



सत्यमेव जयते

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.171/1015/12-13

Dated:19.05.2014

In the matter of:

Shri Ashweeni Kumar Singh,
11-Shantinagar Society,
Near Himmat High School-2,
Himmatnagar, Distt. – Sabarkantha,
Gujarat – 383001.

..... Complainant

Versus

Office of the Chief General Manager,
Through the Chief General Manager,
Bharat Sanchar Nigam Ltd.,
Gujarat Telecom Circle, Telephone Bhavan,
C.G. Road, P.O. Ellisbridge, Navrangpura,
Ahmedabad – 380 006.

..... Respondent

Date of hearing : 24.04.2014

Present :

1. Shri Ashweeni Kumar Singh, complainant.
2. Shri Pradeep Kumar Mathew, Advocate, on behalf of Respondent.

ORDER

The above named complainant, a person with 50% visual impairment and 45% (Deaf) filed complaint dated 14.03.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding recruitment of Junior Telecom Officer under Special Recruitment Drive for persons with disabilities in the year 2011 by BSNL.

2. The complainant submitted that he had applied for the post of Jr. Telecom Officer under Special Recruitment Drive for persons with disabilities under Hearing Impaired category in the year 2011 and cleared the written examination. He was informed vide letter dated 27.03.2012 that his name was at Sr. No. 14 in the list of selected candidates under Hearing Impaired category. Later on his selection was cancelled on the ground of disability certificate issued by the Chief Medical Officer cum Civil Surgeon, Pratap Hospital wherein it was mentioned partially blind (50%) and deaf (45%). The cancellation was done because the backlog vacancies were to be filled from hearing impaired and from persons with locomotor disability.

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3. The post of Jr. Telecom Officer has not been included in the list of identified posts notified by Ministry of Social Justice and Empowerment vide Notification No.16-25/99-N.I.I. dated 31.05.2001 published in the Gazette of India no.178 dated 30.06.2001 as well as Notification No.16.70/2004-DD-III dated 15.03.2007, but keeping in view the fact that the list of identified posts notified by Ministry of Social Justice & Empowerment are indicative but not exhaustive. Establishment can consider and appoint persons with other categories of disability, if they fulfill the physical requirements of a post.

4. The report of Expert Committee to identify/review the posts which is the part of notification dated 31.05.2001 clearly mentioned that while the establishment would have the discretion to identify post in addition to the posts already identified by the appropriate Government, no establishment on its own discretion can exclude any post out of the purview of identified post for effecting reservation under Section 33 of the Act.

4. The matter was taken up with the respondent vide letter dated 21.06.2013

5. Assistant General Manager (Estt.), Bharat Sanchar Nigam Ltd. vide Memo No.Rectt/DRJTO/SRD-2011/1/18/110/101/55 dated 18.07.2013 furnished point-wise comments . In addition, they stated that their requirement is Locomotor Disability and hearing impairment. The complainant is having both hearing impairment and visual Impairment. As per Recruitment Rules for JTO (Telecom), the Visually Impaired candidates are not eligible for the post of JTO (Telecom) in BSNL. The President, Medical Board, Civil Hospital, Ahmedabad declared the candidate as "temporary fit", but there is no provision in the Recruitment Rules of JTO(T) to allow the candidate having "Temporary Fit" certificate. In view of the above facts, the candidature of Shri Ashweenikumar Singh was cancelled by the competent authority.

6. A copy of the reply dated 18.07.2013 received from the respondent was forwarded to the complainant on 22.10.2013 for submission of his comments followed by reminder dated 27.12.2013.

7. The complainant vide letter dated 06.01.2014 intimated that he had already filed a rejoinder dated 29.07.2013. As per his version, the comments of BSNL against paragraph No.4 in Annexure A are wrong. Initially he attended office on 07.04.2012 for pre-appointment formalities and his appointment was cancelled on 28.04.2012 on the basis of his disability certificate issued by the Chief Medical Officer, Sir Pratap General Hospital, Himmatnagar. To prove this, he attached a copy of BSNL letter No.Rectt/DRJTO/SDR-2011/1/18/110/24 dated 28.04.2012. He further stated that prior to this cancellation order dated 28.04.2012, there was no medical examination one for his disability. He challenged cancellation order because of discrimination through his attached letter dated 04.05.2012. The re-assessment was considered. As per the reply received from President, Medical Board, Civil Hospital , Ahmedabad, he was "temporary fit" for one year upto 07.08.2013. Even then his suitability was questioned and appointment was cancelled. He further stated that when there is no provision in the Recruitment Rules of JTO(T) to allow the candidate having "Temporary Fit" certificate, then where is the provision to disallow the candidate having "Temporary Fit" certificate. In the end, he stated that he is victim of aberration and his case is of extreme red tapism. Time and again, the authorities having failed to understand that persons with disabilities are not disabled but are differently abled.

8. Upon considering the reply dated 18.07.2013 of the respondent and the complainant's rejoinder dated 06.01.2014, a hearing was scheduled on 24.04.2014.

9. On the date of hearing, reiterating his written submissions, the representative of the complainant highlighted the fact that the Medical Board in its meeting dated 25.07.2012 had declared the complainant "temporary fit for one year (Ophthalmology)". The complainant further added that subsequently, on 29.12.2012, the Medical Board again examined him and stated in their report as follows:-

"The candidate Ashweenikumar M Singh is temporarily fit to 1 year upto 07.08.2013 for the post of J.T.O. The candidate must come back for further certificate on or before 07.08.2013. He must come with "Satisfactory work Certificate" from his employers.

This is the final opinion after review. No further correspondence will be entertained for the case. The employers are instructed to do the needful at the earliest."

The representative of the complainant further added that the complainant's track record has been excellent and that he passed his Engineering Course without availing any additional facilities such as extra time, amanuenses etc.

10. In response to a query, the Ld. Counsel of the complainant asserted that multiple disabilities do not explicitly figure anywhere in the Persons with Disabilities Act and the application form which the complainant had to complete, contained only one column where only one particular disability could be mentioned. The Ld. counsel of the complainant further contended that the list of identified posts is illustrative and not exhaustive and hence the complainant should have been appointed to the post. In this context he also referred to the judgment dated 8.10.2013 of the Hon'ble Supreme Court 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., wherein the Hon'ble Supreme Court have made the similar observation. The Ld. Counsel added that the contention that the complainant could not be appointed as he also has an additional disability in the form of low vision amounts to discrimination on the ground of disability according to the Convention on the Rights of Persons with Disabilities, which India has since ratified and also under the Constitution of India. He further asserted that the Hon'ble Supreme Court in the matter of Suchita Srivastava & Anr. Vs. Chandigarh Administration had stated that India has ratified the Convention on the Rights of Persons with Disabilities (CRPD) on October 1, 2007 and the contents of the same are binding on our legal system. The Ld. Counsel has agreed to supply proper reference number and the copies of the two judgments of the Hon'ble Supreme Court which he referred to in the course of his deposition.

11. Responding to the arguments of the complainant and reiterating their written submissions, the Ld. Counsel of the respondent stated that the advertisement/notification was only for persons with hearing impairment and persons with locomotor disabilities and the application form was designed accordingly. He added that the fact of his being a person with low vision came to light only on 07.04.2012 on which pre-appointment formalities were being completed as the documents verification was done on that date. This explains why his candidature was cancelled on 28.04.2012 as he was

also a person with low vision in addition to a person with hearing impairment and this post is not identified for person with low vision. The Ld. Counsel added that it was, therefore, amply clear that the complainant did not meet the eligibility criteria for this post as he was a person with low vision as well. The Ld. Counsel of the respondent also clarified that in response to the complainant's representation dated 04.05.2012, he was medically examined by the Medical Board which declared him as "temporary fit for one year" although there is no such categorization, the categorization being "Fit", "Unfit" and "Temporarily Fit" respectively.

12. As regards cancellation of candidature on 28.04.2012 in respect of Shri Ashweeni Kumar Singh, the Court observes that as per the notification dated 21.11.2011, the candidates with locomotor impairment (LI) and hearing impairment (HI) are only permitted for recruitment for the post of J.T.O. under Special Recruitment Drive for persons with disability, whereas Shri Ashweeni Kumar Singh is having visual impairment in addition to the hearing impairment. This additional disability is not identified suitable for the post of J.T.O. Therefore, no direction can be given to the respondent.

13. The matter stands disposed off.

Sd/-

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