



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.5072/1012/2015

Dated 18.11.2016

In the matter of:

Ms. Mallika Sadhu (Banerjee), ^{DS16}
At & PO-Mithani, PS – Kulti,
Sub.Div – Asansol,
West Bengal – 713371
Email – mallikabanerjee13@gmail.com

... Complainant

Versus

Eastern Coalfields Limited ^{DS17}
Through: The Chairman-cum-Manaing Director
Sanctoria, PO: Dishergarh, Dist: Burdwan
West Bengal – 713333

... Respondent

Date of Hearing – 04.10.2015

Present: None of the parties appeared

ORDER

Smt. Mallika Sadhu (Banerjee), a person with 55% hearing impairment vide e-mail dated 19.08.2015 submitted that she applied on 17.12.2012 against the Employment Notice Direct Recruitment Ref.No.ECL/CMD/C-6/Recruitt./Gen./12/217 dated 29.10.2012 for the post of Stenographer (Group 'C' – Post Code No.09 – Total Post 56) at Eastern Coalfields Limited (ECL) and appeared in written test on 21.03.2015. The complainant alleged that the respondent organization had given the benefit of relaxation in upper age limit to persons with disabilities but failed to give the benefit of reservation to persons with disabilities in PwD category. On 06.04.2015, a provisional list was published by the respondent organization for skill test/trade test for the post of Stenographer. Against the total vacancy 56, at least 02 seats should have been reserved for persons with disabilities and atleast 06 candidates with disabilities should have been empanelled for trade test for final selection but surprisingly the respondent missed the 100 point roster for persons with disabilities. She also stated that rights of persons with disabilities were not maintained but still she sat in the written test which was scheduled on 21.03.2015. In response to his RTI application, she was informed that it is a query and does not come under the RTI Act, 2005. She made a request to CMD of the Company but all in vein as no answer was given to her. She requested this Court to look into the matter so that the candidates like her may not be deprived and get the opportunity for reservation.

2. Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 hereinafter referred to as the Act provides as under:

"Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent for persons or class of persons with disability of which one percent each 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:

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."

3. 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 loco-motor 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 posts 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 along with functional classification and physical requirements for performing the duties attached to the 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.

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

5. In view of the above, the matter was taken up with the respondent vide letter dated 22.09.2015 with the advice to submit comments on the complaint of the complainant along with details of posts filled up since 01.01.1996 in Group 'B' & 'C' in the enclosed proforma and a certificate from the Liaison Officer certifying that the

reservation roster for the persons with disabilities was being maintained as per the instructions issued by DoP&T.

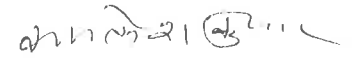
6. In compliance of this Court's letter dated 22.09.2015, respondent vide letter dated 16.12.2015 intimated that after the written test held on 21.03.2015, 168 candidates were short listed for skill-test (typing and short-hand). After the skill test none of the candidates were found successful in the said test and consequently no selection/recruitment for the post of stenographer was made. As such the maintenance of 'Roaster' for the recruitment of post of stenographer for persons with disabilities did not arise. Had the recruitment been successful a points of Roaster would be (i) Post No.1 (1st Block) and (ii) Post No.34 (2nd Block). As per Department of Personnel & Training's Office Memorandum No.16-70/2004-DD.III dated 18.01.2007 the post of Stenographer is identified for OL, BL, PB & B and as per Ministry of Social Justice & Empowerment, Department of Disability Affairs Notification No.16-15/20/2010-DD.III dated 29.07.2013 the post of stenographer is identified for OA, OL, BL, OAL, BL, LV. As such to consider any reservation for HH category did not arise and the complaint of the complainant Smt. Mallika Sadhu (Banerjee) had no substance of merit. Respondent further submitted that ECL engaged in mining and selling of coal is governed by Mines Act, 1952 and any person not confirming to the medical standards of the Mines Act, 1952 and Rules framed thereunder cannot be employed in the mines and in the mine premises. The reservation of persons with disabilities is therefore, applied in administrative offices and the workshops, away from mines premises. Thus, the reservation generally made in ministerial staff, peons, computer personnel, telephone wireless operator, receptionist, armature winder, and dresser. In hospitals same is limited to Aaya and Ward boy. During the period of 1996 to June, 2015, 455 heads were directly recruited on non-identified post out of which in identified posts three percent persons with disabilities were recruited in Special Drive. Respondent also submitted the Proforma, a certificate dated 19.10.2015 from Liaison Officer and Proof of serving a copy of the reply to the complainant.

7. This Court vide letter dated 03.05.2016 advised the complainant to submit comments on the reply of the respondent, dated 16.12.2016. However, no response was received from complainant.

8. Upon considering the fact of the case, this Court observed that the notice published by the respondent on 29.10.2012 for employment/direct recruitment was not as per the instructions issued by DoP&T vide Office Memorandum No.36035/3/2004-Estt. (Res) dated 29.12.2005 as referred to in Para 3 above. Further, the post of Stenographer is identified for the persons having disability with OA, OL, BL, OAL, BL, LV as Ministry of Social Justice & Empowerment, Department of Disability Affairs Notification No.16-15/20/2010-DD.III dated 29.07.2013 and not for persons with hearing impairment.

9. In view of the above, the respondent is advised that in future notices for employment / direct recruitment should be published as per the instructions issued by DoP&T vide Office Memorandum No.36035/3/2004-Estt. (Res) dated 29.12.2005 as referred to in Para 3 above. Since the post of Stenographer is not identified for persons with hearing impairment, the complainant may apply for a suitable post as per her eligibility.

10. The case is accordingly disposed off.



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