



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त विकलांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES
विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No.1320/1021/2014

Dated: 7/09/2017

In the matter of:

Shri Venu Prasad A. R.
Secretary
Differently Abled Employees Federation – BPCL
Bharat Petroleum Corporation Limited – Kochi Refinery
Ambalamugal
Kochi – 682 302
..... Complainant

Versus

Bharat Petroleum Corporation Limited – Kochi Refinery
(Through Executive Director)
Kochi Refinery
Ambalamugal
Ernakulam Dist.,
Kochi – 682 302
..... Respondent

Date of hearing : 18/11/2016

Present :

1. Shri Venu Prasad A.R., Secretary – DAEF, Complainant
2. Shri Mohan Ram B, Chief Manager (Employee Relations), Shri Sreedharan C, Manager Personnel and Shri P. R. Nayak, Advocate on behalf of Respondent

ORDER

Shri Venu Prasad A. R., Secretary, Differently Abled Employees Federation (DAEF) – BPCL (Bharat Petroleum Corporation Limited), Kochi Refinery, filed a complaint dated 28/03/2014 in the Court of Chief Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as Act regarding non implementation of 3% reservation in promotion for persons with disabilities in BPCL – Kochi Refinery. He stated that in Kochi Refinery no person with disabilities got promoted through reservation either in the management cadre or non-management cadre and the employees with disabilities who have joined in Grade II had to retire from IV or V after putting in as many as 25 years of service. He also submitted that BPCL is not paying Transport Allowance at double the normal rate to the non-management staff whereas the management staffs are being paid the same.

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2. The matter was taken up under Section 59 of the Act with the respondent vide Court's letter dated 05/03/2015 to look into the request of the Complainant in the light of DoP&T's OM No. 36035/8/89-Estt.(SCT) dated 20/11/1989 regarding reservation in promotion in Group C and D posts and DoP&T's OM No.36035/3/2004-Estt (Res) dated 29/12/2005 containing consolidate instructions on reservation for persons with disabilities and submit action taken report within 30 days from the receipt of the letter.

3. Respondent vide letter dated 30/03/2015 submitted the following –

- BPCL has two major refineries, one in Mumbai and another in Kochi Refinery, being a continuous process and hazardous industry, manufactures almost all petroleum products and the process units function round the clock, throughout the year. Its an hazardous industry, safety is given prime importance and about 80% of the technical staff is engaged in the process unit.
- BPCL is maintaining the reservation rosters as per guidelines issued by the Government of India. The reservation rosters are inspected by Liaison Officer of the Corporation as well as by the Liaison Officer of the Ministry of Petroleum & Natural Gas, annually.
- BPCI Kochi refinery is recruiting mainly non-management staff in Group C and D posts, who work in rotating shifts. Entry grade is in Grade I (Group D) for ITI qualified candidates in specified trades, and in Grade II (Group C) for Diploma holders in specified disciplines. There is no direct recruitment in Group B in non-management staff. Recruitment for all Group A posts are done by Corporate office. Candidates recruited in Grade I and Grade II posts are posted in the manufacturing and allied process units after completing the required induction training.
- BPCL Kochi Refinery is a potentially hazardous industry and deployment of persons with disabilities, especially hearing handicapped and visually challenged employees inside the plant area involves high risk considering the safety of the plant and personnel. However, adequate number of persons with disabilities as per the reservation guidelines are recruited and deployed in non-hazardous areas, viz, administration, material, etc., in the Refinery.
- Till the merger of Kochi Refinery with BPCL in 2006, Kochi Refinery has been maintaining the PwDs reservation rosters with effect from 1987. However, consequent to the merger in 2006, the PwDs reservation rosters are being maintained centrally at Corporate Office.
- The groups/grades in BPCL, Kochi Refinery are –

Group A	-	All Management Staff
Group B	-	Grades VI and VII
Group C	-	Grades II, III, IV and V
Group D	-	Grade I

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- The Group wise strength, number of employees with disabilities, category wise, in Kochi Refinery as on date (30/03/2015) is –

Group	Total No. of Employees	OH	HH	VH
A	688	4	--	--
B	758	16	4	4
C	528	3	6	7
D	13	0	0	0

- With regard to the complainant's allegation in respect of Reservation in Promotion, the respondent stated that BPCL Kochi Refinery is recruiting mainly non-management staff in Group C and D posts. Entry grade in Grade I (Group D) are ITI qualified candidates and in Grade II (Group C) for Diploma holders and there is no direct recruitment in Group B. Candidates recruited in Grade I and Grade II are posted in the manufacturing and allied process units after completing the required induction training. Promotions are administered through a promotion policy settlement with the trade unions. Promotions for persons with disabilities are applicable only from Group D to C and within Group C (i.e. upto Grade V in Kochi Refinery). They further stated that they are not denying any promotion to any person with disability merely on the ground of his/her disability. Respondent also provided the promotion progressions of some employees with disabilities including the complaint, in Kochi Refinery –

(1) Staff No.83441, Venuprasad A. R. (OH)

Date of Joining	:	04/09/1995
Grade of Joining	:	Grade II (Group C)
Promoted to Grade III – Group C	:	01/10/1999
Promoted to Grade IV – Group C	:	01/11/2001
Promoted to Grade V – Group C	:	01/07/2003
Promoted to Grade VI – Group B	:	01/12/2006
Promoted to Grade VII – Group B	:	01/12/2011

(2) Staff No.83300, Jagadeesh Kumar S (VH)

Date of Joining	:	01/02/1995
Grade of Joining	:	Grade II (Group C)
Promoted to Grade III – Group C	:	01/10/1996
Promoted to Grade IV – Group C	:	01/10/2004
Promoted to Grade V – Group C	:	01/12/2007
Promoted to Grade VI – Group B	:	01/12/2006
Promoted to Grade VII – Group B	:	01/09/2012

(3) Staff No. 81508, John Mathai (HH)

Date of Joining	:	22/07/1985
Grade of Joining	:	Grade I (Group D)
Promoted to Grade III – Group C	:	06/05/1987
Promoted to Grade IV – Group C	:	01/02/1992
Promoted to Grade V – Group C	:	01/05/2000
Promoted to Grade VI – Group B	:	01/10/2014

- They further stated that there are no employee with disability in Kochi Refinery who have not been given promotion from Group D to Group C or within Group C for a very long time. Almost all employees with disabilities have reached at Group C through promotions within a span of 8-10 years from the date of their joining.
 - Further internal promotions are administered by Promotion Policy signed with the trade unions. While notifying internal promotion vacancies for Group C posts, the number of posts reserved for SC and ST are only notified. Though the eligibility criteria for promotion from one grade to the next grade is three years, promotion within Group C, to employees having completed one year with relaxation in the eligibility criteria. This eligibility criteria is extended to all the non-management staff including persons with disabilities. Even when the employees with disability are stagnated in a particular grade on account of non-suitability arising out of lack of experience for the position as prescribed in the Promotion Policy, BPCL, Kochi Refinery management has promoted them after obtaining special approval.
 - As regards the Conveyance Allowance, the respondent stated that BPCL is following IDA pattern of salary. The pay scales, allowances (such as canteen, transport, education support, medical, club), etc., are implemented based on the Long Term Settlement signed with the trade unions. The allowances are covered under the cafeteria approach and as per the guidelines issued by the Govt. of India and should not exceed 50% of the basic pay.
 - As per Clause 32 of the present Long Term Settlement signed with the Trade Unions, which is valid upto 31/07/2018, the workmen who are not utilizing the Company's bus transport facility are being paid transport allowance with effect from 01/08/2008 as –

For those who own vehicle	-	Rs.1100/- per month
For those who do not own vehicle	-	Rs. 650/- per month
 - In addition to the above, 'Physical Handicap Allowance' equivalent to transport allowance is also being paid to all the physically handicapped employees in BPCL, Kochi Refinery.
 - BPCL provides transport facility to various places in and around Ambalamugal / Ernakulam stretching around 60 km from the Refinery and all the employees including persons with disabilities can utilize the transport facilities. As transport allowance is also covered under the perks and allowances within the cafeteria approach having a maximum ceiling of 50%, all the employees utilizing the transport facility will have to adhere to the present policy in vogue on the same.
4. Complainant vide rejoinder dated 18/04/2016 stated that the contention of the respondent is partially true and the employees with disabilities were promoted/got promotion only on general seniority basis and not in reservation quota. The respondent in its reply also admitted that while notifying internal promotion for Group C posts, the number of posts reserved for SC and ST are only notified which confirmed that there are no reservation in promotion to the employees with disability in BPCL Kochi Refinery. Complainant also requested this Court to details of information from the

respondent in respect of number of vacancies filled since 1996 (Direct Recruitment and Promotion) and a certificate of the Liaison Officer certifying that the Reservation Roster is maintained as per the DOP&T's instructions. Complainant further submitted that Management has modified their transport subsidy for the betterment of all management staff in quantity of fuel used in one month, which is more than that of earlier Transport subsidy and which is not included in cafeteria so that BPCL management is not giving transport subsidy at double the normal rate to employees with disabilities in management and non-management staff of BPCL Kochi Refinery. Complainant also submitted that from April 2014, BPCL implemented double the rate of transport allowances in the head 'Handicap allowance' to BPCL Kochi Refinery non-management staff only and requested for double the rate of transport subsidy to employees with disabilities in Management staff also not only in BPCL Kochi Refinery but also in all SBUs of BPCL, if BPCL not extended the facility to them.

5. Upon considering the respondent's reply dated 30/03/2015 and complaint's rejoinder dated 18/04/2015, the hearing was scheduled on 18/11/2016.

6. During the hearing on 18/11/2016, the complainant submitted his written statement wherein he has reiterated his earlier submissions and requested the Court to give directions to BPCL to consider the issues raised in his complaint.

7. Respondent also reiterated their submission made vide letter dated 30/03/2015 and vide their written submission at the time of hearing on 18/11/2016.

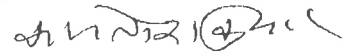
8. Upon hearing both the parties, the case be disposed off with the following directions to the respondent:-

- (i) BPCL should strictly comply with the DOP&T's instructions with regard to reservation in promotion from Group D to Group C and within Group C or as per the Govt. instructions in force from time to time in this regard and maintain a proper Roster for the same as per the Act;
- (ii) Vacancy reserved for Persons with Disabilities needs to be mentioned in internal advertisement for Promotion;
- (iii) BPCL should decide payment of Transport Allowance to all eligible employees with disabilities who are not using the transport facilities being provided by the BPCL at double the normal rate or otherwise make provision for Additional Conveyance Allowance to compensate them for the extra expenditure they are forced to incur for commuting to the office and back to their residence which needs to be adequately enhanced each time the Conveyance Allowance for rest of the employees in BPCL, in consultation with the administrative ministry i.e. Ministry of Petroleum and Natural Gas. BPCL may consider

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excluding such portion of the allowance from the basket of perquisite that are considered for the purpose of 50% ceiling.

- (iv) BPCL should appoint Grievance Redressal Officer / Liaison Officer as per the Act.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities