



सत्यमेव जयते

R/f

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. 5268/1014/2015

Dated:- 21-04.2016

In the matter of:

Shri Vaibhav Narayan Bichukale,
At – Malavadi, Post – Bibi,
Tal – Phaltan, District – Satara,
Maharashtra - 415537

R207

..... Complainant

Versus

National Institute of Virology,
(Through its Director),
Indian Council of Medical Research,
Department of Health Research,
Ministry of Health and Family Welfare,
20A, Dr. Babasaheb Ambedkar Road,
Post Box No. 11, Pune – 411011 (Maharashtra)

R208

..... Respondent

Date of hearing : 15.02.2016, 07.03.2016, 06.04.2016

Present :

15.02.2016

1. Sh. Vaibhav N. Bichukale, Complainant alongwith Shri Patil Dayanand Piloba.
2. Sh. P. Subramanian, Administrative Officer and Smt. A.S. Bakare, Assistant on behalf of the Respondent.

07.03.2016

1. Sh. Vaibhav N. Bichukale, Complainant.
2. Dr. R. Lakshmi Narayan, Senior Administrative Officer on behalf of the Respondent.

06.04.2016

1. Sh. Vaibhav N. Bichukale, Complainant.
2. Dr. R. Lakshmi Narayan, Senior Administrative Officer on behalf of the Respondent.

ORDER

The above named complainant, a person with 45% locomotor disability filed a complaint dated 21.09.2015 before the Chief Commissioner for the Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to the 'Act' regarding non-implementation of Act, 1995 while filling up the post of Multi Tasking (Technical Lab).

2. The complainant submitted that against an advertisement dated 09.02.2015 for 10 posts of Multi Tasking (Technical Lab) Group 'C', out of which one post was reserved for persons with

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disabilities, he applied against the post online in the category of disability. As per his knowledge, after qualifying the written examination and the interview, the post reserved for persons with disabilities has been kept vacant which is contrary to the provisions of the PwD Act, 1995. The result was declared on 25.06.2015 and the respondent has selected 10 candidates out of which none is from the disability category. The respondent is not filling up the post as there is special recruitment drive for filling up the backlog of vacancies reserved for persons with disabilities.

3. The matter was taken up under Section 59 of the Act with the respondent vide this Court's letter dated 12.10.2015.

4. The respondent vide letter No.1/4/2015/Comp./Admn./1-5099 dated 18.1.2015 filed its comments in the matter and, inter-alia, submitted that MTS position is an erstwhile (former) Group D post and the duties are mostly of regular housekeeping and maintenance jobs. These are earmarked for lower rung category of staff with lower level qualification. The Core Committee was formed by the Competent Authority as per ICMR guidelines and was empowered to recommend candidates as per their suitability for the job. The complainant was given the opportunity of written test and personal interview like any other candidate. His name was not recommended by the Core Committee due to non-compatibility of his qualification to the job specification. The interviews were conducted by a committee of 5 members including one outside expert. The marks were given unanimously by the Committee. The sealed envelope having results of written examination was not opened and shown to the Interview Committee so that the Interview Committee is not influence by the written exam marks. The allegation of the complainant is completely baseless. The reserved vacancy has been carried forward for future recruitment.

5. The complainant vide his letter dated 13.01.2016 has submitted his rejoinder, inter-alia, stating that the respondent gave wrong and misleading information to this Court. As per advertisement the minimum qualification for the said post is either SSC or Matriculation. Had the complainant not been interested to work on the said post, he would not have applied for the said post. The complainant is ready and willing to work on the said post if selected. In present days, Government service is not easily available due to competition. Complainant and similarly situated persons are compelled to apply and work on lower grade post due to certain circumstances.

6. After considering the version of both the parties, the case was listed for hearing on 15.02.2016.

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7. During the hearing on 15.02.2016, the complainant has submitted that the respondent had published an advertisement for the post of Multi-tasking (Technical Lab) Group 'C' post. Out of the 10 advertised vacancies, one vacancy was earmarked for persons with disabilities. As he was possessing requisite qualifications, he made online application for the post in the OBC and person with disability category. After qualifying the written examination, the respondent called him for interview which was scheduled on 18.06.2015. That after giving successful interview, he was expecting favourable result. Later on, he was told that he is over qualified and could not be selected. The respondent have filled all the 10 vacancies including one vacancy which was earmarked for persons with disabilities, which is against the Persons with Disabilities Act, 1995. He also submitted that as there is no column with regard to reservation for PwD category in the online application, he filled the column reserved for OBC.

8. The representative of the respondent submitted that selection was made on the recommendation of the Selection Committee constituted for this purpose and fair selection was made. She further submitted that he applied under the category OBC and not under the category of person with disability.. The cut off marks for all the categories was 35%. The highest marks in the list of OBC candidates were 66.10%. The marks of the candidate who was selected in the merit were 58%. Though the complainant secured 42.5% marks in the written examination he could not be selected due to over qualification. The vacancies were filed as there is provision of carrying forward of the vacancies in the DoP&T's O.M. No.36035/3/2004-Estt.(Reser) dated 29.12.2005. She further submitted that the Reservation Roster has been prepared as per DoP&T's instructions and they are following the instructions of DoP&T regarding reservation of persons with disabilities. She produced the application of the complainant, as per which, he had applied under the category of OBC instead of PWD and hence he was considered as an OBC candidate and not as a candidate with disability.

9. On perusal of the application form of the complainant, this Court observed that there is no column in the on-line application form showing vacancies reserved for persons with disabilities. On a query made by the Court whether the provisions of the Persons with Disabilities Act, 1995 and the instructions of Department of Personnel & Training were followed while giving advertisement and making selection, the representative of the respondent submitted that selection was made on the recommendations of the Selection Committee and sought time for further hearing on the pretext that the concerned officer is out of station who has full knowledge of the case.

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10. The Court raised the following queries to the respondent:-
- (i) Whether there is a column in the on-line application form showing vacancies/posts reserved for candidates with disabilities.
 - (ii) Whether the Selection Committee was informed about the DoP&T's instructions on reservation for persons with disabilities and about the provisions of the Persons with Disabilities Act, 1995,
 - (iii) Whether there is any Government instruction fixing the maximum qualification required for the post.
 - (iv) Whether the provisions of Section 36 of the PwD Act, 1995 or Para 16 of the DoP&T's OM No.36035/3/2004-Estt.(Reser) dated 29.12.2005 were followed while carrying forward the vacancies.

Apart from the above, this Court also observed that though the respondent failed to submit the information in the desired format showing details of vacancies filled since 01.01.1996, the Liaison Officer has certified that the Reservation Roster has been maintained as per DoP&T's instructions. The case was re-scheduled for hearing on 07.03.2016.

11. On 07.03.2016, both the parties were heard. The representative of the respondent prayed for seeking further time of two weeks for supplying the required informed as asked for this Court vide Record of Proceedings dated 24.02.2016. The Court agreed to the request of the respondent and the case was listed for final hearing on 06.04.2016. The respondent was directed to bring all the relevant documents and instructions in the matter.

12. On 06.04.2016, the complainant reiterated his written submissions and submitted that he had applied for the post of Multi-tasking (Technical Lab) Group 'C' (erstwhile Group 'D' post). Out of the 10 advertised vacancies, one vacancy was earmarked for persons with disabilities. After qualifying the written examination, the respondent called him for interview which was scheduled on 18.06.2015. After giving successful interview, he was expecting favourable result. However, he was told that he could not be selected because he was over qualified for the post. The essential qualification for this post was SCC/Matric, he filled his qualification as 12th pass in the application form although, he was possessing B.E.(IT). Qualification. He stated before the Interview Board that he possessed B.E.(IT) qualification. The B.E.(IT) certificate was submitted at the time of interview. When he visited the office of the respondent for filing the application under RTI Act, he was not given the acknowledgement of his application and was threatened that he will be implicated in a criminal case.

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13. The representative of the respondent submitted that the complainant had applied for MTS, erstwhile Group D post (now Group 'C' post) for which essential qualification as per Recruitment Rules is SSC./Matric. The nature of job for this post is Lab. Washing and house-keeping, cleaning and maintenance of Lab. In his application form, he had filled his qualification as 12th Pass though he was possessing BE(IT) Qualification which he suppressed in his application form. The Core Committee had recommended that the qualification of the complainant is not compatible with the nature of the job. Therefore, he was not considered suitable for the post. During the last hearing, the complainant himself admitted before the Court that he had not mentioned his actual qualification intentionally because in some other organizations he was not even called for interview owing to his higher qualification of BE(IT). It was also mentioned that the complainant behaved with arrogance during his later visits to the Institute as well as in the letter dated 21.08.2015. The respondent requested this Court to look into these issues as well before reaching any conclusion.

14. On being questioned by this Court, the respondent informed that the only reason for his non selection mentioned in the proceedings of the Selection Committee is "qualification not compatible with the job". There is no mention of any suppression of facts or non-disclosure of factual information. The Court was also informed that vacancy in the post of Multi Tasking Staff (Technical Lab) is still available, which is proposed to be filled up during the Special Recruitment Drive being undertaken by the Institute. On the basis of material on record, evidence adduced during the hearings and the statements made by both sides, this Court is of the opinion that higher qualification is not a bar for recruitment to any post and the complainant must be considered if he possesses the minimum qualification prescribed for the post. It becomes all the more relevant in the case of person with disability and other reserved categories where the Constitution itself provides for making special provision for their upliftment, betterment and social inclusion. The employer must bear in mind that ours is a scarce society for employment much less full employment commensurate with the qualification and talent possessed. The fact remains that as per the reservation roster, one of the 10 posts required to be filled is reserved for persons with disabilities and is still available. Accordingly, the Court directs the respondent that Shri Vaibhav Narayan Bichukale, the complainant may be given appointment to the post of Multi Tasking Staff (Technical Lab) despite his higher qualification as he also possesses the minimum qualification prescribed for the job. The respondent will, however, be free to examine and get the authenticity of the original documents including educational qualifications and Disability Certificate verified. Compliance of the Order will be reported to this Court within one month from the date of receipt of this order.

15. Ordered accordingly.


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

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)