



सत्यमेव जयते

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.: 278/1021/12-13

Dated: 10.08.2017
Dispatch No.....

In the matter of :

Shri G. Chandrasekar,
Sr. Admin Assistant,
Centre for Artificial Intelligence and Robotics (CAIR),
Ministry of Defence,
DRDO Complex,
C.V. Raman Nagar,
Bangalore – 560 093

R2666

.....Complainant

Versus

✓ Electronics & Radar Development Establishment (LRDE),
(Through the Director)
C V Raman Nagar Post,
DRDO Complex,
C.V. Raman Nagar,
Bangalore – 560 093

R2667

.....Respondent

Dates of Hearings : 28.12.2016 , 17.03.2017 & 17.04.2017

Present :

1. The Complainant exempted from hearing.
2. Shri S. Prakash, JD (A), Representative on behalf of Respondent - Present

ORDER

The above named complainant, a person with locomotor disability had filed a complaint dated 04.12.2012 before the Chief Commissioner under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, regarding his promotion.

2. The complainant submitted that he was appointed as L.D.C. in Electronics and Radar Development Establishment (LRDE), a Laboratory under Defence Research & Development Organisation (DRDO) on 24.09.1987 against PH category. He came to know about an element of 3% reservation introduced in promotion within Group C for all PH candidates under the Central Government. He was the only eligible candidate to be considered for promotion to the next higher grade of U.D.C. which was renamed as Admin Asst 'B' on completion of minimum residency period

...2/-

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001; Tel.: 23386054, 23386154; Telefax : 23386006

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in
(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

of 5 years on 01.06.1993 against the reservation earmarked for PH category. Though 33 posts of U.D.C. were filled up on promotion from the feeder grade of L.D.C. by LRDE during the period from 01.06.1993 to 01.06.1995, no reservation was earmarked for PH category. He submitted that he was being denied the benefits of reservation for promotion to the grade of U.D.C.

3. The matter was taken up with Director, Centre for Artificial Intelligence and Robotic (CAIR), Ministry of Defence, Bangalore under Section 59 of the Persons with Disabilities Act, 1995, vide letter dated 15.02.2013 followed by reminder dated 06.08.2013.

4. The Respondent, through Senior Administrative Officer-I, ERDL vide their letter no. LRDE/10072/5/ZDPC/Amn dated 21.08.2013 submitted in the matter that the complainant was appointed as LDC against the PH quota and joined on 24.09.1987 in the Communication Division. The Communication Division was later bifurcated and formed a new Unit/Estt by the name CAIR and the complainant was transferred to CAIR during Nov 2000. The residency period for promotion from LDC to UDC was amended from 8 years to 5 years on seniority cum fitness basis, subject to availability of vacancy. It is stated that PH employees who were senior to the complainant were not considered for promotion on PH reserved quota for want of vacancy. The respondent further stated that there was no deviation/diversion to fill the vacancies reserved for reserved category and in particular the complainant was not denied the benefit for PH reservation for promotion. A copy of ERDE's reply dated 21.08.2013 was sent to the complainant vide this Court's letter dated 05.12.2013 for offering his comments thereupon.

5. The complainant, vide his rejoinder dated 03.01.2014, has submitted that till 1998, DPC-III were carried out on Unit/Estt level on seniority cum fitness subject to availability of vacancy. Formation of Zonal DPC-II with eleven labs as indicated in para 5 has come into existence only w.e.f. 15.04.1998. The complainant submitted that he had completed the required number of years of service, i.e. five years, on 24.09.1992 and was eligible for promotion as per SRO No. 61 dated 08.03.1993 from the year 1993 itself. When he was eligible for promotion from 1993,

...3/-

without considering his eligibility, total 32 promotions were made during the year 1993, 1994 and 1995 and 5 promotions between 1989 to 1992, totaling to 37 promotions from 1989 to 1997. The 34th vacancy was filled during 1994 which should have been reserved for PH (OH) ought to be his promotion. Referring to para 8 of Respondent's letter dated 21.08.2013, the complainant submitted that the seniority of PH (OH) being furnished by the Respondent in their above letter, includes OPH employees of other Lab/Estt who were not in the seniority list of LRDE when he was eligible for promotion from 24.09.1992. The seniority roll enclosed at Annexure-D is prepared after implementation of Zonal DPC. The Complainant also submitted that in all his correspondence and reply from LRDE, the Respondents have quoted Zonal DPC which was effective only from April 1998 ignoring that the Complainant was eligible in LRDE to Unit Level seniority during 1993. The complainant submitted that though reservation policy was effective from 04.11.1977, it appears that in LRDE no reservation policy, as envisaged in Government order, was followed.

6. This Court vide letter dated 08.06.2015 had advised the respondent and the complainant to intimate the present status of the case to this Court.

7. On behalf of Respondent, the Joint Director Electronics & Radar Development vide their letter no. LRDE/10072/5/ZDPC/Adm dated 15.07.2015 reiterated the comments as submitted by them in their reply dated 21.08.2013. A copy of Respondent's letter dated 15.07.2015 was forwarded to the Complainant for his comments vide this Court's letter dated 02.06.2016.

8. The complainant through his rejoinder dated 02.11.2016 has reiterated that he was eligible for promotion from LDC to Admin Asst B w.e.f. 1993 against PH reservation, which was denied to him. He further stated that 32 promotions were made during 1993, 1994 & 1995 and that during this period, his case should have been considered by the Respondent.

9. Upon considering respondent's replies dated 21.08.2013, 15.07.2015 and complainant's rejoinder dated 14.06.2016, it was decided to hold a personal hearing in the matter on 28.12.2016 as the Complainant reiterated that he was being denied the benefits of reservation

...4/-

for promotion to the grade of U.D.C.

10. During the hearing, the Respondent submitted that the complainant was working in LRDE till 02.11.2000 and was posted to their office w.e.f. 03.11.2000. DPC for promotion till March 1998 was held on Lab basis, i.e. by LRDE and from April 1998 onwards DPC was held on Zonal Basis, (Bangalore Zone), Chairman, Director, LRDE and the work related to the DPC such as maintenance of roster for PH, preparation of seniority Roll etc was / is maintained by them and they were/are involved in the DPC activities and not Director, CAIR. The representative of Respondent intimated that Director, LRDE is the respondent and not Director, CARE under the above circumstances. He requested the Court that the respondent in this case may please be replaced with Electronics & Radar Development Establishment, Bangalore and permit them for not appearing before the Court in future in this case.

11. Upon considering respondent's replies dated 21.08.2013, 15.07.2015 & 26.12.2016 and complainant's letters dated 14.06.2016 and 06.12.2016, it has been decided to hold a personal hearing in the matter on 17.03.2017.

12. During the hearing, the complainant submitted a written submission that till 1998, DPC-III were carried out on Unit/Estt level on seniority cum fitness basis subject to availability of vacancies. Formation of Zonal DPC-II with eleven Labs as indicated in para 5 has come into existence only w.e.f. 15.04.1998. He had completed the required number of years of service, i.e. five years on 24.09.1992 and was eligible for promotion as per SRO No.61 dated 08.03.1993 from the year 1993 itself. When he was eligible for promotion from 1993, without considering his eligibility, total 32 promotions were made during the year 1993, 1994 and 1995 and 5 promotions between 1989 to 1992, totaling to 37 promotions from 1989 to 1997. The 34th vacancy was filled during 1994 which should have been reserved for PH(OH) ought to be his promotion. The seniority of PH (OH) furnished at Para 8 of the brief facts includes OPH employees of other Lab/Estt who were not in the seniority list of LRDE when he was eligible for promotion from 24.09.1992. The seniority roll enclosed at Annexure-D is prepared for implementation of Zonal DPC. The complainant further submitted that in all his correspondences and replies from LRDE, they have quoted Zonal DPC which was effective only from April 1998 ignoring that the Complainant was eligible in LRDE for Unit level seniority during 1993. The Complainant submitted that though reservation policy was effective from 04.11.1977, it appears that in LRDE, no reservation policy, as envisaged in Government order, was followed.

13. The representative of the respondent submitted that the complainant was appointed as LDC against the PH quota in the Communication Division on 24.09.1987. The Communication Division was later bifurcated and formed a new Unit/Estt by name CAIR and the

...5/-

complainant was transferred to CAIR during Nov 2000. The residency period for promotion from LDC to UDC was amended from 8 years to 5 years on seniority cum fitness basis subject to availability of vacancy. The promotion from LDC to UDC has been considered by DPC-III (Estt./Lab level) as per the procedure and guidelines laid down on the subject in terms of Lab/Estt level by seniority basis. On scrutiny of DPC-III Minutes and relevant records such as seniority roll etc., it could be seen that Smt. G. Radhamma Thankachy K. Nair, L.D.C of their establishment who was appointed on 25.09.1980 against PH (OH) quota has been arrayed at seniority number 22 and Shri G. Chandrasekar, L.D.C. who was appointed on 24.09.1987 against PH (OH) quota has been arrayed at seniority number 42. It is evident that even PH (OH) persons, senior to the complainant appearing in the seniority roll, could not be considered for promotion on PH reserved quota for want of vacancy. Subsequently, DRDO Hqrs have formed Zonal DPC-II with Eleven (11) DRDO Constituent Labs located in Bangalore, Avadi, Chennai & DFRL, Mysore to consider promotion in respect of Admin & Allied Cadre Posts on Zonal basis and this Estt has been assigned the task of Bangalore Zonal DPC-II Secretariat. Thus, the Bangalore Zonal DPC-II consisting of Eleven (11) DRDO Estt located in Bangalore, Avadi, Chennai & DFRL, Mysore came into existence w.e.f. 15.04.1998. Further vide SRO No. 10-E dated 29.05.1998, the post of LDC/UDC was re-designated as Admin Assistant 'A' and Admin Assistant 'B' respectively with no change in residency period. Consequent to the above, the seniority rolls/Reservation Rosters etc., in respect of all the posts covered under DPC-II (including LDC-Admin Asst 'A'/UDC-Admin Asst 'B') earlier maintained by the respective Estt/Labs (Eleven (11) DRDO Constituent Labs located in Bangalore, Avadi, Chennai & DFRL, Mysore) was merged and re-casted. A fresh seniority roll on zonal basis was prepared after effecting the inter-se-seniority and circulated to all constitute Labs/Estts with a remark to communicate back to Zonal DPC-II Secretariat to incorporate in the Seniority Roll. After effecting correction (whatever received) the combined Seniority Roll came into operation. During July 1997, consequent upon the implementation of Reservation Roster Post Based issued vide GOI, DoP&T O.M. 36012/2/96-Estt.(Res) dated 02.07.1997, the Post Based Reservation Roster was in operation by the respective DPCs as per the Guidelines issued on the subject. The complainant applied for limited Departmental Competitive Examination for promotion to the grade of Adm Asst 'C' and was got selected and promoted as Admin Asst 'C' w.e.f. 19.08.2009 and assumed the charge of the promoted post w.e.f. the same date. It is seen from the DPC-II proceedings for the year 1998 that the LDC/Adm Asst 'A' who were promoted were adjusted in accordance with the applicable reservation in the order of merit. It could also be seen from the Reservation Roster (PH) that if any PH LDC/Adm Asst 'A' is promoted to the post of UDC/Adm Asst 'B', they are being adjusted either on merit or against reservation. Shri G. Chandrasekar, LDC/Adm Asst 'A' of their establishment was promoted as UDC / Adm Asst 'B' w.e.f. 15.10.1998 against the vacancy reserved for PH and all the PH

...6/-

LDC/Adm Asst 'A' who were senior to him and promoted

in the same DPC-II were adjusted against UR vacancy and shown as merit. The representative of respondent further stated that whenever the individual had made any representation on the subject matter, the same was explained to him in details and replied accordingly. It was further submitted by the Respondent that there was no deviation/diversion to fill the vacancies reserved for reserved category and in particular Shri G. Chandrasekar was not denied the benefit of PH reservation for promotion.

14. The court directed the respondent to submit the following documents before one week of hearing.

- 1) A copy of the roster in respect of Group A, B, C & D along with certificate of Liaison Officer certifying that the reservation roster has been maintained as DoP&T instructions.
- 2) Details of vacancies filled since 01.01.1993 (direct recruitment as well as promotion in respect of Group C and D) in the enclosed format.
- 3) To calculate the backlog of vacancies and submit alongwith action to be taken to fill up the backlog vacancies.

15. The case was rescheduled for hearing on **17.04.2017 at 12.00 Hrs.**

16. The complainant was exempted from attending the hearing.

17. The representative of the Respondent submitted that the complainant was appointed as LCD in the Establishment against PH (OH) quota and reported for duty on 24.09.1987 and working in Communication Division. Later the Communication Division of this Establishment was bifurcated and formed a new Unit/Estt by name CAIR, accordingly the above named individual was transferred to CAIR during November 2000. In DRDO prior to 15.04.1998, recommendation for promotion from LDC to UDC was carried out by DPC-III Unit/Estt level on seniority-cum-fitness basis, subject to availability of vacancy. As per the then prevailing SRO No.266 dated 30.06.1986 the residency period for promotion from LDC to UDC was 8 years. Subsequently vide SRO No.61 dated 08.03.1993 the residency period for promotion from LDC to UDC was amended from 8 years to 5 years, on seniority cum fitness basis subject to availability of vacancy. Accordingly, promotion from LDC to UDC was considered by DPC-III (Estt/Lab level) as per the Procedure and Guidelines laid down on the subject in terms of Lab/Estt level by seniority basis. The vacancies available for DPC-III for promotion from LDC to

...7/-

UDC and promotions made during the year 1989 till 1997 were furnished as per following:

Date of DPC III (Estt/Lab level)	No. of vacancy (Released/considered)	No. of Promotions made
15 Dec 1989	NIL	NIL
15 Jun 1990	NIL	NIL
17 Dec 1990	01	01
17 Jun 1991	NIL	NIL
02 Dec 1991	NIL	NIL
01 June 1992	02	02
01 Dec 1992	01	01
01 June 1993	01	01
01 Dec 1993	04	04
01 June 1994	NIL	NIL
02 Dec 1994	23	23
01 June 1995	05	05
01 Dec 1995	NIL	NIL
03 Jun 1996	NIL	NIL
02 Dec 1996	01	01
01 Jun 1997	NIL	NIL
01 Dec 1997	NIL	NIL

18. On scrutiny of DPC-III Minutes and relevant records such as seniority roll etc, it could be seen that Smt. Radhamma Thankachy K. Nair, LDC of their establishment who was appointed on 25.09.1980 against PH (OH) quota has been arrayed at seniority number 22 and the complainant who is working as LDC of their establishment was appointed on 24.09.1987 against PH (OH) quota has been arrayed at seniority number 42. It was evident that even a PH (OH) candidate senior to the complainant was available in the seniority roll, could not be considered for promotion on PH reserved quota for want of vacancy. As per the Respondent, the DRDO head quarters have formed Zonal DPC-II with eleven (11) DRDO Constituent Labs located in Bangalore, Avadi, Chennai & DFRL, Mysore to consider promotion in respect of Admin & Allied Cadre Posts on Zonal basis and their establishment has been assigned the task of Bangalore Zonal DPC-II Secretariat. Thus, the Bangalore Zonal DPC-II consisting of eleven (11) DRDO establishments located in Bangalore, Avadi, Chennai & DFRL, Mysore came into existence w.e.f. 15.04.1998. The representative of the Respondent further submitted that further vide SRO No. 10-E dated 29.05.1998 the post of LDC/UDC was re-designated as Admin Assistant 'A' and Admin Assistant 'B' respectively with no change introduced in residency period. The representative of Respondent submitted that consequent to the above, the

...8/-

seniority rolls / Reservation Roster etc, in respect of all the post covered under DPC-II (including LDC Admin Asst 'A'/UDC-Admin Asst 'B') earlier maintained by the respective establishments/labs (eleven 911) DRDO constituted labs located in Bangalore, Avadi, Chennai & DFRL, Mysore) was merged and re-casted. A fresh seniority roll on zonal basis was prepared after effecting the inter-se-seniority and circulated to all constituent Labs/Estts, with a remark to communicate back to Zonal DPC-II Secretariat to incorporate in the Seniority Roll. After effecting correction, the Combined Seniority Roll came into operation. From the seniority roll for the post of LDC/Admin Asst 'A' for promotion to the grade of UDC/Admin Asst 'B' prepared after effecting the inter-se-seniority of the incumbents of all the Constituent Labs located in Bangalore, Avadi, Chennai & DFRL, Mysore, the seniority details of PH (OH) were reflected as below :-

Sen. No. in Seniority Roll	Name Shri/Smt/Kum	Design	Lab / Estt.	Date of Appt. as LDC / AA'A'
13	BALAMANI P SELVAM (PH-OH)	AA 'A'	CVRDE	13/12/1984
15	MANIMARAN K (PH-OH)	AA 'A'	ADE	07/06/1985
22	LALITHADWARAKANATH R (PH-OH)	AA 'A'	ADE	26/05/1986
23	VINODHINI P (PH-OH)	AA 'A'	ADE	28/05/1985
31	CHANDRASEKAR G (PH-OH)	AA 'A'	LRDE	24/09/1987

The representative of Respondent submitted that after merging the seniority of LDC/Admin Asst 'A' of all the constituent Labs/Estts of Bangalore Zone, it could be seen from the seniority roll of DPC-II in respect of LDC/Admin Asst 'A' post that the complainant appeared much below in Seniority Roll and that the LDC/Admin Asst 'A' who were appointed against PH quota, i.e. (OH) much earlier to him, and were senior to the complainant were available and were considered for promotion from LDC/Admin Asst 'A' to LDC/Admin Asst 'B' in order of their seniority subject to availability of vacancy. The vacancies available for DPC-II for promotion from LDC/Admin Asst 'A' to UDC/Admin Asst 'B' and promotions made during the year 1998 were furnished as below:-

...9/-

Date of DPC II (Bangalore Zone)	No. of vacancies (Released/considered)	No. of promotions made	Remarks
01 June 1998	33	27	06 LDC/Admin Asst 'A' were recommended against vacancies reserved for SC/ST subject to de-reservation
15 Oct 1998	19	19	Shri G. Chandrasekar, Adm. Asst 'A' was promoted as Admin Asst 'B' w.e.f. 15.10.1998 against the vacancy reserved for PH

The representative of Respondent further submitted that it was noted from the DPC-II proceedings for the year 1998 that the LDC/Adm. Asst 'A' who were promoted, were adjusted in accordance to the applicable reservation in the order of their merit. He also submitted that it could be seen from the Reservation Roster (PH) that if any PH LDC/Adm Asst.'A' is promoted to the post of UDC/Adm Asst 'B', they are being adjusted either on merit or against reservation. The Complainant, Shri G. Chandrashekar, LDC/Adm Asst 'A' of their establishment was promoted as UDC/Adm Asst 'B' w.e.f. 15.10.1998 against the vacancy reserved for PH and all the PH LDC/Adm Asst 'A' who were senior to him and promoted in the same DPC-II were adjusted against UR vacancy and shown as merit. He further submitted that whenever the complainant made any representation on the subject matter, the same was explained in details to him and replied accordingly. He submitted that at any stage there was no deviation/diversion to fill the vacancies reserved for reserved category and in particular the complainant was not denied the benefit of PH reservation for promotion.

19. On hearing the matter, the Court took note of the fact that the promotion was not given to the complainant as he was at seniority number 42 whereas many PH (OH) employees senior to the complainant were available in the seniority roll and accordingly the name of the Complainant could not be considered for promotion on PH reserved quota for want of vacancy.

20. Finding no apparent denial of any bonafide right to the Complainant in the instant case, this Court accordingly disposes off the case.



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