



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.436/1024/2013

Dated:-03.07.2014

In the matter of:

Smt. Kakali Ganguly,
W/o Tarun Kumar Ganguly,
L/23, Milon Pally,
P.O. Amrai,
Distt. Burdwan,
West Bengal – 713 203.

..... Complainant

Versus

Office of the General Manager,
(Thru the General Manager),
Eastern Railway,
17 N Road (1st Floor),
Kolkata – 700 001.

.... Respondent

Date of hearing : 22.05.2014

Present :

1. Shri Tarun Kumar Ganguly, husband of Smt. Kakali Ganguly on behalf of complainant.
2. None on behalf of Respondent.

ORDER

The above named complainant, wife of Shri Tarun Kumar Ganguly, a person with 40% locomotor disability filed a complaint dated 10.06.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act against refusal to grant leave and accept his Disability Certificate by the Commercial Department, Eastern Railway, Asansol.

2. The complainant submitted that her husband was working as Traffic Inspector (Coal). On 11.02.2013, while on duty, he fell down on Railway Track during the Railway wagon shunting resulting in unbearable pain in his right side of hip joint. He was operated upon on 05.03.2013 and the right side of his hip joint was replaced at the Eastern Railway Hospital. Vide Office Order dated 11.10.2012, Shri Ganguly was transferred and posted at DCOP as CWC on the same grade and pay. Shri Ganguly made representations to the Eastern Railway to withdraw his transfer order but nothing positive happened. Sr. Divisional Personnel Officer, Eastern Railway, Asansol vide his letter dated 20.12.2012 informed Shri Ganguly that on being declared medically de-categorized, he had been rehabilitated as T.I. (Coal) in identical scale based on his medical category and that there was no

.....2/-

provision for further creation of Special Supernumerary post for his posting against that post. He was asked to perform duty at PROXY/CNL/ASN since 2006. After that, he was again transferred to Railway siding. As he was suffering from hip dislocation problem, he finds it difficult to walk continuously upto DCOP Weigh Bridge which is about 01 Km away from DP Main gate. Therefore, he requested his establishment to withdraw his posting at Railway Siding and keep him on supernumerary post till vacancy exists. The complainant further submitted that her husband was asked a number of times to give option for VRS from service by his department. He was without pay from 28.10.2011 to 06.11.2011 and Disability CL/CL from 17.12.2011 to 21.12.2011 and 03.01.2012 to 06.01.2012.

3. Section 47(1) of the Persons with Disabilities Act, 1995, inter-alia provides :-

“No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age or superannuation, whichever is earlier.”

4. The matter was taken up with the General Manager, Eastern Railway, Kolkata vide this Court's letter dated 22.10.2013.

5. The respondent vide his letter No.E.740/2/T&C-L(R)CA-iii dated 28.11.2013 submitted that the representation dated 10.06.2013 of the complainant was examined in consultation with the concerned division and was intimated that the Medical Officer/E.Railway/Andal recommended for alternative employment with sedentary job on medical ground in favour of Shri T.K. Ganguly vide letter no. nil dated 22.10.2013 and he was found fit in C-1 category. Shri T.K. Ganguly, CWC/DCOP appeared before the Standing Committee for his further rehabilitation in alternative post on 29.10.2013 at DRM office/ASN and result of which was still awaited.

6. A copy of the letter dated 28.11.2013 of the respondent was forwarded to the complainant vide this Court's letter dated 16.12.2013 for her comments.

7. The complainant vide her letters dated 24.12.2013 and 20.02.2014 inter-alia submitted that her husband was rehabilitated as TI Coal under Senior Divisional Commercial Manager, Eastern Railway, Asansol which was not according to medical guideline.

8. Upon considering respondent's letter dated 8.11.2013 and complainant's letters dated 24.12.2013 and 20.02.2014, a hearing was scheduled on 22.05.2014.

9. During the hearing on 22.05.2014, reiterating her written submissions, the complainant who was accompanied by her husband, Shri Tarun Kumar Ganguli submitted that the Standing Committee, referred to in the letter dated 28.11.2013 of Deputy CPO (HQ.) had taken a decision for his

rehabilitation alongwith other employees. Following the said decision, the Eastern Railway, Asansol vide Office Order dated 03.12.2013 rehabilitated him as Office Superintendent (OS) in Civil Engineering Department in the pay scale of Rs.9300-34800 + Rs.4200 (Grade Pay). The said Civil Engineering Department is located on the road side and is convenient to Shri Tarun Kumar Ganguli since there is no need to cross the railway track or climb stairs to reach office. However, vide Office Order dated 14.01.2014, he was absorbed as Office Superintendent and posted under SSE/C&W/STA. That office is under Mechanical Department and is located beside the railway track. To reach that office, he has to cross the main railway line which is dangerous for him and against the advice of the Medical Board. In response to her representation, Eastern Railway, Asansol vide letter dated 21.01.2014 informed her that Sr. DEN (Co-ord)/ASN of Civil Engineering Department did not accept her husband Shri Tarun Kumar Ganguly in Engineering Department and, therefore, he was posted to Mechanical Department. She was again informed vide letter dated 06.02.2014 that her husband was rehabilitated and ordered for posting as OS in PB-II with GP Rs.4200/- in Civil Engineering Department as per the recommendation of the Standing Committee. Subsequently he was posted in Mechanical Department as OS after reviewing the earlier order by the competent authority with the approval of DRM due to administrative reasons.

10. None appeared on behalf of the respondent on the date of hearing.

11. It is observed from Office Order dated 14.01.2014 that the respondent transferred one post of OS of CG-I Grade I within the Department in order to adjust Shri Tarun Kumar Ganguly. The said transfer of post has caused more convenience to him rather than helping him.. Since the office in the Civil Engineering department, where he was originally posted, is more convenient to Shri Tarun Kumar Ganguly, the concerned authority should post him to that office. The concerned officers in the Civil Engineering Department should also be sensitized and made more about the needs of persons with disabilities. It should also be appreciated that posting of Shri Ganguly to the Engineering Department as Office Superintendent will not only help him but also he will be able to work more productively as that location is convenient to him.

12. In the above view of the matter, the respondent is advised to pro-actively consider the case of re-posting of Shri T.K. Ganguly in the post of Office Superintendent in the Civil Engineering Department where he was originally rehabilitated on being medically de-categorized and intimate the action taken in the matter within 30 days from the date of receipt of this order.

13. The matter is disposed off.

Sd/-

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