



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.363/1023/2013

Dated:-08.09.2014

In the matter of:

Shri Gautam Paul,
Ex-Technician 'B',
C/o Late Bimal Chandra Paul,
Mallick Bagan,
(S.M. Bose Road),
District 24 Parganas (N),
Kolkata – 700 109.

..... Complainant

Versus

Department of Atomic Energy,
(Thru the Chairman),
Anushakti Bhavan,
Chhatrapati Shivaji Maharaj Marg,
Mumbai – 400 001.

.... Respondent

Date of hearing : 04.06.2014

Present :

1. Gautam Paul, Complainant alongwith his brother Gopal Ch. Paul and Shri Manish Garg, Advocate on behalf of the Complainant..
2. S/Shri Anoop Banarjee, Adm. Officer-III, A.K. Pattra, Asstt. Personnel Officer and Barudeb Barnar on behalf of the Respondent.

O R D E R

The above named complainant, a person with 50% locomotor disability filed a complaint dated 23.08.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding his reinstatement in service.

2. The factual matrix of the case is that the complainant, Shri Gautam Paul, 35 years of age, who apparently a person with locomotor disability had applied for the post of Tradesman/B (Mechanical Fitter) (Group 'C' post) in pursuance of advertisement no.VECC-1/2007 dated 01.05.2007 issued by the respondent, namely, Variable Energy Cyclotron Centre (VECC), Department of Atomic Energy, Kolkata and the said post against which he applied, belonged to the unreserved category. The complainant was selected on merit. He accordingly joined the duties of the said post w.e.f. 27.08.2009 in the wake of his appointment. The respondent, however, terminated his services

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w.e.f. 23.04.2010 on the ground that the complainant was not a person of absolute integrity. The contention of the respondent is that they discovered subsequent to the complainant's appointment and joining that the complainant's Disability Certificate issued by R.G. Kar Medical College & Hospital, Kolkata was not genuine. Before joining of duty by the complainant on 27.08.2009, the complainant was referred to Defence NRS Medical College and Hospital for ascertaining medical fitness – once on 28.07.2009 and then on 04.08.2009 and accordingly the complainant was examined on 01.08.2009 and 12.08.2009 respectively. The first respondent, among other things, stated that the complainant was a physically handicapped person and the matter had to be referred back to the same medical authority for a second time as the medical fitness certificate did not contain any mention about the complainant's disability. The second certificate dated 12.08.2009 issued by the said authority, while certifying the medical fitness of the complainant for office and table work also stated that the complainant happened to be a "person with 65% disability as per the certificate issued from R.G. Kar Medical College & Hospital – Medical (Handicapped) Board on 18.05.2004 - at present the patient can walk without support." Subsequent to the termination of his service on 23.04.2010, the complainant obtained another Disability Certificate dated 27.08.2010 from North 24 Parganas District Hospital, Barasat and submitted the same to the Director, VECC. The said certificate dated 27.08.2010 reads as under:-

"He is a physically challenged person with old injury @ knee ankle & restriction of movement of @ knee, ankle & radioculopathy @ side. His percentage of permanent/partial disability is calculated as 50% and having chances of variation the case requires review after x years."

3. The complainant had challenged the validity of the termination order dated 23.04.2010 issued by the respondent while the respondent maintains that the Disability Certificate issued by R.G. Kar Medical College & Hospital. Dated 18.05.2004 was purely in-genuine and completely fake as was confirmed in writing by the R.G. Kar Medical College & Hospital, Kolkata vide their letter No. RGKH/148/2010/1571 dated 25.03.2010. and states as under:-

"Ref: VECC/Admn/Rect/2010/642 dated 19.03.2010.

Sub : Physical Disability Certificate reg.

In reply to your letter under reference and subject this may please be noted that the certificate (Xerox copy) which you have sent to us for verification is purely in-genuine and completely fake.

So, question of issuing the same from this office does not arise.

This is for faovur of your information please."

4. In the light of this fact, the respondent states that submission of fake certificate adversely reflects on integrity of the complainant and his service was terminated accordingly and the act of termination was perfectly in order.

5. It goes without saying that the State Commissioner for Persons with Disabilities, Government of West Bengal also took up the matter with respondent vide her letter No. 546/Com dated 22.05.2012 Which states as under:-

"In inviting a reference to above, I would like to submit an appeal in favour of Sri Gautam Paul for re-instatement in service.

Facts of the case in brief are stated below:

1. *Shri Paul appeared and succeeded in the Competitive Examination conducted by the Variable Energy Cyclotron Centre, Department of Atomic Energy and subsequently was appointed w.e.f. 27.08.2009 to the post of Technician after completing all the formalities.*

2. *After a lapse of few months, it appeared to the Concerned Authority that the Disability Certificate which the candidate produced, was not a genuine one and issued a Show Cause notice why he would not be terminated from his service and not being satisfied with his replies, he was terminated from service with effect from April 23, 2010.*

Shri Paul has submitted an application to this office alongwith some documents.

On perusal of the papers on record, I would like to state the followings for your kind consideration:

The candidate not being aware of the actual procedure for obtaining certificate, approached a wrong place and accepted the certificate signed by a single doctor, in stead of three doctors. He is the permanent resident of North 24 Parganas District. If, he is cunning enough, he could have obtained a Disability Certificate from his District Hospital fraudulently as alleged. Same act of ignorance has been committed by the Officer of your Department also. Shri Paul was allowed to sit for the examination taking into consideration the 'In-genuine' certificate. If this act of omission is committed by an experienced Officer and he is excused for that omission, then why a person with disability, whose disability has been confirmed twice by the Zonal Medical Board at N.R.S. Medical College & Hospital will not be excused for this act of ignorance.

Sir, my humble submission is that this disability has been confirmed by the Zonal Medical Board. Subsequently, he obtained Disability Certificate from the District Hospital, Barasat also. Therefore, the contents of the certificate are almost same only the procedure was not proper.

Therefore, his dismissal could be justified only, if it was found that not being a genuine person with disability, the Disability Certificate was procured by him fraudulently. Even if it is accepted that being fully aware of the procedure, he took recourse to any unlawful mean, though I strongly differ, he may kindly be excused for this first offence.

Sir, you have to appreciate that, there are very few opportunities for the persons with disabilities. Shri Gautam Paul, qualified himself for appointment to the said post by his Endeavour and sincerity after going through all the difficult test.

Therefore, it is my earnest appeal that for the sake of natural justice to a person with disability candidate, he may kindly be excused for this act of ignorance and he may kindly be re-instated."

6. Reiterating his written submissions, the Ld. Counsel of the complainant also highlighted the statement of the Director VECC citing his notings on the file which states as under:-

“We now have a certificate from a recognized authority (North 24 Parganas District Authority) that cannot be ignored. He surely has not developed the orthopedic disability recently. It must have been there since he was first employed with VECC. So, is there a case for giving him benefit of doubt? The case is not straight forward. Please discuss for the next course of action.”

He stressed the point that the complainant did not submit any fake certificate as he was under bonafide belief that it was issued by the competent authority and has obtained the certificate in good faith. He further submitted that at the time of initial appointment, he was also physically handicapped and as on today he continues to be so.

7. Reiterating their written submissions, the respondents contested the stand of the complainant and asserted that a certificate issued by R.G. Kar Medical College & Hospital dated 18.05.2004 was in-genuine and fake and stated that the post to which the complainant was recruited belonged to unreserved category; nevertheless the complainant apparently being a person with disability was given the benefit of age relaxation. The respondent further contended that the act of submitting in-genuine and fake certificate by the complainant amply demonstrated utter want of integrity on the part of the complainant which is detrimental to the Department. The respondent also cited the following extracts of letter dated 25.03.2010 from R.G. Kar Medical College & Hospital disowning the complainant's certificate as follows:-

“That the certificate which you have sent to us for verification is purely in-genuine and completely fake. So the question of issuing the same from the office does not arise.”

It was also alleged by the respondent that the complainant submitted the fake certificate with the sole intent of availing age relaxation available to persons with disabilities under the prevailing norms.

8. After hearing out the parties and after a careful perusal of the written submissions together with relevant documents and records of the complainant and respondent respectively, it would be in the fitness of things for this Court to also highlight and refer to the notings on the relevant file by the Director, VECC favouring the benefit of doubt to the complainant. Besides, the possibility of the complainant having obtained the allegedly in-genuine and fake certificate from the R. G.Kar Medical College & Hospital in good faith without knowing to be in-genuine and fake cannot be, perhaps, be ruled out, more particularly in the face of the fact that the complainant's disability as of now appears fairly obvious. It is possible that there may have been some procedural or format relating lacunae involving the said certificate in question.

9. In the above view of the matter, this Court deems it fair and appropriate that the matter be referred to the Secretary, Government of West Bengal, Department of Health, Kolkata requesting him to constitute a panel of Medical Experts for undertaking a meticulous examination of the complainant in person together with his medical records to ascertain his disability including the degree and nature and extent of his disability and also to the extent possible his probable period of time for which he has been a person with disability. The copies of relevant records relating to the case/matter be also sent to the Secretary, Government of West Bengal, Department of Health, Kolkata for necessary action. The Secretary, Health, Government of West Bengal, Kolkata may constitute a complete medical examination of the complainant within six weeks from the date of receipt of this order. The Secretary, Health, Government of West Bengal will forward the outcome of the medical examination of the complainant to the respondent and the complainant under intimation to this Court.

10. On receipt of the outcome of the medical examination, the respondent shall consider revoking their termination order dated 23.04.2010 and thereby re-instate the complainant in service with all consequential benefits if the outcome of the said medical examination so warrants. The respondent shall accordingly take appropriate action within six weeks from the date of receipt of the outcome of the medical examination as stated above under intimation to this Court. A copy of this Order be also marked to the Secretary, Government of West Bengal, Department of Health for appropriate action.

11. The matter stands disposed off with the above directions.

Sd/-

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

Copy to:

The Secretary, Government of West Bengal, Department of Health & Family Welfare, Swasthya Bhawan, GN-29, Sector-IV, Salt Lake, Kolkata-700 091 for appropriate action.