



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.5171/1021/2015

Dated:-04/07/2016

In the matter of:

Shri Vinod Kumar Mishra,
G-102, Eastern Gates,
Sector 4C, Vasundhara,
Ghaziabad,
Uttar Pradesh-201012

D115

..... Complainant

Versus

Central Electronics Limited,
(Thru Chairman and Managing Director),
4, Industrial Area,
Sahibabad-201010 (U.P.)

D116

..... Respondent

Date of hearing : 18.03.2016, 02.05.2016, 19.05.2016, 26.05.2016

Present :

18.03.2016

1. Shri Vinod Kumar Mishra, Complainant alongwith Mohd. Najeemuddin, Advocate..
2. Shri R.D. Chaudhary, Executive Director(HR) alongwith Sh. Kunal Sharma, Advocate, on behalf of Respondent.

02.05.2016

1. Shri Vinod Kumar Mishra, Complainant alongwith Mohd. Nayeemuddin, Advocate.
2. Shri R.D. Chaudhary, Executive Director(HR), M.S. Verma, AGM(HRD) alongwith Sh. Kunal Sharma, Advocate, on behalf of Respondent.

19.05.2016

1. Shri Vinod Kumar Mishra, Complainant alongwith Mohd. Nayeemuddin, Advocate.
2. Shri M.S. Verma, AGM(HRD) alongwith Miss Sakshi Vaid, Advocate for Sh. Kunal Sharma, Advocate, on behalf of Respondent.

26.05.2016

1. Shri Vinod Kumar Mishra, Complainant..
2. S/Shri R.D. Choudhury, Executive Director (HR) , M.S. Verma, AGM(HRD) alongwith Sh. Kunal Sharma, Advocate, on behalf of Respondent.

O R D E R

The above named complainant, a person with 80% locomotor disability filed a complaint dated 14.09.2014 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 the 'Act' regarding his promotion and barrier free and accessible work stations to employees with disabilities.

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2. The complainant inter alia submitted that he is working as Assistant General Manager in Central Electronics Limited at Sahibabad, Ghaziabad (Uttar Pradesh). As per the complainant, the appointment of Shri Rakesh Ranjan, R-4 as General Manager caused prejudice to him. He was promoted as Assistant General Manager on 01.04.2011 and heading the assigned department. Time and again, he was entrusted with the additional responsibilities which he met successfully.

3. Apart from above, he submitted that the Act mandates the appropriate Government and the local authorities to provide ramps in public buildings, adaptation of toilets for wheel chair users etc., whereas the respondent did not provide the ramps more particularly in the Administration building and in other buildings. In September, 2013, he was transferred to a building at second floor where there was no gents' toilet. He had to walk downstairs or upstairs several times a day to meet his natural urges. The CEL-respondent did not pay any heed to these problems. As per him, the respondent is under obligation to provide easy accessibility and barrier free environment to person with disability as per provisions of the Act.

4. As per the promotion policy of the respondent-Company for the Executives/Senior Executives, his next promotion was due for the post of General Manager on 01.04.2013 which was declined to him by respondent. He made number of representations for his promotion as General Manager to respondent. He was informed vide Office Order No. 2(1076)83-Pers dated 09.06.2015 that he was considered for promotion as General Manager by the DPC in the year 2013 and 2014 but he was not found suitable for promotion in both these years. He has prayed for the following:-

- (i) To direct the respondent to promote the complainant to the post of General Manager w.e.f. 01.04.2013.
- (ii) To direct the respondent to produce the records pertaining to the proceedings carried out and reports/recommendations made by DPC for the years 2013 and 2014 on record.
- (iii) To direct the respondent to provide easy accessibility and barrier free environment for PwDs including the complainant as per provisions of the Act.
- (iv) to direct the respondent issue guidelines and office memorandum in light of the judgment dated 08.10.2013 in Civil Appeal No.9096/2013 of the Hon'ble supreme Court and the judgment dated 04.12.2013 passed by the Hon'ble High Court of Bombay in Public Interest Litigation No. 106/2010 to the respondent.

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- (v) To direct the respondent to implement the directives contained in the O.M. dated 29.12.2005 and O.M. dated 31.03.2014 of DoP&T and other OMs issued by the Government.
5. As there was no reservation in promotion in Group 'A' and 'B', the matter was taken up with the respondent vide letter dated 23.09.2015 advising the respondent to consider the complainant's complaint in the light of instructions mentioned in the letter and to submit the action taken report to this Court, ensuring that employees with disabilities are not deprived of their legitimate rights.
6. The Assistant General Manager (HRD), Central Electronics Limited, respondent vide his reply dated 02.11.2015 has inter alia submitted that ramps are available in most of the buildings of Central Electronics Limited (CEL). The administrative block was one building without a ramp and the same has now been provided. Neither the complainant nor any other person has ever raised the issue of ramp not being available in the Administrative building before this. The complainant has been provided an office on the ground floor of the SPD Building where he was sitting on the first floor. Regarding promotion, it is stated in their reply that the complainant was considered twice by a duly constituted DPC for promotion to the post of General Manager and it is an allegation on the part of the complainant that he was not considered for next promotion. The Liaison Officer is mandated to look after the reservation matters related to persons with disabilities. The complainant has unnecessarily dragged in ED/HR in the matter without citing any authentic documentary evidence thereof. Shri Rakesh Ranjan is a Railway Signaling & Telecom Engineer who was later on deputation for a very specific requirement, after following the due process for the same. His name is being unnecessarily dragged into the case. The prayer made by the complainant in bereft of any substance and he is trying to obtain benefit of promotion as matter of right which is not valid as per law. Since no violation of the Act has taken place and the action taken by the CEL- respondent is bonafide.
- 7.. The complainant vide his rejoinder dated 02.12.2015 has submitted that the averment that ramps are available in most buildings in CEL is vague misconceived as alleged the ramps are not disabled friendly. The ramps are too steep and devoid of railing even in one side. In fact, there is no accessible ramp with railing in respondent company even till date. He denied the responsibility that he did not raise the issue of ramp not being available in the Administration building. He submitted that it is wrong on the part of CEL to state that the complainant has been given full opportunity and has been considered twice by a duly constituted DPC for promotion to the post of General Manager. He

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denied the question of declining of promotion. He further submitted that the CEL should place on record the minutes, report and recommendation of DPC for the years 2013, 2014 and 2015 in sealed cover. As per him, he is eligible for promotion to the post of General Manager on 01.04.2013. The complainant submitted that as per roster system for PwDs, there are four vacancies in Cadre-A/Group A. He is the only internal candidate in this category who is eligible for and meriting for promotion in the post of General Manager. The averment that Shri Ranjan was taken on deputation for a very specific requirement after following the due process is vague, amorphous, unspecific, misplaced, wrong and denied.

8. A copy of the complainant's rejoinder letter dated 02.12.2015 was forwarded to the respondent for their comments vide this Court's letter dated 31.12.2015.

9.. The respondent vide letter dated 18.01.2016 has reiterated the reply dated 02.11.2015 in toto and submitted that the rejoinder application of the complainant is a rehash of his willful attempt to seek an undue promotion for which he was considered for promotion by the DPC twice but not found fit. As in his words, he has resorted to fake propaganda, mistruths and ridiculous claims to seek undue benefit and has sought to the respectable members of the Management in a bad light. Repetitive beyond measures and raising a fresh issue, not combined in his original application/representation works out the rejoinder application. The respondent has prayed for dismissing the case. The ramps are available for PwD employees for entry and exist for many years. The Liaison Officer, functioning in the Company is as per the directions of the Government and it is denied that the Liaison Officer has erred in his functioning. The respondent stated that the complainant has been advised a number of times to follow the correct methodology during his assignment in the task of setting up Quality Circles in all the Production Divisions, but to little avail. The complainant did not fare well in the assigned job of piloting the Manufacturing Excellence project in the new module production line. In the core area of Quality Assurance, the complainant's work has not been upto the mark. In the case of Certificate Training Course – a new initiative which was assigned to him, the performance of the complainant has been far from satisfactory. The respondent further stated that the ground cited by the complainant like his averments are totally devoid of merit and amounts to a selfish attempt at garnering undue benefit without being deserving the same. The complainant has been warned to be more careful in his behavior and use of his official power in future. The respondent further stated that the company has not violated any provisions of the law in handling the case of the complainant's promotion as General Manager in CEL.

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10. Upon considering the respondent's replies dated 02.11.2015, 18.01.2016 and complainant's rejoinder dated 02.12.2015, a hearing was scheduled in the matter for 18.03.2016.

11.. On 18.03.2016 during the course of hearing, the Ld. Counsel on behalf of the complainant submitted that the complainant has been serving in this organization for more than three decades continuously. He performed all the work with sincerity, diligence and hard work at par with or even better than the employees who are physically challenged. He is due for promotion for the post of General Manager w.e.f. 01.04.2013. He made his representation dated 30.03.2015 followed by reminders dated 20.04.2015 and 13.05.2015. The respondent vide their letter dated 09.06.2015 declined promotion of the complainant to the post of General Manager stating therein that the complainant was not found suitable for promotion by the Departmental Promotion Committee held during the year 2013 and 2014. The other issue of the complainant is that he has been working under tough and unfavourable condition. The respondent did not provide barrier free environment at the work place, no ramp in the building, more particularly in the Administrative Building, and no toilets for wheel chair users. In September, 2013, the complainant was transferred to a building at first floor where there was no gents toilet. He has to work downstairs or upstairs several times during the day.

12. The Ld. Counsel on behalf of the respondent submitted that the complainant Shri Vinod Kumar Mishra was considered for promotion to the post of General Manager by the DPC held during the years 2014 and 2015 but was not found fit by the DPC. The C.E.L Management has nothing personal against the complainant, but at the same time, cannot be arm-twisted, to extend undue promotion, to an un-deserving candidate. The Company is in compliance of all the rules, instructions of the Government and various laws of the land. As regards Shri Rakesh Ranjan, he is a Signal and Telecommunication Engineer of repute, recruited through the Engineering Services Examination of the UPSC and taken on deputation basis in the company for specialized requirement. As regards Shri Mahajan, the representative of the respondent submitted that Shri Mahajan became AGM in April, 2007, while Shri Mishra became AGM in April, 2011. The contentions raised by the complainant are utterly baseless and have no basis. Promotions are made on merit, based on performance and the same is not a reflection of the physical ability/disability of the person but of the performance and potential appraisal by the DPC. The complainant now has been posted on the Ground floor. The ramps have been provided and are disabled friendly.

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13. After hearing both the parties, the respondent is directed to submit the following documents/information to this Court with copy to complainant before the next date of hearing i.e. 02.05.2016:-

- (i) Copies of advertisements issued for filling up the posts during the years 2013, 2014 and 2015.
- (ii) Copy of Recruitment Rules for the post of General Manager.
- (iii) Copy of reservation Roster maintained for persons with disabilities in respect of Group 'A' and 'B' w.e.f. 01.01.1996.
- (iv) Information regarding details of vacancies filled since 01.01.1996 in Group 'A' (Promotion) in the proforma supplied during the course of hearing (copy enclosed).
- (v) Copies of results of DPC for the years 2013, 2014 and 2015 showing the marks given by the DPC to all the candidates including the complainant.
- (vi) Specific comments whether the complainant's candidature was considered as per DoP&T's instructions as contained in their O.M. No.36035/4/2010-Estt. (Res.) dated 01.08.2011.

14. It has also been decided during the hearing that an Access Audit Team may be constituted who may conduct the Access Audit of the respondent's organization on a mutual convenient date and submit the report to this Court before the next date of hearing i.e. 02.05.2016. The fee may be given to the Access Audit Team as per extent rules. A copy of the Book titled "Planning A Barrier Free Environment" has also been supplied to the representative of the respondent in the Court for making barrier free environment in their organization.

15. The parties are hereby directed to appear and present their case on the next date of hearing on 02.05.2016 at 03.00 P.M. in the Court of Chief Commissioner for Persons with Disabilities, Sarojini House, 6, Bhagwan Dass Road, New Delhi. In the event of non-appearance, this Court may be constrained to either decide the complaint on the basis of available records or take action under Section 63(1)(a) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 for enforcing the attendance.

16. On 02.05.2016 during the course of hearing, the Ld. Counsel on behalf of the complainant reiterated the written submissions of the complainant and submitted that as per Record of Proceedings dated 21.03.2016, this Court had directed the respondent to provide certain documents as listed in Para 3 of the Record of Proceedings. The respondent has not supplied the documents till

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date. The respondent may be directed to provide the documents to the complainant. The Access Audit Team has visited the respondent's company and has submitted its report to this Court. A copy of the same may be provided so that we may assist the Court in this regard. He further submitted that prior to the visit of Access Audit Team, the respondent company has transferred the complainant to a Division/building, which is more inaccessible than the earlier place of posting. Besides, the complainant has been asked to report Shri Anil Mahajan who was earlier junior to him. The respondent company has done this to humiliate him. The transfer is not due to any administrative exigencies but to victimize the complainant.

17. The representative of the respondent submitted that they had filed the reply at the Reception of this Court today immediately before the hearing and the copy thereof was dispatched to complainant on Saturday last dated 30.04.2016. He further submitted that the Petitioner's allegation that he was transferred as AGM/PPC, MED, as a result of sheer vendetta arising out of arrangement over the Access Audit being ordered in CEL, is far from the truth. The Access Audit was ordered on 18th March, 2016, in the course of the last hearing in the case. Considering the Petitioner's Representation, dated 26th March, 2016, addressed to the Chief Commissioner for Persons with Disabilities and copy endorsed to the CMD, CEL, wherein the Petitioner had complained that he was "facing unbearable hardship due to inaccessibility of his work place," the CMD had directed that immediate action may be taken to mitigate the hardship being faced by him. It was felt that the post he was handling involved moving around various shops on the ground and first floors of different buildings. The other assignment of Training also required him to take classes on second floor of the Administrative Block and also oversee practical work being done in various areas of the Company. He submitted that most of the buildings in CEL are about 40 years old and it is not feasible to make major modifications. Besides, any modification will take time to plan, tender out and execute the work. It was, therefore, decided that he should be posted in PPC of MED Division, so that climbing of stairs, etc., could be avoided, keeping his experience in the field in mind. The said order was, thus, issued on 1st April, 2016. His contention that the MED Building is more in-accessible than his previous place of work, is also not correct. He has been accommodated in the Ground Floor of the Building, which has a ramp. Disabled friendly toilet is also proposed to be constructed in the Division, so that the Petitioner does not face any problem. Access Audit has already been conducted and the truth of his allegations could be verified therefrom. As regards humiliation on account of being posted under Shri Anil Mahajan, it may be mentioned that Shri Mahajan is a General Manager, while the Petitioner is an AGM. Shri Mahajan was promoted as a Chief Manager and thereafter as an AGM, much earlier than the Petitioner. The contention that Shri Mahajan is a junior, is not correct. The Access Audit having

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been conducted, it is clear that the Petitioner has been un-necessarily trying to run down the Company as lacking in facilities for the disabled.

18. After hearing both the parties, the Court observed that one of the two grievances of the complainant is that the place of his posting is not accessible. On the directions of this Court, Accessible Audit was conducted and as per the Report there is nothing exclusively wrong about the accessibility of the place. The complainant has submitted that the present place where he has been shifted is more in-accessible to him. The representative of the respondent has informed that the CMD of the organization has specifically given direction that this grievance of the complainant may be redressed, and, therefore, he was shifted to Ground Floor. Since the complainant feels that the previous place was more convenient to him than the present one, the Court suggested that he may be shifted to the same place again. Both the parties agreed. It was further advised that the respondent should take necessary steps to make their old building more accessible and disabled friendly in due course. The Misc. Petition dated 20.4.2016 submitted to this Court on 27.04.2016 also stands disposed off.

19. For the other issues, a copy of the reply of the respondent alongwith its annexures (except DPC proceedings which is stated to be confidential) was given to the complainant by the Respondent. Complainant to file rejoinder within one week from today so as to reach on or before 10.05.2016 with a copy to the respondent. The case is fixed for next hearing on 19.05.2016 at 03.00 P.M.

20. On 19.05.2016 during the course of hearing, Miss Sakshi Vaid, Advocate appearing for Shri Kunal Sharma, Advocate on behalf of respondent submitted that the grandfather of the Counsel, who was appearing in the matter before this Court has passed away on 14.05.2016 due to which he had to go to Pathankot (Punjab) for the performance of the last rites. He is required to be out of Delhi till 23.05.2016 and as such he is unable to attend the proceedings in the captioned matter today i.e. 19.05.2016. She has requested the Court for a short adjournment after 23.05.2016.

21. The Counsel appearing on behalf of the Complainant submitted that if a Counsel seeks adjournment on his personal ground, he normally does not object. He will not even object for today's adjournment. He would like to seek directions of this Court to the Counsel appearing on behalf of the respondent to furnish Death Certificate of his grandfather on the next date of hearing. It is further submitted by the Counsel of the complainant that in case the respondent seeks adjournment on flimsy ground in future, the respondent shall grant Special Casual Leave for that day to the Complainant.

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22. On this the Counsel appearing on behalf of the respondent submitted that this was not a flimsy ground, rather it was a genuine ground. She had come to this Court in the morning and also conveyed the complainant but the complainant told that he will attend the hearing at 3.00 P.M.

23 Keeping in view the genuine prayer made on behalf of the Counsel for the respondent, the Court granted adjournment. The case is fixed for next hearing on 26.05.2016 at 04.00 P.M.

24. On 26.05.2016, the complainant reiterated his written submissions and stated that the respondent organization has not followed roster system of reservation at all. The information furnished before this Court has been fabricated after the direction issued by this Court on 18.03.2016 and it is different from the annual return submitted by the respondent. This matter needs detailed examination as it is blatant violation of PwD Act and contrary to the directions of Hon'ble Supreme Court. If the roster system would have followed, the complainant would have got the advantage and he would not have been pushed behind his juniors. Hence he is entitled for relief. Even if the information furnished by the respondent is treated as correct, there is a cadre strength of 108 in "A" category and accordingly there are four vacancies for PwDs. At the same time, there are vacancies of General Managers. General Managers have been recruited in between but the post was not reserved. Hence complainant has been at disadvantage and deserves relief. He further submitted that the posts are filled on deputation only when internal candidates with relevant qualifications and experience are not available. Here posts are filled on deputation on nomination basis and a right of PwD candidate to compete was denied. PwD Act does not permit discrimination, here it is a case of denial. Hence complainant has been at disadvantage and deserves relief. The complainant with disability was denied opportunity in various ways and was persuaded to report to a retired person/consultant. The DPC minutes are not accessible. This court may please examine whether marks as per prevailing promotion policy such as qualification, number of years in present grade, Annual appraisal report, interview/moderation have been given or not or just declared suitable/non-suitable. The promotion of complainant is due from 01.04.2013, even though conveyed in writing on 09.06.2015. Complainant was considered for promotion in 2013 but now it is established that complainant was not considered at all just to facilitate the appointment of Shri Rakesh Ranjan respondent no. 2 on nomination basis in October, 2013. In worst case, promotion can be granted with effect from 01.04.2015 as this will not disturb the seniority of those who became General Managers although they were junior to the complainant earlier. The remaining loss to the complainant may please be recorded by this Court for the next promotion i.e. General Manager of Executive Director.

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25. The Counsel of the respondent submitted that the complainant in this case has made the prayers, such as (i) Directions to the Respondents to promote the Petitioner; (ii) To produce proceedings of D.P.C; (iii) To promote easy accessibility for PWDs; (iv) To direct Respondents to issue guidelines and office memorandum; (v) To direct the Respondents to implement the directions in Official Memorandum dated 29/12/2005 and 31/03/2014. The Prayers (ii) and (iii) have already been complied with, Prayer (iv) and (v) are vague in nature and they do not state as to what relief is required by the Petitioner submitted that to be considered for promotion is a matter of right, however promotion is not a matter of right, and the Petitioner has been duly considered for promotion as per two DPC's held in the year 2014 and 2015. That the instant principle of law has been laid down in various judgments of the Hon'ble Apex Court and the reliance is placed on Municipal Corporation of Delhi vs. Dhan Singh (MANU/DE/7167/2007). Further it is a settled principle of law that the DPC enjoys full discretion to devise its method and procedure for assessment of suitability and merits of candidates considered by it and the Courts and tribunals should not interfere in the proceedings. This principle has been reiterated in UOI vs. S.K. Goel (MANU/SC/7092/2007 and in State of Madhya Pradesh vs. Srikant Chaphekar MANU/SC/0183/1993. It is the case of the Petitioner that he has been discriminated by the Respondents because he suffers from physical disability.

26. It may be noted that it is the case of Petitioner himself that he was selected in the Respondent Company through Campus Selection, he further states that while in service he successfully pursued an MBA Degree and that the Petitioner is now enrolled for PhD and that he was recommended by the Respondent Company for the President Medal as an outstanding employee with disabilities. All the above facts show that not only there has been no discrimination, in fact the Petitioner has been provided with every opportunity to advance his career. It is further the case of the Petitioner that he was posted to the post of AGM on 01/04/2011, and he has since then been performing excellently well. In this regard it is submitted that the Petitioner has been issued confidential qua his performance being unsatisfactory on 21/05/2013, and again on 08/07/2013, Letter No. CMD/13-14 by the CMD of Respondent-2. Further, the Petitioner was issued a warning on 13/09/2013, Letter No. CEL/Pers/2013-14 to be careful in his behavior as there were complaints of sexual harassments and wrongful utilization of powers upon which the inquiry committee report had affirmed that there was wrongful utilization of power by the Petitioner. Therefore, there is no substance in the contention of the Petitioner that he has been performing extremely well. It is further the case of Petitioner that he was due for promotion from 01/04/2013 but was not promoted (Paragraph 22 to 25). It is submitted that the

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DPC proceedings placed before this forum clearly shows that the Petitioner was considered for promotion but was not found suitable and out of 15 candidates only 1 candidate in the year 2014, and out of 14 candidates only 2 in the year 2015 were found fit for promotion. It is further the case of the Petitioner that Sh. Anil Mahajan was promoted ahead of him despite the fact that Sh. Anil Mahajan was junior to him. It is submitted that Sh. Mahajan had superseded the Petitioner in the year 1991 itself when he was placed at category E-4 on 01/10/1991, whereas, the Petitioner was promoted to category E-4 on 01/01/1992 and consequently Sh. Anil Mahajan was promoted to Grade E-7 on 01/04/2007 whereas the Petitioner was promoted to E-7 on 01/04/2011. It is submitted that the issue of the aforesaid promotion does not fall for consideration under the PWD Act. Further, it has been held by the Hon'ble Supreme Court in P.S. Sada Siva Swamy vs. State of Tamil Nadu (1995) 1 SCC 152 that a person who is aggrieved by an order promoting a Junior should approach the Court at least within 6 months or at the maximum within 1 year.

27. It is further the case of the Petitioner that candidates with disabilities were neither considered for promotion nor deputation. It is evident from the records that both in promotion and deputation there was no bar for candidates with disabilities. In so far as the case of Petitioner is concerned, since he was the internal candidate was duly considered for promotion. The Petitioner has further raised the issue of two Officers Namely Sh. Rakesh Ranjan and Sh. R. D. Choudhury being hired through deputation and alleging that internal candidates were not considered for said post and that the Chairman of the Company is an Ex-Railway Officer and was therefore giving preference to Railway Officers. At the outset it is submitted that the issue of internal candidates not being considered and the alleged bias of the present CMD towards Railway Officers is not an issue which can be and should be raised before this forum as the same amounts to wastage of precious time of this Hon'ble Forum, which has the mandate of securing the rights of persons with disabilities. It is further submitted that the above two appointments were made in pursuance of specific exemption granted by the administrative ministry of the Respondent-2. It is to say the Ministry of Science and Technology vide letter dated 02/01/2014 No. DSIR/CEL/1/2013/2014 has exempted the aforesaid posts from the rule of immediate absorption for a period of three years and permits taking people on deputation. It is further clear from the advertisements for the appointment of the said two posts that the aforesaid posts were required to be filled by the persons having at least 10 years of experience in Advance Railway Signaling against which Sh. Rakesh Ranjan was hired and the other post for E.D.(HR) required 15 years of experience in H.R. and Mr. Choudhury who was engaged for the same post came from Indian Railway Personal

....12/-



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

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Service which is the only recognized H.R. service under the Government of India. Therefore there is no substance in any allegation of the petitioner and the petitioner has not been able to make out any case of discrimination against Persons With Disability or for that matter any case under the Persons With Disabilities Act.

28. After hearing both the parties and perusal of the records available on file, this Court is of the view that as per promotion policy for Executives, it is seen that the eligibility service for promotion from E-VII and above is two years. In exceptional cases, service eligibility for inter cluster between (cluster) promotions may be relaxed by the CMD on the recommendation of a specially constituted Committee. All promotions to executive posts shall be considered by duly constituted Departmental Promotion Committee which shall meet in the months of May and November to consider cases of executives who complete the service eligibility for promotion as per clause 5 above, on 31st March, and 30th September of the same year respectively. The procedure for determination of merit is discussed in Clause 6.3 of the Promotion Policy. The promotion will be sequential from one grade to the immediately next higher grade. As per Clause 9.3 of the Promotion Policy for executives, "This policy shall supersede all the previous orders on the subject. The Company reserves the rights to withdraw terms and/or amend any of the provisions contained in the above policy, if it considers necessary to do so. The constitution of DPC for promotion from E-VII to E-VIII is as under:-

- | | | |
|------------------------------------|---|--|
| 1. Chairman & Managing Director | - | Chairman |
| 2. SGM/GM | - | Members (Three-
One will be from concerned Group) |
| 3. One Expert Member form outside. | | |
| 4. Personnel Head | - | Member Secretary. |

29. It is also seen form the Minutes of the DPC meeting dated 25.07.2014 and 10.08.2015 that in the year 2014, the DPC evaluated the cases of 15 eligible executives including Shri V.K. Mishra, complainant and recommends the name of Shri Anil Mahajan, AGM for promotion to the post of General Manager w.e.f. 01.08.2014. In the year 2015, the DPC considered the names of 14 eligible executives including Shri V.K. Mishra and recommends the names of S/Shri K.V. Raman, AGM, R.O., Bangalore and Shri P.C. Awasthi, AGM/SPD for promotion to the post of General Manager w.e.f. 01.04.2015.

.....13/-



न्यायालय मुख्य आयुक्त विकलांगजन
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30. As per DOP&T's O.M. No. 36035/4/2010-Estt. (Res.) dated 01.08.2011, the DoP&T had clarified that if promotions are made to a Group 'A' or Group 'B' post, which is identified suitable for persons with disabilities of a specific category, the persons with disabilities of relevant category in feeder grade, if any, shall be considered for promotion to the post of applying the same criterion as applicable to other person.

31. In view of the above, there is no reservation in promotion in Group 'A' and Group 'B' posts, hence there appears no violation of any provisions of the Persons with Disabilities Act, 1995 or the Government instructions in the matter. The DPC after following the procedure for promotion has selected the persons to the post of General Manager in the years 2014 and 2015 respectively and this Court cannot interfere/comments on the Minutes of the DPC. Hence, no direction can be given to the respondent in the matter.

32. As regards the issue of accessibility of office premises at Administrative Block, this Court got conducted the Access Audit of the premises and as per the Access Audit Team, there is nothing exclusively wrong about the accessibility of the place.

33. The case is disposed off accordingly.

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