



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.5169/1021/2015

Dated:-03.02.2017

In the matter of:

Shri Jitendra Kumar, ^{D732}
L.D.C., Admn.II Section,
Office of the Medical Superintendent,
Safdarjung Hospital,
New Delhi-110029.
Email<jitendra120877@gmail.com>

..... Complainant 1

Shri Bharat Bhushan, ^{D733}
R/o 1571, Laxmi Bai Nagar,
New Delhi-110023.

..... Complainant 2

Versus

Safdarjung Hospital, ^{D734}
(Though Medical Superintendent),
Ring Road,
Ansari Nagar West,
New Delhi-110029.

..... Respondent

Date of hearing : 13.10.2016, 21.10.2016, 22.12.2016

Present :

13.10.2016

1. S/Shri Jitendra Kumar and Bharat Bhushan, Complainants. alongwith Shri Naresh Kaushik, Advocate.
- 2 . Dr. K. T .Bhowmik, Addl. M.S., Shri Sanjay Kathuria, AAO & Ms. Shalini Johri, Store Keeper, on behalf of Respondent.

21.10.2016

1. S/Shri Jitendra Kumar and Bharat Bhushan, Complainants alongwith Shri Naresh Kaushik, Advocate.
- 2 . Dr. K. T .Bhowmik, Addl. M.S., S/Shri Sanjay Kathuria, AAO & Mahesh Kumar, LDC, on behalf of Respondent.

22.12.2016

1. S/Shri Jitendra Kumar, Bharat Bhushan and Satish Chand, Complainants.
- 2 . Dr. K. T .Bhowmik, Addl. M.S., S/Shri Sanjay Kathuria, AAO & Mahesh Kumar, LDC, on behalf of Respondent.

ORDER

The above named complainants, Shri Jitendra Kumar, a person with 40% locomotor disability and Shri Bharat Bhushan, a person with 61% locomotor disability filed complaints dated 14.09.2014 and 07.04.2016 respectively before the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act' regarding promotion and non-compliance of reservation policy in Vardhman Mahavir Medical College (VMMC) and Safdarjung Hospital.

.....2/-

2. The complainant Shri Jitendera Kumar (Case No. 5169/1021/2015) has submitted that he was appointed in the post of LDC in August, 2011 through Staff Selection Commission under PH quota. He became eligible for promotion to the post of UDC on 02.08.2014 as per roster point. He made a representation dated 13.05.2015 and followed by reminders dated 05.06.2015 and 16.07.2015. He further submitted that a four member Committee under the Chairperson of Additional Medical Superintendent was constituted, to look into the matter. The Chairperson convened a meeting on 25.08.2015 to consider the representation of the complainant along with other cases of non PwDs. The complainant has submitted that the Committee's did not come at a conclusion. The complainant requested this Court to intervene in the matter

3. The another complainant Shri Bharat Bhushan (Case No. 6200/1021/2016) has submitted that he is working as Store Keeper/UDC in Safdarjung Hospital. Initially he was appointed as LDC ;on 16.07.1986 on compassionate grounds. He was promoted to the post of Storekeeper/UDC on 20.08.2002 without being considered for promotion in the reserved category. He was entitled for promotion on 09.01.1996 but was given promotion late without considering his disability. The complainant has been giving representations to his establishment for his promotion to the post of UDC since 1996. He has requested this Court to look into his complaint for considering his promotion to the post of UDC with retrospective effect from 1996 for subsequent promotions as per reservation policy.

4. The matters were taken up with the Medical Superintendent V.M.M.C. & Safdarjung Hospital, New Delhi vide this Court's letter dated 23.09.2015. and 30.05.2016 respectively.

5. The Deputy Director (Admn.) Office of the Medical Superintendent, Safdarjung Hospital vide letter No.2-5/2006-Ad.II dated 09.11.2015 (Case No. 5169/1021/2015) has stated that the matter of filling up the vacant posts of Upper Division Clerk in the hospital is under process. The complainant has not been denied the promotion. The respondent has given the details of number of vacancies filled since 1996 in their reply. 14 vacancies were shown under Backlog/Shortfall in Group C direct category. The respondent's above referred reply has been sent to the complainant for his reply vide e-mail dated 14.12.2015.

6. The complainant vide their rejoinder letter dated 28.12.2015 (Case No. 5169/1021/2015) submitted that the vacancy of U.D.C. has been vacant during April, 2014 and more than 20 months have been passed since then but these posts were not filled up by the Hospital.

7. A copy of complainants' rejoinder dated 28.12.2015 (Case No. 5169/1021/2015) was sent to the respondent for his comments vide this Court's letter dated 28.03.2016. The Assistant Administrative Officer O/o the Medical Superintendent, Safdarjung Hospital vide his letter no.2-5/2006 Admn.II dated 05.05.2016 has intimated that at present there are 07 posts of UDC lying vacant and the process of filling up of UDC is under process. The Group 'C' PwD roster has been re-casted but the same has been challenged by many officials and is being reviewed. It is further stated therein that as and when the matter will be resolved, the post of UDC will be filled through DPC and filling up the PwD points will be considered by them accordingly. They stated that the complainant has never been denied promotion and he is also under the consideration zone against the PwD vacancies. A

copy of respondent's reply dated 05.05.2016 was sent to the complainant for his comments vide this Court's letter dated 08.06.2016.

8. After considering the respondent's reply dated 09.11.2015, 05.05.2016 and complainant No.1's rejoinders dated 28.12.2015, 27.04.2016 and 21.07.2016 in Case No. 5169/1021/2015 and after considering complainant No.2's letter dated 06.07.2016 in Case No.6200/1021/2016, a hearing was scheduled on dated 13.10.2016.

9. During the hearing on 13.10.2016, the Complainants again reiterated their point that their promotions have been denied by their establishment. The Respondent requested for 10 days time to submit the Roster duly signed by the authorized Liaison Officer to this Court, which has been agreed to by the Chief Commissioner. The next date was fixed for hearing on 21.10.2016.

10. During the hearing on 21.10.2016, the Counsel of the complainants reiterated the written submissions and submitted that the law enacted by the Parliament is binding on the Safdarjung Hospital and the implementation of the said law is enforceable by them and any administrative reason for not implementing the law is not tenable. The action deserves to be taken in the matter against the persons responsible for non-implementation. Promotions deserve to be given as per the Act and as per the roster enacted by the DoP&T, which is binding.

11. The representative of the respondent submitted reply dated 21.10.2016 during the hearing, which was taken on record. A copy of which was supplied to the Counsel of the complainants for their counter-reply, for which they sought time. After going through the Reservation Roster, certain shortcomings were pointed out to the representatives of the respondent, for which they submitted that they will submit the roster in this Court on or before 17.11.2016 duly certificate signed by the Liaison Officer. The next date was fixed for hearing on 22.12.2016.

12. During the hearing on 22.12.2016, the Complainants reiterated their written submissions and submitted not giving promotion to them is a clear violation of the DoP&T's guidelines and prayed for issuing directions for their promotions.

13. The representatives of the Respondent submitted that as per directions of this Court, they have revised the Reservation Roster but the signatures on the Certificate of the Revised Roster are yet to be obtained and prayed 3-4 times for submitting the Revised Roster to this Court after obtaining the signatures on the Certificate of the Roster. After hearing the parties, the Court granted the time to the Respondent as requested and the order reserved till receipt of Reservation Roster..

14. Section 33 of the Persons with Disabilities Act, 1995 provides as under:-

"Section 33. Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent 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."

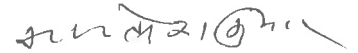
15. Para 12 of the DoP&T's O.M. dated 29.12.2005 provides that at the time of initial appointment and promotion against a vacancy reserved for persons with disability, the appointing authority shall ensure that the candidate is eligible to get the benefit of reservation.

16. Para 2(ii) of DoP&T's O.M. dated 29.12.2005 provides that three percent of the vacancies in case of promotion to Group D and Group C posts in which the element of direct recruitment, if any, does not exceed 75%, shall be reserved for persons with disabilities of which one per cent each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy in the posts identified for each disability.

17. The Respondent has submitted the revised Reservation Roster on dated 24.12.2016 duly signed by the Liaison Officer alongwith the Certificate that the Reservation Roster is maintained as per the DoP&T' O.M. No. 36035/3/2004-Estt. (Res) dated 29.12.2005.

18. After hearing the respondent and records available on the file and in the light of DoP&T's O.Ms, this Court is of the view that the respondent is advised to take all appropriate steps to promote the complainants and other eligible persons with disability under 3% reservation quota in Group 'C' and 'D' in promotion as per Section 33 of the PwD Act, 1995. Compliance Report of this Order may be sent to this Court within 60 days from the date of receipt of this order.

19. The case is disposed off accordingly.



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