



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.: 3829/1024/2015

Dated: 01.06.2017
Dispatch No.....

In the matter of :

Shri T. Suresh Rao.,
'Daivanugraha'
No.9/10, Uttarahalli-Kengeri Main Road,
Channasandra,
R.R. Nagar,
Bengaluru – 560 098

.....Complainant

Versus

Employees' State Insurance Corporation
(Through Director General)
Panchdeep Bhawan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi – 110 002

.....Respondent

Date of Hearing : 03.03.2017 and 13.04.2017

Present :

1. Shri Subhash Chandra Vashishth, Legal Counsel – on Behalf of Complainant
2. Respondent - Absent

ORDER

The above named complainant, a person with 75% visual impairment, filed complaints dated 20.01.2015 & 17.03.2015 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act' regarding his posting to a suitable branch and denial of promotion.

2. The complainant submitted that he is presently working as Assistant in Employees State Insurance Corporation (ESIC) at its office in Bangalore. During the service he became visually impaired due to series of surgeries performed on his left eye due to macular hole and retina detachment. He got lazer treatment of his right eye due to corneal hole. On the basis of his disability, he requested his department for his posting to a suitable branch where he can able to work comfortably. His request was not considered by his establishment. He was denied his next promotion whereas his juniors were promoted.

3. The matter was taken up with the respondent under Section 59 of the Act vide this Court's letter dated 06.07.2015.

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4. The Respondent vide letter no. A-12/18/PWD Rep./10-SCT dated 22.01.2016 submitted that the complainant joined this organisation as LDC on 16.04.1982 and promoted in various cadres. The complainant is presently working as Assistant after earning two promotions. The complainant vide his letter dated 08.10.2014 had expressed his inability to work on computers and requested their office to post him to a branch where the work on computer was not involved and responsibility of work is less for the reasons that he is suffering from low vision. The complainant was then posted to Benefits branch where minimal work on computers is involved. The Regional Director, Bangalore was advised to consider the name of the complainant by conducting a review screening for the promotion to the post of SSO. As regards, grant of Transport Allowance at double the normal rate to the complainant, the Respondent had referred the Medical Certificate of the complainant to Ophthalmology Department, ESIC Model Hospital, Rajajinagar, Bangalore for their opinion. The Head of the Department, Ophthalmology reported that the vision of Right Eye was 6/60 (i.e. more than 3/60) and opined that the complainant did not fulfill the criteria of vision less than 3/60 in both the eyes for eligibility for payment of Transport Allowance and the complainant was not paid the Transport Allowance at double the normal rate as applicable to employees with disabilities.

5. The complainant vide his rejoinder dated 24.02.2016 submitted that his request for post him to a branch where computer work is not involved and responsibility of work is less, has not been considered favourably by his establishment. He was posted to Benefits Branch where computer work is involved and responsibility is also more. He submitted that till date he has not been offered any promotion by his establishment. He further submitted that the Disability Certificate issued by a competent authority under the Persons with Disabilities Act, 1995, was referred to a Doctor who is much below the rank of Competent Authority for his opinion.

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6. This Court vide letter dated 14.12.2016 advised both parties to intimate the present status of the case to this Court in order to take a final view in the matter. The complainant vide his letter dated 26.12.2016 submitted that he was not offered any promotion merely on the grounds of his disability, though his junior was promoted long back. He further submitted that by giving promotion his post should have been adjusted against any other post or if such post is not available, the post should have been kept on supernumerary till such post is available or till he attains the age of superannuation. He further submitted that he had requested his establishment for payment of Transport Allowance at double the normal rate. The Disability Certificate issued to him is absolutely in accordance with Section 2(b) (ii) of the Persons with Disabilities, Act, 1995.

7. Upon considering the respondent's letter dated 22.01.2016 and complainant's letters dated 14.10.2015, 08.02.2016, 24.02.2016 and 23.11.2016, the hearing was scheduled on 03.03.2017.

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8. During the hearing Legal Counsels on behalf of complainant were present. The Counsels of the complainant reiterated and prayed for the posting of the complainant to a suitable branch and to grant promotion etc. to him.

9. No representative of Respondent was present during the hearing nor any intimation was given about their inability to attend the hearing despite the fact that the Notice of hearing was sent to them on 30.01.2017 by Speed Post. The Court noted with serious concern the utter disregard shown by the Respondent by neither intimating their inability to attend the hearing nor caring to send their versions of the case to this Court. The Court vide Record of Proceedings dated 15.03.017 adjourned the next hearing on 13.04.2017.

10. During the hearing the Legal Counsel of the complainant argued on two issues, Double Transport Allowance and denial of promotion. The Counsel submitted that the complainant relied on Supreme Court Judgment no. WP(Civil) No. 107 of 2011. The relevant paras of the judgment is reproduced below;

" 18. The Disabilities Act, as already indicted, states that the "persons with disabilities" means persons suffering from not less than 40% of "any disability", as certified by the medical doctor. When a person is having any of the disabilities mentioned in Section 2(i) and is so certified by the Medical Doctor, he is entitled to the benefits of all the Schemes and benefits provided by the Government and there can be no further discrimination among the persons with varied or different types of disabilities. In the matter of affirmative action, in our view, there cannot be further discrimination between a person with disability of 'blindness' and a person with disability of 'hearing impairment'. Such discrimination has not been envisaged under the Disabilities Act. All the categories of persons mentioned in Section 2(i) have their own disadvantages, peculiar to themselves. A 'visually impaired person' cannot be equated with 'hearing impaired person' and vice versa. Both have different type of mode of disability. For a blind person, visibility may be poor, sometimes zero per cent, but would be able to hear and understand what is going on in and around him. At the same time, a deaf and dumb person could see, but would not be able to talk and hear what is going on around him. The nature of disability of those categories of persons may not be same, but the disabilities they suffer are to be addressed with care and compassion.

19. Ministry of Finance, Government of India, took the view that a visually impaired person cannot be equated with hearing impaired person since persons who are deaf and dumb are not physically dependent on others for commuting from one place to another, hence they are not entitled

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to double rate of transport allowance. The view expressed by the Ministry of Finance, in spite of the recommendations, made by the Ministry of Health and Family Welfare, for not providing transport allowance to its Government employees suffering from hearing impairment, cannot be sustained. We are of the view that the travel undertaken by the deaf and hearing impaired employees is equally arduous and burdensome as compared to persons having other disabilities referred to in Section 2(i) of the Act. Hearing impaired persons cannot communicate with the bus conductors, auto and taxi drivers as a normal person can do. Invariably, they have to seek the assistance of a stranger. Time and effort required to reach a destination is considerably more as compared to normal persons. A hearing impaired person sometimes may end up spending more money in travelling as compared to normal persons. At times, he is required to seek assistance of strangers or other travelers.

20. The hearing impaired person also would not be able to hear the sound of horn and passing vehicles and, at times, will have to seek the assistance of other co-passengers or strangers on the road. We find it difficult to subscribe the view that disability, as envisaged under Section 2(a) of the Act, with respect to the hearing impaired persons, is less than the disability of a blind person. No such discrimination has ever been made or visualized among the persons with disabilities mentioned in Section 2(i) of the Act as they form a class by themselves. A further discrimination amongst themselves is clearly violative of Article 14 of the Constitution of India.

21. The Disabilities Act deals with a well defined class, i.e. "persons with disabilities" mentioned in Section 2(i). The nature of disability may differ from person to person included in Section 2(i), but all such persons have been categorized as a group of "persons with disabilities" under Section 2(i) read with Section 2(t) of the Act. In our view, the differentia sought to be canvassed by the Ministry of Finance has no rational relation to the object sought to be achieved by the Disabilities Act, which envisages to give equal opportunities, protection and rights to the "persons with disabilities". Equality of law and equal protection of law be afforded to all the "persons with disabilities" while participating in Government functions. Transport allowance is given to Government employees since many of the Government employees may not be residing in and around their places of work. Sometimes, they have to commute long distances to and fro. There has been an unprecedented increase in the commutation time between the residence and place of work which effects the work environment in offices adversely as the employee spend much of their energy in commuting and, in the case of persons with disabilities, the situation is more grave."

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11. The Counsel stressed that there cannot be discrimination among the persons with varied or different types of disabilities. In the complainant's case, he suffers from 75% visual disability. The Counsel submitted that the complainant cannot be denied the benefit of Double Transport Allowance in the light of the clarifications and underlined the principle provided by the judgment referred above. On the point of denial of promotion to the complainant to the next post which is Group 'C' (i.e. , post of SSO/Manager Gr.2/ Superintendent), in the instant case it is submitted that the complainant has been denied his promotion on the basis of his acquired disability which violates of Section 47 of the Persons with Disabilities Act. It is also brought to the notice of the Court that several employees junior to the complainant have been granted promotion by way of seniority singling him out due to his disability. It is pertinent to mention that vide impugned Office No. 392 of 2014 dated 12.11.2014, a colleague namely Ms. K. Geetha, who is immediately junior to the complainant, was promoted to the cadre of SSO/Br. Mgr. Gr.II/Suptd which is a Group C post. Similarly vide another impugned Office Order No. 366/2016 dated 19.10.2016 issued by the respondent, 62, employees were promoted to the cadre of SSO / Manager Gr. II/Superintendent on the basis of seniority after they were recommended by a screening committee. The Gradation/Seniority list of Group C & D as on 31.03.2013 was issued by Dy. Director (Adm) Regional Office (Karnataka) of the respondent organization vide its letter 01.12.2014. In this above gradation/seniority list, the name of the complainant appears at Sl. No. 98 while employee Ms. K. Geetha is at Sl. No. 99 who was immediately junior to the complainant. It is pertinent to mention that Employers from Sl. No. 29 to 62 are junior to the complainant. Section 47 of the Persons with Disabilities, Act, 1995, reproduced below provides not only adjusting the employee acquiring disabilities against the same post or some other post or supernumerary posts with the same pay scale & service benefits and that no promotion will be denied only on the ground of disability.

"Under Section 47(1) of the Persons with Disabilities Act, 1995, no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. Provided that, if an employees, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits. Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability :

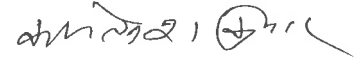
Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject so such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section ."

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The complainant cannot be refused promotion to the next post merely on the ground of disability if other employees are being promoted on the basis of seniority. Though identification of post may not be any consequence since the complainant's case is covered by the protections available under Section 47, however, for the sake of argument, the post in question, i.e. SSO/Manager Gr. II/Superintendent are identified suitable for persons with visual disabilities. The complainant is at the verge of retirement as he is due to retire on superannuation on 31.07.2017.

12. After hearing the parties and perusal of available records Respondent is directed to provide Transport Allowance to the complainant at double the normal rate as applicable in the case of persons with disabilities. The Respondent is further directed to consider the complainant for promotion to Group 'C' post.

13. The case is accordingly disposed off.



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