



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. 4868/1014/2015

Dated:- 01.11.2016

In the matter of:

Shri T.K. Ananda Kumar,
26-B, Thennolai Kara Street, III Lane,
Madurai-625001, Tamilnadu.

..... Complainant

Versus

The Chief Postmaster General,
Tamilnadu Circle,
Chennai-600 002.

..... Respondent

Date of hearing : 04.03.2016, 25.04.2016, 23.06.2016

Present :

04.03.2016

1. Shi T.K. Ananda Kumar, Complainant alongwith Shri T.K. Saravana Kumar.
2. Shri K. Ravendran, Senior Supdt. Of Post Offices, on behalf of the Respondent.

25.04.2016

1. Complainant absent.
2. Shri K. Raveendran, Senior Supdt. of Post Offices & Ms. Jayanthi Murlu, ASP (Rectt.), on behalf of the Respondent.

23.06.2016

1. Complainant absent.
2. Shri S. Kumar, Assistant Director (Rectt. & Estt.), on behalf of the Respondent.

ORDER

The above mentioned complainant, a person with 70% locomotor disability filed a complaint dated 22.07.2015 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding non selection to the post of Postal Assistant/Sorting Assistant in the Tamil Nadu Circle.

2. The complainant has submitted that he applied for the post of Postal Assistant/Sorting Assistant in the Tamil Nadu Circle and passed the Typing Test conducted on 25.09.2014 and when the result was announced on February, 2015, he was not selected. Through RTI application, he came to know that he got 43 marks in Paper-I and 133.71 in Paper-II (Typing Test) whereas the cut of marks for PH III is 52 but they had selected the category PH-III for marks 49 and 50. The cut off marks fixed for Special category PH-III was 52 but OBC category was 42 and General category candidates also selected for marks 52. In the main list, one OBC candidate had been selected and his marks were 42. As he got 43 marks and belonging to OBC category and sub-category being III, he should have been selected in OBC category or PH III category. As his marks are eligible for selection of OBC category but his name was not listed in the result. He took up the matter with the Secretary (Posts), Director

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(Postal), Chief Post Master General and AD (Recruitment), but he was informed that he could not claim under OBC category due to age bar whereas as per O.M. dated 29.12.2005 and 29.06.2015, he can claim age relaxation for 13 years for his category and being eligible under OBC category.

3. The matter was taken up under Section 59 of the Act with the respondent vide this Court's letter dated 21.09.2015.

4. Chief Postmaster General, Tamilnadu Circle vide his letter dated 09.10.2015 has interalia submitted that the complainant got only 43 marks in Paper-I and 133.71 marks in paper II. At the time of releasing the marks list, the minimum cut off marks for PH3 were 59. It has been mentioned in the said letter that some of the PH3 candidates did not turn up and in these vacancies the candidates from the wait list were allotted. As per the notification, merit in Paper-I will be taken into account subject to qualifying in Paper-II. All the 3 PH3 candidates referred by the complainant got higher marks than himself and were selected .

5. Shri M. Jagadeesan, OBC candidate of Kancheepuram Division, who scored 42 marks in Paper-I and 82.96 marks in Paper-II is an OBC Gramin Dak Sevak candidate and was selected under GDS merit quota. The complainant was considered for Direct Recruitment open quota only. Hence, the complainant was not meritorious candidate of Postal Assistant/Sorting Assistant Direct Recruitment Examination 2013-14 and there is no injustice in his case. The details of vacancies filled since 1996 has also been enclosed with the reply.

6. The complainant vide his rejoinder dated 23.10.2015 submitted that the reply given by the Postal Director is not reflecting the truth. He has stated that the selected candidate is from GDS, it was not originally mentioned in the main selection list. The reason now adduced for selecting Shri M. Jagadeesan is artificial and not based on truth. He requested that a review of his entire case may be ordered by this Court and render justice to him.

7. The copy of the respondent's rejoinder letter dated 23.10.2015 was forwarded to the Chief Postmaster General for their comments.

8. The respondent vide letter No.REP/2-Misc/15 dated 23.11.2015 in reply to comments/rejoinder of the complainant submitted that the complainant secured 43 marks in Paper-I PA/SA DR Examiantion-2014. As per the notification, merit in Paper-I will be taken into account subject to qualifying in Paper-II. All the selected PH3 candidates under OBC category got higher marks than the complainant. The marks secured by last selected PH3 candidate under OBC category is 48 and the selection of candidates from PA/SA DR Examination – 2014 was over as the examination for the post for subsequent year vacancies was held on 01.11.2015. There are 17 more candidates secured more marks in Paper I and qualified in Paper-II, than the complainant, who were not selected being less meritorious than last selected candidate. Shri M. Jagadeesan, a GDS

candidate of OBC category from Kancheepuram Division, who secured 42 marks in Paper-I and 82.96 marks in Paper-II got selected under GDS (Gramin Dak Sevak) merit quota in Postal Assistant/Sorting Assistant Examination. He got selected against separate vacancy notified for GFDS.

9. A copy of reply received from the respondent dated 23.11.2015 was forwarded to the complainant vide this Court letter dated 11.12.2015 for his comments/rejoinder.

10. The complainant vide letter dated 29.12.2015 submitted that calling for application to fill up the vacancies or any subsequent correspondence, it was not mentioned that the post would be filled up from GDS category. Now, only it was adduced that the post has been filled with GDS category. It is nothing but only and after thought to cover the mistake of the Postal Department. It is also unimaginable and unacceptable that the post was earmarked for GDS category. In between GDS and handicapped candidate, physically handicapped candidate is desirable and preferable because a GDS category was already in a service but a PH candidate is 100% genuine and desirable to be posted in the Department. A GDS category will not be preferable at any point of view when he is compared with a PH candidate. Hence, the entire issue may please be reviewed in the light of above reasons and issue order for favourable orders in this regard.

11. After considering the replies of the respondent and rejoinders of the complainant, a hearing was scheduled on 04.03.2016.

12. During the hearing on 04.03.2016, the complainant reiterated its submission and has submitted that one candidate named Shri M. Jagadeesan, employee was selected with lesser marks than him and his name was omitted. He further submitted that there was no mention in the advertisement about filling up of post from GDS cadre. He should have been recruited by merit and by the marks obtained. It is an afterthought that the post of Postal Assistant/Sorting Assistant was filled up by the GDS cadre. When there was no specific mention of filling up the post from the GDS cadre, it is not justifiable and acceptable by prudence and by logic that the post was earmarked to a GDS cadre. In the result sheet of Postal/Sorting Assistant for the year 2011-12, it was clearly mentioned that against GDS quota vacancies under DR, only four GDS were qualified and were selected and allotted to the division name properly e.g. Shri Naveenan K. belongs to SC category and selected under GDS quota, so they had clearly mentioned as category : SC GDS and filled against SC. In some divisions, disabled candidates were interchanged. If no PH II (HH) candidates were available then the vacancies were filled with PH III (OH) candidates but this rule was not applied for Dindigul and Erode divisions. He had preferred both two divisions. Both these Divisions were not filled by PH quota due to non availability of PH II (HH) candidates at the same time. He had preferred both two divisions. They should have filled the vacancies by interchanging as there was no PH(II) candidates were available. Since he had opted for these two divisions, his name was not considered for these divisions. He is now crossing 40 years of age and there are seldom possibilities for getting a job. In the end of prayed that his case may be considered sympathetically.

13. The representative of the respondent submitted that the complainant applied for the said examination against the 1034 vacancies and belongs to OBC PH III category. The result for the above said examination was declared in Tamil Nadu Circle on 19.02.2015 with reference to the category-wise merit list received from the Postal Directorate. With reference to PH III category merit list, 11 candidates were declared successful for the 11 notified vacancies under PH-III. Shri Anbarasan, PH-III category candidate was the last selected candidate in the merit list and he secured 52 marks. Among the selected candidates, 7 candidates declined to join the post. Hence, another 7 candidates were allotted in the place of declined candidates from waiting list. From the allotted waiting list, a wait list candidate at sr. No. 4 also declined and hence candidate at sr. no. 8 of the waitlist was selected. Thus, the last selected candidate in PH-III category is R. Malathi, who secured 48 marks. The complainant, Shri T.K. Ananda Kumar's name is not figured either in the select list or waitlist of PH-III category, as he secured only 43 marks. In respect of vacancies reserved for OBC, the last selected candidate from OBC wait list is Santhiya Rajam at Sr. No. 58 of OBC wait list secured 56 marks. The marks obtained by the last candidate in the OBC wait list is 53. Further, the complainant's name is not figured either in the select list or waitlist of OBC category as he secured only 43 marks.

14. The complainant compared himself with one Shri Jagadeesan M of OBC category who secured 42 marks and selected from merit list of GDS qualified candidates in Kanchipuram Division. Shri Jagadeesan M is selected against one vacancy out of 254 vacancies notified for Gramin Dak Sevaks category. The complainant could not compare himself with Shri Jagadeesan M, as they have written examination for different set of vacancies notified, one from open market and other from GDS. The complainant had applied against 1034 vacancies, whereas Shri Jagadeesan, GDS have applied against 254 vacancies. Moreover, there are 17 qualified candidates in PH-III category between the last selected candidate and the complainant who secured marks in range 48 to 43, and 692 qualified candidates in OBC category between the last selected candidate and the complainant who secured marks in range 56 to 43. The complainant is qualified in the examination but did not come in the zone of select list and waitlist of PH-III category and OBC category.

15. The Court put the following queries to the respondent:-

- (i) Whether the provision of the Persons with Disabilities Act, 1995 was followed in letter and spirit?
- (ii) Whether the consolidated instructions on reservation to Persons with Disabilities issued by DoP&T vide O.M. No36035/3/2004-Estt.(Res). dated 29.12.2005 was followed while issuing advertisement and making selection?
- (iii) Whether the unfilled vacancies were carried forward as per the provision of Section 36 of the Persons with Disabilities Act, 1995 and as per Para 16 of DoP&T's O.M. dated 29.12.2005 referred above?

- (iv) Without deciding the cut out, how the Merit List was prepared?
- (v) As per Section 33 of the Persons with Disabilities Act, 1995, three percent vacancies shall be reserved for persons suffering from- (i) Blindness or low vision; (ii) Hearing impairment; (iii) Loco motor disability or cerebral palsy, in the posts identified for each disability, whereas as per advertisement against the 34 vacancies, only 11 vacancies were reserved for persons with disabilities. The reason for reserving less vacancies be explained.
- (vi) The reason for not filling the vacancies as per mandate of Section 33 of the Persons with Disabilities Act, 1995 i.e. 1:1:1.
- (vii) The representative of the respondent submitted that selection was made on the basis of merit list prepared on the basis of marks obtained by the candidates in the written test. The respondent may clarify how without deciding the cut off they implement the para 7 of DoP&T's O.M. dated 29.12.2005?

16. The representative of the respondent sought 4 weeks time to file the reply to the queries raised by the Court.

17. The Court agreed to the request of the respondent and adjourned the case for 25.04.2016. The respondent is directed to bring all the relevant documents and instructions in the matter. The complainant was exempted for appearing in the hearing. However, he was directed to remain present over his cell phone on the date of hearing so that, if needed, he may be contacted over the phone.

18. During the hearing on 25.04.2016, the complainant did not turn up because during the last hearing on 04.03.2016 he was granted exemption from appearing in the next hearing. However, he was directed to remain present over his cell phone on the date of hearing so that, if needed, he may be contacted over the phone.

19. The respondent reiterated its earlier submissions and submitted that so far as the fixing of cut off marks is concerned, the cut off has been determined and available on record has been shown to the Court. However, the Court has raised a query on how the present score of 58 marks which has been shown maximum of cut of marks for P-3 is not adjusted against OBC, for which minimum of marks as 57. The query will be clarified from our Postal Directorate, New Delhi-110001. Similarly, with regard to preparation of Roster in the Format Annexure-II of Department of Personnel & Training's O.M. No.36035//2004-Estt(Res) dated 29.12.2005 w.e.f. 01.01.1996 is concerned, the same is to be re-casted which need six week time. The respondent will also produce on the next date of hearing the Roster for PwD for Theni and Dindigul Division, for which two preferences have been given by the Complainant in his application. The respondent also vide letter No.REP/2-Misc./15 dated 01.04.2016 has filed reply to this Court's queries made vide this Court's ROP dated 16.01.2016.

20. On a query from this Court, the representative of the respondent has submitted that vacancies were calculated by the Circle Office and the Reservation Roster was maintained by the respective Divisions. On asking for the copy of the Reservation Roster, the representative of the respondent shown the Register maintained from the year 2011, showing that 3% of vacancies were reserved for the persons with disabilities. In the absence of the Reservation Roster from 01.01.1996, it is difficult to check whether there is any backlog or not. The representative of the respondent was asked to confirm whether there was no backlog till December, 2010, the representatives of the respondent shown their inability to confirm.

21. The respondent has shown the cut off marks. As per him, the cut off for P-3 was 58 marks (Maximum) and 52 marks (Minimum). If the cut off is 58 then out of 11 candidates selected, it is seen that the first candidate had secured 58 marks and he has to be considered selected on merit basis in view of the para 7 of DoP&T's O.M. dated 29.12.2005 referred above and the vacancy filled by that candidate should be allotted to the next candidate.

22. In view of the above, the respondent was directed –

- (i) To submit the copy of the Reservation Roster in respect of all divisions maintained by them since 01.01.1996.
- (ii) To submit the Reservation Roster in respect of Divisions Theni and Dindigul one week prior to the date of hearing as the complainant has given preferences for these Divisions.
- (iii) To calculate the backlog in respect of these Divisions. from 01.01.1996 and inform the backlog vacancies to this Court.
- (iv) To get the clarification with regard to adjustment of candidate selected on their own merit from Postal Directorate and submit the clarification one week prior to the date of hearing.

23. The representatives of the respondent have requested for six weeks times to prepare the Reservation Roster. The request of the respondent has been agreed and the case is listed for hearing on 23.06.2016.

24. During the hearing on 23.06.2016, the complainant did not turn up as he was granted exemption from appearing in the hearing. However, he was directed to remain present over his cell phone on the date of hearing so that, if needed, he may be contacted over the phone.

25. The representative of the respondent submitted that as per Notification No.A-34012/10/2014-DE dated 21.02.2014 of Tamil Nadu Postal Circle, 1034 vacancies of Postal Assistants/Sorting Assistants for the year 2013-14 inclusive of 7 major Units. For 45 Postal Divisions, the vacancies were 641, out of which 20 vacancies were computed for persons with disabilities and in RMS, 237 vacancies have been decided for PwD. In respect of other categories of PASBCO, PAF, PAMMS,

PRLO, total vacancies comes to 156, for which 6 vacancies have been identified for PH as per Notification. Besides 1034 vacancies notified filling up for open market, 254 vacancies of GDS (residual vacancies) were notified and results were declared. The complainant Ananda Kumar, PH III category applied for the above examination. As per PH-III Merit List, 11 candidates were declared successful. The last selected PH-III candidate was Anwar Hasan, who secured 52 marks. Among the 11 selected candidates, 7 candidates declined to join. Hence, another 7 candidates were allotted in place of declining candidates from the Waiting List. From the allotted Waiting List, candidates at Sr. No. 4 also declined and hence candidate at Sr. No. 8 of Waiting List was selected. Thus, the last selected candidate in PH-II category is R. Maladi, who secured 48 marks also was selected. The complainant, Shri Ananda Kumar is not at all figured either in the Selected list or in the Waiting list of PH-III category as he secured only 43 marks. The last Wait List candidate's marks in PH-III is T.S. Venketashan, OBC candidate who secured 48 marks (11th position). Based on the age, Date of Birth 18.05.1985 is selected. This is in order. The complainant compared the case of Shri M. Jagadeesan selected against one vacancy out of 254 vacancies notified for Gramin Dak Sevak category. Thus, as already explained in our reports, the selection is made in respect of all categories which is in purview of the Rules and the records were shown to this Court also.

26. After hearing the parties and perusal of record, this Court observed that the complainant has secured 43 marks in OBC category which are less than the marks secured by the last selected candidate in the OBC category. Therefore, there is no merit in the case and hence, the complainant's grievance is rejected. However, it is also seen that the respondent has not prepared the reservation Roster Registers for persons with disabilities from the year 1996 as directed by the Department of Personnel & Training to all the Ministries vide its O.M. 36035/8/2003-Estt. (Res) dated have further vide its O.M. dated 14.12.2012. The Reservation Roster produced before the Court was perused and observed that the Register has not been prepared as per the instructions of DoP&T. The vacancies were notified by the concerned Division and the Circle Office is also maintaining their own reservation Roster Register. As the vacancies were advertised by the Circle Office, a common Roster Register has to be maintained by the Circle Office.

27. Though, as per the cut off for the post in question was 58 marks but as per respondent, they adjusted Shri Harish against reserved vacancies as he opted for posting at Chennai and there were no vacancies for persons with disabilities at Chennai Division.

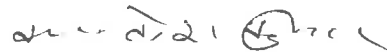
28. Para 7 of DoP&T's O.M. No. 36035/2004-Estt.(Res) dated 29.12.2005 provides that persons with disabilities selected on their own merit without relaxed standards alongwith other candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with disabilities which will thus comprise physically handicapped candidates who are lower in merit than the last candidate in merit list but otherwise

found suitable for appointment, if necessary, by relaxed standards. It will apply in case of direct recruitment as well as promotion, wherever reservation for persons with disabilities is admissible.

29. In the present case, it is seen that the respondent had advertised 1034 posts and had reserved only 20 vacancies for persons with disabilities instead of reserving 32. Hence, there appears backlog of 12 vacancies.

30. As per DoP&T's O.M. No.36035/8/2003-Estt.(Res) dated 26.04.2006 and 14.12.2012 the Reservation roster should be maintained Group-wise, whereas the respondent has maintained the Roster Register post-wise. As per the Reservation Roster Register produced before this Court, this Court observed that there appears number of backlog vacancies and, therefore, the respondent is directed to compute the backlog vacancies and conduct Special Recruitment Drive to fill the backlog vacancies within a period of 120 days from the date of receipt of this Order. Names of the selected candidates with nature of their disability may be intimated to this Court within 15 days from their joining.

31. The case is accordingly disposed off.



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