



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.628/1011/2013

Dated:- 24.06.2014

In the matter of:

Suo motu

Versus

Central Electronics Ltd.
Through the Chairman,
4, Industrial Area,
Sahibabad, Ghaziabad (U.P.)

..... Respondent

Date of hearing : 20.05.2014

Present :

S/Shri M.S. Verma, AGM (HRD) and Shri Harish Aneja, AO (HRD), on behalf of Respondent.

ORDER

Central Electronics Ltd., Ghaziabad published an advertisement in the Employment News dated 26 October – 01 November, 2013 for various posts which were identified as suitable for persons with disabilities as per the Ministry of Social Justice & Empowerment, Department of Disability Affairs' Notification No. 16-15/2010-DD.III dated 21.07.2013. The said list of identified posts is available in the websites of Ministry of Social Justice and Empowerment <www.socialjustice.nic.in> and is applicable to all the organizations/establishments of Govt. of India/CPSUs. In the said advertisement, reservation for persons with disabilities was not provided in accordance with Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2. A Notice of Complaint to Show Cause under Section 59 of the Act was sent to the Chairman, Central Electronics Ltd, Ghaziabad vide this Court's letter dated 18.11.2013.

3. The respondent vide letter dated 11.12.2013 submitted that the management mentioned and included in the advertisement no.83/Pers./2/2013 dated 26.10.2013 for reservation of persons with disabilities. A non-refundable Bank Draft for Rs.250/- drawn in favour of Central Electronics Limited payable at Ghaziabad/New Delhi was to be enclosed. Candidates were advised to write their name and post applied on the reverse side of the bank draft. No application fee need to be paid by the candidates belonging to SC/ST/PwD. Upper age limit was relaxed by 5 years for SC/ST, 3 years for

OBC (non creamy layer). It was relaxed to 10 years for PwD-General, 13 years for PwD-OBC and 15 years for PwD-SC/ST candidates. Reservation was applicable as per extant government rules. A statement in respect of Group 'A', 'B', 'C' & 'D' posts filled up in the organization since 1996, number of persons in position, total number of vacancies existing etc. alongwith a Certificate from the Liaison Officer certifying that the reservation roster for the persons with disabilities was being maintained as per DoP&T instructions was also enclosed alongwith the reply.

4. Upon considering the reply dated 11.12.2013 of the respondent, a hearing was scheduled on 20.05.2014.

5. During the hearing, it was observed that the copy of advertisement mentioning exemption of application fee, relaxation in upper age limit and reservation for persons with disabilities as per Govt. rules was not available with the reply dated 11.12.2013 of the respondent. Page 9 of the Employment News dated 26.10.2013 in which the advertisement was continued and contained the said information was also not available in the file.

6. The representative of the respondent submitted a copy of the full advertisement containing the above mentioned information. At serial no. 3 under General Instructions, it has been mentioned that "reservation is applicable as per instant Govt. rules". He also submitted that reservation for persons with disabilities is kept open to ensure that persons with disabilities may apply for any vacancy which can be treated as reserved for them. For example, in the instant case, the post of Technical Manager, Electrical Engineer, Electronics Engineer, Executive (Material Management), Technical Officer, Mechanical Engineer, Officer (HR) and Executive (IT) were advertised. If a vacancy in any one post were reserved, then persons with disabilities would have to be considered against only that reserved post. The scope for persons with disabilities being considered against reserved vacancies would be narrowed down considerably especially in view of the fact that most of the posts in respondent's establishments are technical in nature and very few eligible persons with disabilities apply. For example in response to the instant advertisement, only one person with disability has applied for the post of Officer (HR) out of the 190 applications received for various advertised posts. There is no application from any person with disability for any other posts. Therefore, if a particular vacancy was reserved other than Officer (HR), no person with disability could have been considered against a reserved vacancy. Recruitment process is under way and the person with disability who has applied for the post of Officer (HR) will be considered. As regards the backlog of reserved vacancies for persons with disabilities, the same will be examined and, if necessary, special Recruitment Drive will be conducted.

7. Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, provides as under:-

"Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent 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 in such notification, exempt any establishment from the provisions of this section.

8. Section 36 of the said Act provides as under:-

“Where in any recruitment year any vacancy under Section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.

Provided that if the nature of vacancies in any establishment is such that a given category of person can not be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government.

9. Para 25 of the said O.M. of DoP&T dated 29.12.2005 provides the following should invariably be mentioned in all recruitment notices/advertisements in accordance with:

- i. Number of vacancies reserved for sub categories of disabilities – whether the vacancy is reserved for blind or low vision; persons suffering from hearing impairment; locomotor disability; or cerebral palsy;
- ii. In case of vacancies in posts identified suitable to be held by persons with disabilities, it shall be indicated that the post is identified for persons with disabilities, suffering from blindness or low vision; hearing impairment; and/or locomotor disability or cerebral palsy, as the case may be, and that the persons with disabilities belonging to the category/categories for which the post is identified shall be allowed to apply even if no vacancies are reserved for them. Such candidates will be considered for selection for appointment to the post by general standards of merit.
- iii. In case of vacancies in posts identified suitable for persons with disabilities, irrespective of whether any vacancies are reserved or not, the categories of disabilities viz. blindness or low vision, hearing impairment and locomotor disability or cerebral palsy, for which the post is identified suitable alongwith functional classification and physical requirements for performing the duties attached to the post shall be indicated clearly.
- iv. That persons suffering from not less than 40% of the relevant disability shall alone be eligible for the benefit of reservation.
- v. Relaxation in upper age limit, exemption from payment of examination fee etc.

10. In compliance of the judgment of Hon'ble Supreme Court dated 08.10.2013 in the matter of Civil Appeal No.9096 of 2013 (arising out of SLP (Civil) No.7541 of 2009) titled Union of India & Anr. Vs. National Federation of Blind & Ors., Department of Personnel & Training vide their O.M. No.36012/24/2009-Estt (Res) dated 03.12.2013 has modified Para 14 of their O.M. dated 29.12.2005 to the effect that, "Reservation for persons with disabilities in Group 'A' or Group 'B' posts shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group 'A' posts or Group 'B' posts respectively, in the cadre."

11. In the above view of the matter, the respondent is directed to compute the exact number of reserved vacancies for persons with disabilities in the manner prescribed by Department of Personnel & Training and conduct a Special Recruitment Drive to fill up the reserved vacancies for persons with disabilities. The advertisement for the Special Recruitment Drive be issued within 45 days from the date of receipt of this Order and the process of recruitment be completed within 60 days thereafter. The procedure for notice of vacancies, selection etc. as prescribed in DoP&T's O.M. dated 29.12.2005 be followed. The names and addresses of the persons with disabilities who may be appointed against the reserved vacancies be intimated to this Court within 15 days of their joining.

12. The matter is disposed off accordingly.

Sd/-

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