



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. 32/1051/10-11

Dated: 03.11.2016

In the matter of:

Shri Kinny Yogesh Pandey, 0469
201, Ankur Bhavan, Sambhaji Nagar,
Vasai Road (E), District – Thane,
Maharashtra – 401210.

----- Complainant

Versus

Western Railway HQ, 0470
Through the General Manager (Personnel),
Churchgate, Mumbai-400020.

----- Respondent No. 1

Ministry of Railways, 0471
Through the Adviser (Public Grievances)
Rail Bhawan, New Delhi-110001.

----- Respondent No. 2

Date of hearing : 12.07.2016, 3.10.2016

Present :

12.07.2016

1. Complainant absent.
2. Dr. Uma Nataraj on behalf of Respondents.

03.10.2016

1. Complainant absent.
2. S/Shri S.M. Salim, APO-HQ-CCG-WR, Srinivas K.M., Chief S&WLT,WR-HQ-CCG and Dr. Uma Nataraj on behalf of Respondents.

ORDER

The above named complainant, a person with hearing impairment filed a complaint dated 08.04.2014 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding harassment by the respondents.

2. The complainant submitted that he is the victim of serial bomb blasts occurred in the suburban trains at Mumbai on 11.07.2006. The complainant alongwith his father was travelling from Mumbai Central Railway Station to Vasai Road Railway Station at about 1800 hours to 1830 hours. When the said train reached at Borivili Station, the bomb exploded and both the complainant and his father were seriously injured. The complainant, at the time of incident was a bonafide passenger holding a valid season ticket. The complainant further submitted that Ministry of Railway (Railway Board) issued the fresh directions to the General Manager (Personnel) of Western Railway, Mumbai stating that disabled persons who have applied for appointment for themselves may be considered on parameters set for appointment of physically handicapped quota as per the Persons with Disabilities Act, 1995 and they should be examined accordingly by the medical board for appointment in Group 'D'.

...2/-

3. The matter was initially taken up under Section 59 of the Act with the respondent vide this Court's letter dated 01.06.2010 and subsequently thereafter vide letters dated 30.09.2015 and 03.12.2015 and reminders dated 6.12.2015 and 07.03.2016.

4. The respondent No.1 vide letter dated 05.09.2014 submitted that instructions were issued to the Commissioner for Persons with Disabilities, Government of Maharashtra to constitute an independent Medical Board of ENT Specialists of Govt. Hospital/institution to re-assess the hearing loss of the complainant Shri Kinny Yogesh Pandey as per the guidelines for evaluation of various disabilities and procedure for certification as noticed vide Notification dated 01.06.2001 by Ministry of Social Justice & Empowerment. It is seen that the Medical Board as per instructions of this Court dated 14.02.2014 has not been constituted by Commissioner for Persons with Disabilities, Government of Maharashtra. Instead a certificate issued in the year 2013 by District Hospital, Nashik certifying the percentage of disability as 63.04% in the case of Shri Kinny Yogesh Pandey has been sent which appears to be contradictory. It is stated that the complainant has already been examined twice by the Medical Board constituted by this Railway and has found the disability of Shri Kinny Yogesh Pandey as 15.04% only. Further complainant had submitted a disability certificate dated 01.10.2008 issued by JJ Hospital, Mumbai indicating extent of disability as 50%. On verification of the said certificate from JJ Group of Hospitals the certificate found to be fake as advised by Medical Superintendent, JJ Group of Hospitals, Mumbai. Thereafter the complainant had submitted disability certificate dated 04.05.2011 issued by JJ Group of Hospitals indicating extent of disability as 75%. There are discrepancies in the certificates submitted by the complainant. It is requested to send the audiogram report of Shri Kinny Yogesh Pandey based on which medical certificate dated 22.02.2013 was issued by District Hospital, Nashik so that further action can be taken in this case.

5. The complainant vide his letter dated 07.11.2014, 08.02.2016 and 22.04.2016 submitted that he has no such audiograms issued to him by the Medical Committee constituted by the Maharashtra Government. The member of Medical Committee at AYJNIHH, Mumbai themselves tested his hearing disabilities with audiograms, BERA and various other tests, none of those copies of the test has been issued to him. He was only given the final medical certificate by the constituted medical committee which has duly been forwarded to you. I would also like to clarify/reply that such discrepancies were caused by the Railway itself referring to the letter bearing dated 23.12.2010 to Dean, Sir J.J. Group of Hospitals, Mumbai obtained by me under RTI Act, 2005 from Sir J.J. Group of Hospitals, wherein railway deliberately tried to intervening your certificate verification process and forced them to report it as a fake certificate. The reply was sent without even consulting the concerned doctor who signed on the certificate, Dr. Mohan Jagde, Head ENT Department, Sir JJ Hospital. Kindly note that the Dean of the Hospital was the member of the Medical Board constituted by the railway for accessing disabilities of the 11/7 Bomb Blast victims which access wrong disabilities and tried to defend it therein as it hurt the credibility and ego of the members of the medical committee. I would like to know what

new thing had come up with me to which my disability is 55% since 01.12.2012 and not immediately after the Bomb Blast which is on 11.07.2006. They are just trying to hide their mistake and deprive the rights of disabled persons injured during the 11/7 serial bomb blast.

6. The respondent No.1, General Manager (E), Western Railway vide letter dated 11.12.2015 submitted that the Audiogram report received in respect of Shri Kinny Yogesh Pandey based on which his Medical Certificate dated 22.02.2013 was issued, has been examined by the Medical Department of this Railway and it has been certified by the Medical authority that the extent of disability of Shri Kinny Yogesh Pandey is 55% as on 01.12.2012.

7. Upon considering the letters dated 05.09.2014, 11.12.2015 of the respondent No.1 and letters dated 07.11.2014, 08.02.2016 and 22.04.2016 of the complainant, a hearing was scheduled on 12.07.2016.

8. During the hearing on 12.07.2016, the complainant vide his e-mail dated 08.07.2016 has submitted that due to financial and illness of his as well as his father, he may not be able to attend the hearing and has requested this Court to keep his perspective during the hearing as per his representations.

9. The representative of the respondent submitted that a serial bomb blast was occurred on 11.07.2006 in local suburban train in Mumbai. Shri Kinny Yogesh Pandey was a bonafide passenger of the affected train. He got injured for left ear profound sensor-neural hearing loss. His right ear's hearing is normal. After two years of bomb blast, he developed right ear conductive hearing loss, which is temporary but the victim did not take treatment. Due to not taking the treatment, the disease progressed to sensor-neural hearing loss. After this the Medical Board was held at Nasik based on repeat audiometry and BERA. It was decided that this victim is having 55% disability on dated 22.02.2013. Based on this, the Railway took a decision that his case will be processed for Competent Authority's consideration for employment in Railway as substitute in erstwhile Group 'D' post.

10. After hearing the representative of the respondent and going from the letter No. E(R&T) 890/60/2/11-07 dated 07.07.2016, the respondent is directed to submit the decision taken on the complainant's request for employment in the Railway within 30 days from the date of receipt of this Record of Proceedings. The case was fixed for hearing on 03.10.2016.

11. The complainant vide his e-mail dated 30.09.2016 submitted that he does not agree with the said excuse given by the Railway as mentioned in para 2 of Record of Proceedings dated 24.08.2016 of this Court. Kindly note since the inception of the case, I had been pointing out the fact that I had been presenting myself with all documents (pertaining to my medical condition) as and when I was called by the Railway Medical Board from time to time. How can they say that initially I had injury to my left ear and I have not taken proper treatment and it slowly developed to right ear. Can they prove is

there any sought of medical conditions or disease to which I am infected sustained during the bomb blast and which gradually increases that too on another ear during the span of two years. I would like to again point out the fact that the so-called Medical Board constituted by Railway did not even made a slightest bit of the attempt to examine disabilities of the 11/7 blast victim correctly. They had taken discussion on the audiogram not even signed by the doctor as I was not in the condition to hear the audiogram pressure due to multiple severe injuries on my head and various parts of my body. I believe such behavior of the so-called Medical Board constituted by Railway may be either due to lack of knowledge in judging medical conditions of the patients accurately or may be due to corruption.

12. The representatives of the respondents submitted that in connection with the above, it is certified that appointment order of Shri Kinny Yogesh Pandey was issued vide letter No.E(R&T)/840/60/2/1/11-07 dated 03.10.2016 with the approval of General Manager, Western Railway. Shri Kinny Yogesh Pandey is appointed as Khalasi/Helper in Bombay Central Division and has also been communicated telephonically.

13. After hearing the representative of the respondent and perusal of the record, this Court observed that since the relief has been granted to the complainant by the respondent, there is no need to give any further direction to the respondent and the case is closed.

14. Ordered accordingly.



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