



सत्यमेव जयते

Extra

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.4450/1091/2015

Dated 18.04.2017

In the matter of:

Shri K.G. Kachhadiya, ^{R653}
Income Tax Inspector,
Income Tax Office, ITO-Ward-1(1)(5),
5th Floor, Aayakar Bhavan,
Race Course Ring Road, Rajkot, Gujarat
Email – kgk5566@gmail.com

... Complainant

Versus

O/o the Principal Chief Commissioner of Income Tax (Gujarat),
Through: Principal Chief Commissioner of Income Tax,
2nd Floor, Aayakar Bhavan, Ashram Road,
Ahmedabad, Gujarat-380014 ^{R654}

... Respondent

Date of Hearing – 22.11.2016

Present:

None of the parties appeared

ORDER

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The above named complainant, a person with 75% locomotor disability filed a complaint dated 07.06.2015 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act', regarding non-maintenance of the cadre-wise Roster Register and non-implementation of reservation in promotion for the persons with disabilities.

2. The complainant submitted that he was working as Income Tax Inspector in Rajkot. After passing the Departmental Examination for Inspector in the year 2001, he was promoted as Income tax Inspector on 22.12.2008. He passed the Departmental Examination for Income tax Officer in the year 2009. He was expecting to be promoted as Income Tax Officer in PH quota in respective Departmental Promotion Committee selection. He made a representation on 15.05.2015 to the Principal Chief Commissioner of Income Tax, Ahmedabad to verify his eligibility and pre-pone him in Re-casted Seniority list of Inspectors of Income-Tax. He was told that his case was pending for disposal. He further submitted that PH quota of reservation was either not maintained properly or was altogether not maintained at all by his establishment. In the Recruitment

Year 2007, two DPCs were held in which, no PH persons were promoted. His seniority number was at 245, which was within the extended zone. The reservation of PH category being horizontal, the extended zone had to be considered on the total number of posts (i.e. five times of 61 which come 305). He requested to consider his promotion to the post of Income-Tax Inspector in the first DPC held on 16.07.2007 of 61 candidates pre-poning his seniority from 16.07.2007.

3. The matter was taken up with the respondent under Section 59 of the Act vide this Court's letter dated 16.06.2015.

4. The respondent vide letter No.Pr.CC/ABD/HQ-Personnel/KGK/2015-16 dated 09.09.2015 submitted that the complaint regarding non-implementation of reservation in promotion for persons with disabilities was wrong as in every DPC conducted for promotion in Group 'C' cadre, 3% of the vacancy was earmarked for persons with disabilities and the same was filled up by extending the zone by 5 times the number of vacancy for the recruitment years. The complainant was promoted as Inspector in Recruitment Year 2008-09 in the reserved quota for PH candidate. The respondent intimated that unified vacancies were carried forward till three subsequent recruitment years. Regarding the claim of the complainant that he should have been promoted in Recruitment Year 2007-08, the DPC for Recruitment Year 2007-08 examined and found that two DPCs were conducted in Recruitment Year 2007-08. First DPC was conducted on 12.07.2007 which was again reviewed on 01.08.2008. A total of 60 vacancies were determined including carried forward 17 vacancy (13 ministerial and 4 stenographer cadre), out of which 44 vacancies were allotted to Ministerial cadre and 16 for stenographer cadre. 3% quota of the vacancy was earmarked for PH quota in both categories. Accordingly, 3% of 31 current years ministerial vacancy i.e. 1 vacancy was allotted to ministerial cadre. As the complainant belonged to ministerial cadre, the zone of consideration was extended to 44 and the eligibility list of 220 candidates was prepared for consideration. As the complainant did not appear with the list of 220 candidates, he was not considered for promotion. On account of Ahmedabad CAT's decision that Shri Parag R. Shah belonged to PH quota and senior to the complainant was promoted against the reserved quota for PH candidate in the Recruitment Year 2007-08. In the Eligibility list of officials for Recruitment Year 2007-08, complainant name appeared at Sr. No.274 and the promotion was considered till the Sr. No.220 in the extended zone. The second DPC for Recruitment Year 2007-08 was held on 07.11.2007 wherein 25 vacancies including 13 carried forward vacancies were determined out of which 20 vacancies were allotted to Ministerial cadre and 5 to stenographer cadre. The current vacancy for the DPC was only 12. Accordingly, 3% of 12 vacancies being less than 0.5 no vacancy were earmarked to PH candidates. As per DoP&T's OM dated 30.01.2015, the total vacancy of regular and supplementary DPC had to be summed up. The OM relied upon by the complainant had effect only from the date of issue of OM and

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could not be implemented retrospectively. Besides this, the complainant had claimed that 3% of total vacancies including carried forward vacancies had to be earmarked every year. That could not be entertained as 3% vacancies were already earmarked from the vacancies of previous years which were carried forward to subsequent years.

5. The respondent vide letter No.Pr.CC/GUJ/DC(HQ-Pers)/KGK/Misc./179-2/2015-16 dated 29.01.2016 further submitted that feeder cadres for promotion to the post of Inspector of Income-Tax comprised of Office Superintendent, Sr. Tax Assistant and Tax Assistant/UDC from the ministerial cadre and Stenographer Gr.I, Stenographer Gr.II and Stenographer Gr.III from the Stenographer's cadre. As per the recruitment rules, the promotion to the post of Inspector had to be made from the ministerial cadre and Stenographer's cadre in the ratio of 3:1. Therefore, separate list had to be prepared for ministerial cadre and stenographer's cadre and provision for reservation (including horizontal reservation for PH) had to be considered in both the ministerial and stenographer cadre. When sufficient number of candidates belonging to reserved category was not available either in ministerial cadre or stenographer's cadre then the eligibility list of respective cadre was to be extended upto 5 times as per the vacancy determined for their cadre. This was done to maintain the ratio 3:1 between ministerial and stenographer's cadre. Accordingly, the complainant was not considered for promotion in the DPC held on 12.07.2007 as his name did not appear even in the extended zone as per the vacancy for Ministerial staff. Even the OM dated 30.01.2015 did not state that the zone of consideration for the original DPC had to be considered taking into account the future vacancy that might likely arise for unforeseen circumstances. The contention of the complainant that he should be considered for promotion in the original DPC held on 12.07.2007 was found to be untenable as the official was neither within the extended zone of consideration of the original DPC dated 12.07.2007 nor the O.M. dated 30.01.2015 referred by him supported his claim. The O.M. was issued on account of references made on various issues related to supplementary DPC, including the issue of zone of consideration. The respondent further submitted that the contention of the complainant that the O.M. dated 30.01.2015 is clarificatory in nature and is effective retrospectively is wrong and misinterpreted. The respondent intimated that clarification was being sought from DoP&T through CBDT regarding the effective date of the O.M. dated 30.01.2015 and whether it would also apply in case where DPC was conducted in the year 2007. The respondent further requested that the petition of the complainant be kept on hold till clarification was received from CBDT/DoP&T.

6. The complainant vide rejoinder dated 16.09.2015 submitted that he was promoted in the Recruitment Year 2008-09 in reserved PH quota. But the respondent had not maintained proper Reservation Roster since 1996 to earmarked 3% reservation for persons with disabilities as per para 15(a) of the DoP&T's O.M. dated 29.12.2005. During Recruitment Year 2007, the department stopped giving reservation benefit to

persons with disabilities in the cadre of Inspector. This Court vide order dated 30.05.2008 in case No.5108/2008 advised the respondent that the post of Income Tax Inspector be treated as Group 'C' post and separate DPC be held to consider complainant's promotion if he was eligible. The Income Tax Department had informed that since the complainant did not fall within the extended zone of previous two DPCs his promotion was not due. His colleague Shri Parag R. Shah was promoted on 01.08.2008 and complainant's seniority was fixed from 12.07.2007. Thereafter, with effect from 03.06.2014 the complainant was promoted as Income Tax Officer. Further, on 29.04.2004 both Shri Parag Shah and the complainant was promoted to Senior Tax Assistant and their seniority were No.706 and 708 respectively. The complainant again filed complaints dated 11.08.2008, 15.10.2008 and 14.11.2008 [Case No.20/1021/08-09]. After direction dated 27.01.2010 of this Court, DoP&T vide O.M. No.22011/2/2014-Estt. dated 30.01.2015 clarified as under:

“(a) Zone of consideration (Normal as well as Extended) shall be decided taking into account total number of vacancies in the relevant vacancy year; and (b) all the officers already assessed in the original DPC are not to be included in the fresh zone of consideration in respect of the S-DPC.”

The complainant submitted that since he was coming from ministerial staff quota, the zone of consideration in original and supplementary DPC in his case, according to the clarification of DoP&T was as under:

Original DPC dated 12.07.2007

No.0 of vacancies	-	45 (After reducing 16 posts of stenographers)
Normal zone	-	$45 \times 2 + 4 = 94$
Extended zone	-	$45 \times 5 = 225$

Supplementary DPC dated 07.11.2007

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No. of vacancies	-	20 (After reducing 5 posts of stenographers)
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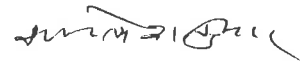
Zone of consideration was to decide taking into account the total number of vacancies in the vacancy year, i.e. 65 (vacancies at the time of original DPC + unanticipated vacancies for the same year i.e. 45+20)

For 65 vacancies, normal zone was : $65 \times 2 + 4 = 134$

Extended Zone : $65 \times 5 = 325$

Accordingly, the complainant submitted that his seniority No. was 245 within the extended zone and he was eligible for promotion for the post of Income Tax Officer w.e.f. 16.07.2007. The complainant further requested that the DPC already held on 22.12.2014 be reviewed and consider his case for promotion to the post of Income-Tax Officer.

7. The complainant in his rejoinder vide email dated 21.12.2015 submitted that DPC meeting for Recruitment Year 2009-10, was held on 29.06.2009 to consider promotion to the cadre of Income-Tax Inspector, in which 05 posts were already vacant for Recruitment year 2007-08 for PH employees out of which only 01 post was filled up by the Department though eligible candidates were available.
8. Upon considering the replies received from the respondent and rejoinders received from the complainant, this Court vide Notice of Hearing dated 21.09.2016 scheduled the case for personal hearing on 22.11.2016 and summoned the parties to appear before the court.
9. In the meanwhile, the complainant vide representation dated 18.11.2016 intimated to this Court that the Income Tax Department Gujarat vide order No.50(NG) of 2016-17 dated 18.11.2016 had promoted him to the cadre of Inspector with effect from 16.07.2007. The complainant also desired to withdraw the case filed by him.
10. The respondent vide letter No.Pr.CC/GUJ/CD (HQ-Pers)/KGK/Misc./179-2/2016-17/5153 dated 18.11.2016 intimated that the case of the complainant was considered and a Review DPC was conducted on 18.11.2016, whereby the complainant was given promotion to the cadre of ITI in Recruitment Year 2007-08 w.e.f. 16.07.2007 and accordingly an order No.50 (NG) of 2016-17 dated 18.11.2016 was issued. The respondent also intimated that the complainant vide letter dated 18.11.2016 also withdrawn his case filed before this Court.
11. In view of the above, since the grievance of the complainant has been redressed, no further action is required in the matter and the case is accordingly closed.



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