



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.5682/1023/2016

Dated:-06.10.2016

**In the matter of:**

Shri T.O. Sunny,  
Chirayath, 0385  
48, Ullasnagar,  
Kanjikode West P.O.,  
Palakkad,  
Kerala-678623  
Email: <t.o.sunny100@gmail.com>

..... Complainant

**Versus**

Ministry of Heavy Industries and Public Enterprises  
(Through Secretary), 0386  
Department of Heavy Industry,  
Udyog Bhavan,  
New Delhi-110001.

.... Respondent No.1

FCRI Governing Council,  
(Through Chairman FCRI), 0387  
Joint Secretary,  
Department of Heavy Industries,  
Udyog Bhawan,  
New Delhi-110011

..... Respondent No. 2

Fluid Control Research Institute,  
(Represented by its Director), 0388  
Kanjikode (West),  
Palakkad,  
Kerala-671623

..... Respondent No. 3

Fluid Control Research institute,  
(Through Director), 0389  
Kanjikode,  
Palakkad,  
Kerala-678623.

.... Respondent No. 4

Date of hearing : 09.09.2016

**Present :**

1. S/Shri T.O. Sunny, R.E., Complainant with Preena Sunny .
2. Shri Tom Joseph, Advocate for-1-4 & Sunil Kumar, Finance & Accounts Officer on behalf of Respondent.

**ORDER**

The above named complainant, a person with 50% mental disability (Schizophrenia) disability filed a complaint dated 19.12.2015 (alongwith a copy of the Order dated 23.05.2016 of the Hon'ble High Court of Kerala in WP (C) No. 3547 of 2016) under the Persons with Disabilities (Equal

.....2/-

Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act' regarding not forwarding of his various applications for employment elsewhere by his department.

2. The complainant submitted that he is working as Research Engineer in Fluid Control Research Institute (FCRI) at Kanjikode, Palakkad, Kerala. He was appointed as Engineer in FCRI after finding him medically fit vide Order dated 18.10.1994. While working in FCRI, he developed mild mental depression which was diagnosed Paranoid. He has been undergoing treatment for it since 2001. Previously he was working in National Power Corporation. Due to continuous medication and treatment, he was compelled to avail leave occasionally. Despite his ailment, he was given huge amount of work. He was admitted to S.H. Hospital, Payankulam Thadupuza (Mental Hospital) for treatment of his mental illness on several occasions. The Disability Certificate No.1455 shows that the complainant is suffering from 50% mental illness. He made several representations to his office for an alternative employment, but the request was not considered. The complainant was issued an office Order dated 14.11.2014 stating that the leave will be sanctioned after finalization of disciplinary proceeding which was initiated against him. And he was asked to remain on leave. The complainant was placed under suspension with retrospective effect from 07.11.2014. He is without salary since November, 2014. The complainant has requested this Court to direct FCRI to stop all further actions and enquiry report pending against him.

3. The matter was taken up with the respondent vide this Court's letter of even number dated 28.06.2016.

4. The Respondent No. 3 and 4 filed their Written Comments dated 21.07.2016 and submitted that the complainant joined service of the Third Respondent Institute as an Engineering Officer in the year 1991. During the entire tenure of his service, it was found that his work was lackadaisical and he was constantly neglecting his work. His probation period was also extended because of the reasons mentioned. However, he was given an adhoc promotion in the year 2007 without any additional duties or responsibilities and at present he is designated as Research Engineer. In spite of the opportunities given, he continued with his acts of omission and commission and finally a warning memo dated 04.06.2014 was issued to him providing with a final chance to improve. Under the circumstances the 4<sup>th</sup> respondent was compelled to serve Show Cause Notice and Charge Sheet up on the complainant.

5. No reply in the matter was filed by Respondent No. 1 and 2, despite reminder letter dated 02.08.2016.

6. A copy of reply dated 21.07.2016 received from Respondent No. 3 and 4 was forwarded to the complainant vide this Court letter dated 02.08.2016 for his comments/rejoinder.

7. The complainant in his rejoinder dated 01.08.2016 submitted his comments/rejoinder, inter-

alia, stating that he was admitted four times in the sacred heart hospital, Paynkulam (Mental Hospital) in the period from 21.02.2001 to 15.03.2001, 08.12.2002 to 23.12.2002, 19.08.2003 to 11.09.2003, 18.02.2013 to 08.03.2013 respectively. Medical Board of Government Medical College Hospital, Thrissur has certified 50% mental disability. Due to social stigma all the certificates were not submitted to the respondent then and there. Hence he prayed for giving him protection under Section 47 of the PwD, Act, 1995 and reinstate him into the service of Fluid Control Research Institute.

8. Upon considering the respondent's reply dated 18/21.09.2015 and complainant's rejoinder dated 29.12.2015, a hearing was scheduled on 29.02.2016 which was further re-scheduled to 26.04.2016.

9. On considering the comments/rejoinder dated 01.08.2016 of the complainant, a hearing was scheduled on dated 09.09.2016.

10. During the hearing on 09.09.2016, the complainant reiterated his written submissions and submitted that he is suffering from Schizophrenia (mental illness). He cannot sustain without taking medicines. If he does not take medicines, his behavior will change. He is taking the medicines since 2001 more than 15 years. He joined this Department in December, 1994. Now, he has been suspended from service in November, 2014. He wants remedial action this considering his illness.

11. The respondent submitted that to be considered the complainant as disabled, his Schizophrenia must have lasted or must be expected to last, for at least 12 months. There is no standard test to diagnose Schizophrenia. Their involvement in social activities decreases over the period of time. In the case of the complainant, the Inquiry Report substantiates that he has not abstained from social activities and on the other hand has secured first position and other prizes in quiz competition etc. It is settled that Schizophrenia usually develops in the late teens and early 20s in men, and in the 20s or early 30s in women and those over 30, rarely develop symptoms if none have been present previously. Raj S. (2013) Living with a disability : A perspective on disability in people living with Schizophrenia (PLS), International Journal of Psychosocial Rehabilitation, Vol. 18(1) 115-123. It is further submitted that the complainant is an abuse of the provisions of Persons with Disabilities Act, 1995. It shall set up a wrong precedent, wherein unscrupulous elements will take shelter behind this provision in order to escape from Disciplinary proceedings and punishment. The incidence narrated in the complainant does not show any direct nexus or link between the mental disabilities and the acts of mis-conduct evidencing that the same is only a false pretext to avoid the disciplinary proceedings. Even the probation of the complaint was extended for four years and the complainant was granted adhoc promotion (not on merits). The complainant has admitted his own mistakes in his own hand and pen over about a decade. The Writ Petition before the High Court and the complaint dated 19.05.2015 is only an after thought after the Memo. Dated 04.06.2014. The Certificate of Disability relied upon is vitiated as the Psychiatrist has rendered treatment to the

complainant prior to the issuance of the Disability Certificate. The present case being a psychological disorder, the signatures of the Psychiatrist on the Disability Certificate is of an utmost important. The Psychiatrist despite being a specialist in the field has not classified the type of Schizophrenia that the complainant is suffering from. The Certificate from the Medical Board is of the period after commission of misconducts. The respondent has provided that the Exhibit P-2 Medical Certificate is concocted and not genuine in the light of the Medical Certificate R-3(C-F). The complainant has taken medical reimbursement of approximately Rs.3,000/- for the last four years. It is evident that there is hospitalization admission as inpatient. The false pretext of social stigma cannot be relied upon as no social stigma is attached in reporting a medical condition to his own employer that too in a Government controlled autonomous body. The Inquiry Report totally nails the lies put forth by the complainant. It needs to be noticed that the complainant has very actively participated in the inquiry proceedings. The complainant has not preferred an appeal as provided in FCRI Disciplinary Rules and has opted for back door by approached this Court. The Exhibit P-3 has no legal sanctity. Even the documents relied upon by the complainant show that his claims are varying from Bipolar mood Disorder to Schizophrenia to Paranoid Schizophrenia, thus, showing that the same are only a fable effort to subvert to the proposed punishment. Paras 117 and 107 of the Inquiry Report are very relevant to show that the present complaint is an after thought. The Medical Certificate dated 01.08.2015 clearly states that there are no active symptoms of Schizophrenia, which glaringly contradicts to the Medical Certificate dated 19.08.2015 certifying Schizophrenia. The complainant has a valid Driving License and is driving vehicle on regular basis and has performed Election Observer Duty in the year 2014. The complainant has not made any complaint against any other individual subordinate or superior in the office and has awoken only when Disciplinary Proceedings were initiated against him. The respondent prays that the medical literature placed on record by the respondent covering the dimension and symptoms Schizophrenia from the Shorter Oxford Text Book of Psychiatry Vth Edition squarely proves that the case of the complainant is false and bogus.

12. After hearing the parties and after perusing the record available on the file, this Court has observed that the complainant has developed mental problem (illness) during service period. As per Section 47 of the Persons with Disabilities Act, 1995 – "No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service; Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, which is earlier. (2) No promotion shall be denied to a person merely on the ground of his disability; Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

13. It was further observed that the organization has never taken any steps to get the complainant examined by a competent medical authority.

14. Keeping view the medical report and prescription, which is the self effort of the complainant, there seems no reason not to believe about his acquiring of mental illness during his service period.

15. Organization, instead of giving memos and instituting enquiry against the complainant, should had been taken appropriate measures for assessment and treatment to improve his functional capacity.

16. There is a serious lapse on the part of the respondent organization as well as harassment to the complainant and violation of Section 47 of the Persons with Disabilities Act.

17. Therefore, the respondent organization is directed not to further harass the complainant and provide him all facilities for his treatment and place him on a suitable assignment with all service benefits for which he is entitled.



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