



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.3564/1011/2015

Dated:- 07.09.2016

In the matter of:

Dr. R. Balasubramaniam, ⁰³¹¹
12/45, Thiyagi Natesan Street No.2,
Ammamet, Salem,
Tamil Nadu - 636003

..... Complainant

Versus

Indian Maritime University, ⁰³¹²
Through Registrar,
East Coast Road, Uthandi,
Chennai-600119.

..... Respondent

Date of hearing : 27.07.2016

Present:-

1. Complainant absent.
2. Shri K.S.M. Rafi, Assistant Registrar, on behalf of Respondent.

ORDER

The above named complainant, a person with 55% locomotor disability submitted a complaint dated 20.01.2015 before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to the 'Act' regarding non implementation of provisions of Persons with Disabilities Act, 1995 by Indian Maritime University, Chennai in the recruitment of various posts.

2. The complainant submitted that Indian Maritime University had issued an advertisement in "The Hindu" dated 17.01.2015 calling for applications for various non-teaching positions but they have not provided specific reservation for Differently Abled Persons (DAPs). He further submitted that respondent had also mentioned in the advertisement that photocopies of the service certificates should be attested by Notary Public which is in violation of Government of India's guidelines.

3. The matter was taken up under Section 59 of the Act with the respondent vide this Court's letter dated 27.04.2015.

4. In response, the Registrar, Indian Maritime University vide letter dated 10.07.2015 inter-alia submitted that they are routinely giving age relaxation for PwD candidates as per Government of India norms and this is incorporated in the Recruitment Rules. They further submitted that they have asked for attestation of service certificate by a Notary Public only where a candidate has worked in multiple organizations and to guard against false claims.

...2/-

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

5. In response to respondent's letter dated 10.07.2015, this Court vide letter dated 24.11.2015 informed the respondent that though it is not against the Persons with Disabilities Act, 1995 to ask the complainant for attestation of service certificate by a Notary Public only, but the same is inconvenient and expensive for disabled persons. This Court also advised the respondent to maintain a reservation roster and calculate the backlog vacancies meant for persons with disabilities and fill the same at the earliest under intimation to this Court followed by reminder dated 29.02.2016.

6. Despite reminder dated 29.02.2016, no reply was received, therefore, a hearing was scheduled on 27.07.2016.

7. During the hearing on 27.07.2016, none appeared on behalf of the complainant. Nor any intimation has been received about his inability to attend the hearing on 27.07.2016 despite the fact that the copy of the Notice of hearing was sent on 15.06.2016 by Speed Post. This Court noted with serious concern, the utter disregard shown by the complainant by neither intimating his inability to attend the hearing nor caring to appear to explain his versions of the case.

8. The representative of the respondent submitted reply dated 20.07.2016 during the course of hearing, which was taken on record. The respondent has shown the copy of Reservation Roster. He also submitted that a reply has been filed and he has nothing to argue. We are strictly following the instructions as informed by the DOP&T.

9. 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) Locomotor 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."

10. Para 25 of the Department of Personnel & Training's O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 provides that 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 duty 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.

11. DOP&T in para 15 of their OM No.36035/3/2004-Estt. dated 29.12.2005 has prescribed the procedure for effecting reservation – maintenance of roster. Further, DoP&T vide their O.M. No.36035/8/2003-Estt. (Res) dated 26.04.2006 had decided that all establishments should prepare the reservation roster registers as provided in their O.M. mentioned above starting from the year 1996 and reservation for persons with disabilities be earmarked as per instructions contained in the above mentioned O.M.

12. DoP&T also vide its O.M. No.36035/6/2012-Estt. (Res.) dated 14.12.2012 had requested the Ministries/Departments to prepare reservation roster registers starting from the year 1996. As per the instructions if some or all the vacancies so earmarked have not been filled by reservation and were filled by able bodied persons either for the reason that points of reservation had not been earmarked properly at the appropriate time or persons with disabilities did not become available, such unutilized reservation might be treated as having been carried forward. Ministries/Department may ensure that reservation to persons with disabilities is provided as per extant instructions so as to minimize possibility of creation of backlog reserved vacancies. It is also advised that concerted efforts should be made to clear the backlog through regular recruitments without waiting for Special Recruitment Drives.

13. In compliance of Judgment dated 08.10.2013 of Hon'ble Supreme Court of India in Civil Appeal No. 9096 of 2013 (arising out of SLP (Civil No. 7541 of 2009) titled Union of India & Anr. Vs.

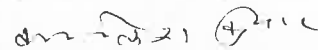
National Federation of the Blind & Ors., the Department of Personnel & Training vide OM No. 36012/24/2009-Estt. (Res) dated 03.12.2013 has modified para 14 of its OM No.36035/3/2004-Estt. (Res) dated 29.12.2005 to the effect that "Reservation for persons with disabilities in Group 'A' or Group 'B' posts shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group 'A' posts or Group 'B' posts respectively, in the cadre."

14. Department of Personnel & Training vide its O.M. No.36035/2/2012-Estt.(Res) dated 08.01.2014 had amended the Para 4 of its O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 relating to identification of jobs/posts and all the Ministries/Departments are now requested to utilize the list of identified posts specified in Annexure-C of the Ministry of Social Justice and Empowerment's Notification No.126-15/2010-DD.III dated 29.07.2013. It is further stated that the list of jobs/posts notified by the Ministry of Social Justice and Empowerment is illustrative and the concerned Ministries/Departments can further supplement the list to suit their job requirements.

15. Department of Personnel & Training further in compliance of the Directions of the Hon'ble Supreme Court in its Judgment dated 08.10.2013 referred above in para 10 vide its O.M. No.36035/4/2013.Estt.(Res.) dated 06/07.01.2015 has amended para 15(i) of the said O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 to the extent that "Reservation for persons with disabilities in Group 'A' or Group 'B' post shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group "A" posts or Group "B" posts respectively in the cadre."

16. After hearing the respondent and after going through the papers on record and after perusal of the Reservation Roster, it is observed that the same has not been prepared as per DOPT's instructions. It is made separately for each post instead of preparing Group-wise. The case is disposed off with the following directions to the respondent:-

- (i) In future, advertise the vacancies as per para 25 of DOPT's O.M. No.36035/3/2004-Estt.(Res) dated 29.12.2005 and also to follow the instructions referred above on this issue.
- (ii) Reservation Roster Register to be maintained from the date of inception as per DOPT's instructions.
- (iii) Submit a copy of Reservation Roster alongwith certificate of the Liaison Officer certifying that the reservation roster has been maintained as per DOPT's instructions.
- (iv) Calculate the backlog vacancies and to conduct the Special Recruitment Drive to fill up the backlog vacancies in a time frame manner.
- (v) The names of the selected candidates with their nature and percentage of disabilities may be intimated to this Court within 15 days of their joining.



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