



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.212/1011/2013

Dated:- 18.09.2014

In the matter of:

Ms. Stuti Bharti,
Parasnath Apartment,
H.No.183/3, Flat No. 04,
Ward No.-3, Maharuli,
New Delhi-110030.

..... Complainant

Versus

Rashtriya Ispat Nigam Limited,
Through the Chairman-cum-Managing Director,
Visakhapatnam Steel Plant,
Administrative Building,
Visakhapatnam – 530 031 (Andhra Pradesh)

..... Respondent

Date of hearing : 13.01.2014 & 19.08.2014

Present :

13.01.2014

1. Ms. Stuti Bharti, Complainant
2. S/Shri Binay Prasad, AGM (Personnel) & Anuj Sarma, Advocate on behalf of the Respondent.

19.08.2014

1. Ms. Stuti Bharti, Complainant
2. S/Shri Binay Prasad, AGM (Personnel) & Purushottam Kumar Jha, Advocate on behalf of the Respondent.

O R D E R

The above named complainant, a person with 55% locomotor disability, filed complaint dated 16.07.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding not reserving the post of Management Trainee (Technical) for persons with disabilities.

2. The complainant submitted that Vizag Steel vide advertisement No.04/2013 published an advertisement for the posts of (a) Management Trainee (Technical), (b) Management Trainee (Finance & Accounts), (c) Management Trainee (HR & Welfare) and (d) Management Trainee (Corporate Communications). She further submitted that the reservation was provided for the post mentioned at (b) to (d) and no reservation was provided against the post of Management Trainee (Technical) for which she was eligible.

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3. As per Notification No. 16-70/2004-DD-III dated 18.01.2007 issued by the Ministry of Social Justice and Empowerment, the post of Management Trainee (Technical) in Chemical Electrical, Mechanical Engineers and Engineering Management Trainee are identified for persons with disabilities such as OA, OL, BL and HH category.

4. Section 33 of the Persons with Disabilities Act, 1995 provides as under:-

“Section 33. 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.”

5. Para 25 of the Department of Personnel & Training's O.M. No.36035/3/2004-Estt.(Res) 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 post 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 loco-motor disability or cerebral palsy, for which the post is identified suitable alongwith functional classification and physical requirements for performing the during attached to that 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.

6. The matter was taken up with the respondent vide letter dated 18.07.2013.

7. The respondent in its reply dated 10.09.2013 in para 1(ii), inter-alia, submitted that all posts in Group-A in Non-Works areas, other than Medical Department have been considered as identified

posts. Thus, posts in Group-A Works Division (including Management Trainees (Technical)) do not come under the category of identified posts and hence PwDs are not considered for appointment against these posts irrespective of their branch of engineering like Chemical, Electrical and Mechanical. He also enclosed the information regarding details of vacancies filled in their organization from 07.02.1996 to 31.07.2013.

8. A copy of the respondent's reply dated 10.09.2013 was forwarded to the complainant vide this Court's letter dated 20.09.2013. The complainant in her rejoinder dated 03.10.2013 submitted that there is no reservation in promotion for PwD candidates to Management Trainee (Technical). She requested for conducting the hearing before taking any final decision in the matter.

9. Upon considering the reply dated 10.09.2013 of the respondent and the complainant's rejoinder dated 03.10.2013, a hearing was scheduled on 13.01.2014.

10. The Ld. Counsel for the respondent reiterated the written submissions and added that the respondent would like to submit a detailed written submission/reply in the light of the observations of this Court during the course of hearing.

11. The complainant submitted that she appeared in the written examination for Management Trainee (Technical) in Mechanical discipline and she is B.Tech in Mechanical Engineering. She also stated that she has not been called for interview which is slated to be held from 20th of this month.

12. As per the written submissions of the respondent, against 1312 persons in position in Group 'A' or Class 'I' post and 203 vacancies filled since 1996, the respondents have appointed 15 persons with disabilities (OH – 9, VH – 3 and HH-3). It is, however, not clear whether all the 15 persons with disabilities were appointed after 07.02.1996. The respondent was required to reserve at least 4 vacancies for persons with disabilities against 109 vacancies advertised in different technical/non-technical disciplines in the post of Management Trainee. Therefore, the understanding of the respondent that they were not required to reserve any vacancies for persons with disabilities against 109 vacancies on the ground that they had fulfilled the requirement of 3% reservation for persons with disabilities is faulty. Further, the posts in technical disciplines, such as, Chemical Engineering, Civil engineering, Electrical Engineering, Electronics Engineering, Instrumentation Engineering and Metrology Engineering are identified for persons with disabilities. The posts in Mechanical Engineering including Management Trainee are identified for persons with disabilities in One Leg (OL). Since the complainant is a person with disability in one leg, she had a claim against a reserved vacancy for persons with locomotor disability. It is also to be noted that the posts which are identified by the Ministry of Social Justice & Empowerment, Government of India, should be adhered to by the Departments/Establishments unless exempted under Proviso to Section 33 of the Persons with Disabilities Act, 1995.

13. It is also relevant to note that as per Para 22 of DoP&T's O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005, the standard of selection should be relaxed in respect of persons with disabilities. Sufficient number of persons with disabilities are not available to fill all the reserved vacancies for them. Therefore, even if the complainant had not secured enough marks in the written examination

to be called for interview, she was entitled to the benefit of relaxed standard as envisaged in Para 22 of the said Office Memorandum dated 29.12.2005. The respondent was directed to consider the complainant against a vacancy to be reserved for persons with disabilities against the current recruitment to 109 posts and call her for ensuing interview at the earliest by fastest means, such as, e-mail, telephone, fax etc. Since more material facts and submissions were to be put forth by the respondent, the consideration/selection of the complainant against the reserved vacancy for persons with disability unless she qualifies to be selected purely on merit in normal course, will be subject to the final outcome of his complaint. The respondent was directed to submit his reply within three weeks.

14. The respondent vide letter dated 27.02.2014, inter alia, submitted that Ms. Stuti Bharti did not secure the minimum qualifying marks in the written test even after extending 10% relaxation as applicable to PwD category and could not qualify in the written test for the post of Management Trainee (Technical) and a hearing was scheduled on 19.08.2014.

15. During the hearing on 19.08.2014, reiterating her written submissions, the complainant added that the Persons with Disabilities Act, 1995 does not anywhere explicitly stipulate anything about the quantum of qualifying marks which a candidate with disability must obtain and, as such, she should be appointed as Management Trainee (Mechanical) which is identified for persons with disabilities belonging to her category of disability. Besides, she also contended that she was the lone candidate with disability for the said post.

16. Reiterating the written submissions, the Ld. Counsel for respondent submitted that even though no vacancy was reserved for persons with disabilities in the Management Trainee (Technical) which includes Mechanical Engineer, in compliance with the directions of this Court, the complainant was considered for the post. However, as she could not secure the minimum qualifying marks i.e. 40% after relaxation of 10%, in the written test, she was not eligible to be called for interview for the post of Management Trainee (Technical).

17. He referred to Para 28 of Hon'ble Supreme Court's Order dated 28.09.2011 of I.A. No.5-8 in Civil Appeal Nos. 8343-8344 of 2011 (arising out of SLP (C) No.20152-20153 of 2010) in the case of Bedanga Telukdar vs. Saifudaulah Khan & Others, which reads as under:-

"28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if

exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of qualify contained in Article 14 and 16 of the Constitution of India.”

The Ld. Counsel particularly pointed out that the relevant policy as approved by the Competent Authority for the post of Management Trainee provides for relaxation of 10 marks in respect of candidates belonging to SC, ST and persons with disabilities.

18. In response to a query as to the basis on which they had, in an earlier case (No.2231/1011/2014) which was heard in Hyderabad on 02.06.2014, had stated that the backlog of one vacancy for VI and two for HI as on 31.03.2013 had been filled up, was attributable to their erstwhile understanding that the reservation for persons with disabilities was not to be computed against the vacancies in technical posts. This explains why the said case was closed by this Court.

19. It is observed that though this Court cannot insist upon extending the limitless relaxation of standards in the qualifying marks, one cannot lose sight of the fact that it was wrong on the part of the respondent not to include the technical posts within the ambit of reserved categories without first obtaining exemption as stipulated under proviso of Section 33 of the PwD Act, 1995. This explains why this Court directs the respondent to include these posts while computing backlog of reserved vacancies for persons with disabilities accordingly and take time bound action to fill up the backlog of vacancies by launching Special Recruitment Drive.

20. The matter stands disposed off accordingly.

Sd/-

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