate offices was not relevant for the purpose of deciding the substantive grievance of the complainant. The respondent was, therefore, directed to submit the information in respect of Group 'A'

posts and a detailed reply to the complaint with a copy to the complainant. The complainant was directed to file his rejoinder, if any, within 15 days of the receipt of the respondent's reply.

9. Deputy Secretary, Ministry of Law & Justice, Department of Legal Affairs vide letter No.A.60011/27/2013-Admn.I(LA) dated 23.09.2013 submitted as under:-

"Before replying to the complaint of Shri Pushpinder Kumar, brief background of the case is submitted as follows:-

2. *In 2007, the Department of Legal Affairs reported to the UPSC, 5 vacancies of Deputy Legal Adviser to be filled by direct recruitment, on which one was reserved for physically handicapped persons. The UPSC advertised the posts and invited applications. The UPSC short-listed 13 candidates for the one post reserved for physically handicapped persons.*
3. *Later on, the UPSC informed vide its letter No.1/195(25)/2006-R-II dated 30.6.2010 that recruitment action for the one post reserved for physically handicapped candidates had become infructuous at interview stage. In other words, Shri Pushpinder Kumar one of the thirteen short-listed candidates for the post reserved for physically handicapped persons was not found fit at interview stage by the UPSC.*
4. *Eventually, the entire recruitment process for the 5 posts was challenged before the CAT, Principal Bench, and was later on quashed by the Hon'ble Tribunal.*
5. *Later on in 2011, the Department of Legal Affairs reported 11 vacancies of Deputy Legal Adviser to the UPSC to be filled by direct recruitment, including one post reserved for physically handicapped persons. While the recruitment process was on in the UPSC, this Department took a decision with the approval of the competent authority to divert the posts of DLA falling for direct recruitment quota to promotion quota and fill these posts by promotion of the officers in the feeder grade who had been stagnating for more than double the eligibility service for promotion.*
6. *The ILS Rules provide for relaxation of the rules in consultation with the Department of Personnel & Training and the UPSC. Accordingly, after obtaining the approval of the Department of Personnel & Training and the UPSC, a proposal for filling up 14 posts of DLA by promotion was sent to the UPSC for convening a meeting of the DPC. In the meanwhile, one Shri Baljinder Singh Sra challenged the diversion of posts from direct recruitment to promotion quota in his OA No.191/CH/2013 at CAT, Chandigarh Bench. Later on, two more OAs Nos.1165/2013 & 1925/2013 were filed before CAT, Principal Bench, New Delhi. On the directions of the CAT, Principal Bench the OA at Chandigarh has been ordered to be transferred to Delhi. The three OAs are at present pending before the CAT, Principal Bench, New Delhi.*

Para-wise Reply:

Para 1 – No comments.

Para 2 – As already submitted, this Department did initiate action for filling up of 11 posts of DLA by direct recruitment including one post reserved for physically

handicapped persons. : However, later on a decision was taken with the approval of the competent authority to divert 14 posts of Deputy Legal Adviser from direct recruitment to promotion quota and fill these up by promotion. Even after diversion of posts from direct recruitment to promotion quota and the posts of DLA being filled by promotion of officers in the feeder grade, one of the posts of ALA, falling vacant consequently, to be filled by direct recruitment. Thus the diversion of posts of DLA from direct recruitment to promotion quota does not affect the reservation for physically handicapped persons is reserved for physically handicapped persons.

Para 3 - As already submitted the allegations in this para are without basis.

Para 4 to Para 7 – The submissions in this para are not relevant to the issue.

Para 8 – Relief: (i) & (ii) As per procedure, Group 'A' posts in the Ministry are filled through UPSC and it would not be possible for the Department of Legal Affairs to fill the posts directly without associating UPSC.

(iii) It is requested that complaint of Shri Pushpinder Kumar may be dismissed.”

10. The complainant vide his letter dated 02.12.2013 submitted para-wise comments to the reply dated 23.09.2013 of the respondent. The sum and substance of his letter dated 02.12.2013 is that since the post of Deputy Legal Advisor was reserved for persons with disabilities and the post is lying vacant and the diversion of the post to the promotion quota has been stayed by the Hon'ble CAT, the complainant may be recommended to be selected candidate against the said reserved post for persons with disabilities. The complainant has also requested that he may be allowed to take part in the proceedings pending before the CAT.

11. On the next date of hearing on 24.01.2013, reiterating his written submissions, the complainant stated that diversion of a reserved vacancy for persons with disability from direct recruitment to promotion quota has adversely affected his right against the post so challenged in the complaint. He also submitted that as UPSC is only the recommending authority, the Department of Legal Affairs being the appointing authority is obligated to appoint a person with disability and in this case the complainant, against the vacancy reserved for persons with disabilities in the post of Deputy Legal Advisor which continues to lie unfilled since 2000. He further submitted that the stay granted by the Hon'ble CAT on holding DPC should be construed as being in his favour. Therefore, he contended that this Court should make a recommendation to the Department of Legal Affairs to appoint him to the post of Deputy Legal Advisor which was reserved for persons with disabilities, if necessary, subject to the outcome of the corresponding case pending in the Central Administrative Tribunal (Principal Bench). He also contended that the decision of the Selection Committee is liable to be challenged before this Court.

12. The representative of the respondent clarified that out of the 37 vacancies falling into direct recruitment quota in Group 'A', 2 persons with locomotor disability, namely, Shri Mahesh Tyagi and Shri Pankaj Kapur were appointed against 2 reserved vacancies. As the Department was effecting reservation for persons with disabilities individually post-wise instead of on the basis of all Group 'A'

posts combined together, they ended up reserving and filling up more vacancies by persons with disabilities than what they were mandated to do u/s 33 of the PWD Act, 1995. Therefore, it has not prejudicially affected the complainant's interests as a person with disability. He also emphasized that the decision to divert the post of Deputy Legal Advisor from direct recruitment to promotion quota was a policy decision at the level of the competent authority in the interest of Indian Legal Service (ILS) Cadre especially officers in the feeder grade. The decision to divert the post from direct recruitment to promotion quota is presently under challenge in the Central Administrative Tribunal (Principal Bench), New Delhi

13. After going through the relevant records and written submissions of the complainant and the respondent, this Court is convinced that it is not within the remit of this Court to go into the merit of the decision of the Selection Committee. It may also be in the fitness of things for this Court to observe here that the decision of the respondent to divert the posts in question from direct recruitment to promotion quota besides being a general policy matter, is already under challenge in the Hon'ble Central Administrative Tribunal (Principal Bench), New Delhi with the result that it would not any way be appropriate for this Court to adjudicate upon this aspect of the matter.

14. In view of the foregoing, while this Court is unable to issue any direction to the respondent in respect of the matter, it is observed that the respondent is free to consider the complainant's case subject to the outcome of the decision of the Tribunal, more particularly, in the face of the fact that the complainant apparently appears to meet the eligibility criteria. As regards permission to the complainant to take part in the proceedings in the Central Administrative Tribunal, he does not require such a permission from this Court.

15. Action taken in respect of the matter may be intimated to this Court.

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

Sd/-

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