



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.: 655/1024/2013

Dated: 10.08.2017
Dispatch No.....

In the matter of :

Shri Avinash D. Thakur,
8/249, Akanksha,
Nirmal Nagar, MHB, R277
Bandra (E),
Mumbai - 400 051

.....Complainant

Versus

Employees Provident Fund Organisation,
(Through Central Provident Fund Commissioner)
Bhavishya Nidhi Bhavan,
14, Bhikaji Cama Place,
New Delhi - 110 066 R278

.....Respondent

Date of Hearing : 06.06.2017, 03.03.2017 and 20.04.2017.

Present :

Complainant Shri Avinash D. Thakur and Mrs. A.A. Thakur, Present
Shri Amit Singla and Shri Anirudh Chundawat, representatives of Respondent also present.

ORDER

The above named complainant, a person with 68% locomotor disability, filed a complaint dated 30.10.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, regarding non-implementation of Persons with Disabilities Act, 1995, in the Employees Provident Fund Organisation;

2. Shri Avinash D. Thakur submitted that Employees Provident Fund Organisation, New Delhi and its offices in India are not adhering to the implementation of Persons with Disabilities Act, 1995 specifically Section 32, 33, 36, 47 & 59 among its employees. The complainant is working in the EPFO's office in Mumbai region where he has alleged the suppression of the rights of persons with disabilities.

3. The matter was taken up with the respondent under Section 59 of the Persons with Disabilities Act, 1995 vide this Court's letter dated 10.02.2014, followed by reminder dated 19.05.2014.

4. The Regional Provident Fund Commissioner – II (HRM) vide letter no. MH/PF/BAN/HRM – I(5)/ADT/43 dated 09.06.2014 submitted that the complainant joined EPFO in 1979 as LDC with a sound physical fitness and not under the PH quota. However, after the receipt of the documents dated 06.11.2003 claiming his physical disability status, his service records were updated. At the time of disablement he was posted in Zone – II on first floor i.e. in 2003, then subsequently he was posted to the PPA section in 2004 which was also on 1st floor, then afterwards he was posted to the Dispatch Section in the year 2005 which was on the ground floor. However since he had worked more than 7 years in Dispatch section, as per the transfer policy, he was transferred to Accts Group 39 situated on the 3rd floor in the year 2012 as there was no similar section on ground floor. It was submitted by the Respondent that there were about 27 employees with disabilities working in their office who were also routinely transferred on different floors. Among these employees, there were some employees who had disability in legs but have worked satisfactorily and none of these employees have complained so far, so it was assumed that the complainant might also utilize the available facility. A copy of the reply dated 09.06.2014 of the Respondent was forwarded to the complainant for his comments/rejoinder vide this court's letter dated 10.07.2014.

5. The Complainant, Shri Avinash D. Thakur vide his letter dated 24.07.2014 has submitted pointwise comments (F/B) which are as under:-

- (i) When he was declared more than 50% disabled, then why he was transferred to A/c Gr. 62, on the 4th floor old EPFO Bldg, which was inconvenient for him in 2005 and stopped his salaries for thirteen months.
- (ii) What action has been taken on the order of Apang Ayuktalaya, Pune who were the guilty officers, their name and designation?
- (iii) Whether their policy decided by local union is more forcible than Sec – 47 of PwD Act, 1995.
- (iv) Why payment of thirteen months held up and given after court judgment without interest.

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- (v) In 2005 why PH quota 3% has been misutilized and non disabled employees has been promoted in PH?
- (vi) Why two officers DD-ESIC & RC Nagpur of DPC committee not signed the proceedings and why all the record of PH quota not kept before DPC committee?
- (vii) In 2012, what were the circumstances under which he was again transferred to Gr 39 on third floor of EPFO old building?
- (viii) What was the reason to give him chargesheet on 15.05.2012 one day before the DPC meet i.e 16.05.2012.

6. This Court vide letters dated 31.12.2014 and 09.03.2015 advised the Regional Provident Fund Commissioner-II (HRM) to submit their comments on the complainant's rejoinder dated 24.07.2014 along with the information regarding number of posts filled by promotion since 01.01.1996 in Group A, B, C & D.

7. The Regional P.F. Commissioner-II (HRM) vide his letter no. MH/PF/BAN/HRM-I(5) dated 18.03.2015 submitted that as per the rules in force there is reservation applicable under PH quota to Group 'B' cadre owing to the Head Office letter No. HRD/2(6)84/EPF Staff (CCA) Rules 1971/29268 dated 19.08.2010 wherein the Notification of Re-classification of various posts in the Employees' provident Fund Organisation, Ministry of Labour was published in Gazette of India in accordance with the 6th Central Pay Commission had been forwarded according to which a Central Civil Post carrying the Grade Pay of Rs.4200/- in Scale of Pay of Rs.9300-34800 in Pay Band 2 has been classified as a Group B post. He further submitted that the complainant was charge sheeted twice one 26.03.2007 and 15.05.2013. As such his name was not considered for promotion to the post of Section Supervisor. However, he was promoted to the post of Section Supervisor vide Office Order No. MH/HRM-I(5)/SS-Prom-AdHoc/SQ/320 dated 02.03.2015. He further submitted that initially the entire Maharashtra was one Region and later on the same was made into three and now there are five regions, i.e. Mumbai -I, Mumbai-II, Mumbai-III, Nagpur and Pune during the last years. The preparation of the Establishment Master in connection with the above stated structural changes in all cadre is

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under process and the information required in the proforma regarding the number of posts filled by promotion since 01.01.1996 in Group A, B, C & D cadre and certificate from the Liaison Officer certifying the Reservation Roster for persons with disabilities is also under preparation and require some more time. A copy of Respondent's letter dated 18.03.2015 was sent to the complainant for his comments vide this Court's letter dated 12.05.2015.

8. The complainant vide his reply dated 05.05.2015 has submitted that his establishment has not given him any disability leave and also interest on thirteen months' salary, which was stopped after he acquired disability. The structural changes which his establishment says is not been maintained since 01.01.1996. The complainant has requested to sanction him 1) disability leave, 2) interest on his salaries for thirteen months 3) revise DPC of 105 promotions of Section Supervisor in 2005 and promotions for genuine PH employees and 4) posting to ground floor.

9. This Court vide letters dated 06.07.2015 & 24.10.2016 advised the Commissioner for Persons with Disabilities, Govt. of Maharashtra to translate their Order dated 19.04.2008 into English and send the same to this Court.

10. Upon considering respondent's replies dated 09.06.2014, 18.03.2015 and complainant's letters dated 20.02.2014, 24.07.2014 and 05.05.2015, a personal hearing was scheduled on 03.03.2017.

11. During the hearing, the complainant reiterated his written submissions and also submitted that he was in the EPFO Office in the year 1979 in sports activities. He fell down in the office and became more than 50% disabled. He was transferred to PPA Section in 2004 which was on First Floor. In the year 2012 he was transferred to Accounts Group 39 situated on the third floor which was inconvenient for him and his salaries for thirteen months' was also stopped. No action was taken against the guilty officers on the order of Apang Ayuktalaya, Pune. His payment of thirteen months' was held up and given after Court judgment without interest. In the year 2005, the PH quota of 3% was mis-utilized and non disabled employees were promoted in disabled quota. The Complainant was not given promotion which was due to him from the year 2002. According to the Complainant, the officers who had stopped his

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promotion, should be punished. As per the Complainant, he was given Charge Sheet on 15.05.2012, i.e., one day prior to the DPC meeting, which was held on 16.05.2012, he has not got the payment of Rs.1,71,251/- so far. He prayed before this Court to give him justice.

12. The representative of the respondent submitted a copy of letter dated 02.03.2017 addressed to the Regional P.F. Commissioner-I, Bandra (Maharashtra) and copy to this Court and prayed for supply of the copy of the complaint of the complainant, which was supplied to him during the hearing. He sought time for submitting the point-wise reply to the complaint relating to pay, promotion and harassment caused to the complainant. He further submitted that since the matter relates to Regional Office, Bandra, Mumbai, the subject matter needs to be clarified from the Regional Provident Fund Office, Bandra. On the request of the Respondent, the Court granted time. The respondent was directed to file the detailed reply one week before the next date of hearing.

13. The case was then adjourned to 20.04.2017 at 1500 Hours.

14. During the hearing dated 20th April, 2017, the complainant reiterated his earlier submissions that during his service with EPFO Office, he fell down in the office and became more than 50% disabled. His payments for thirteen months was held up and given after the Court judgment. In the year 2005, the PH quota of 3% was misutilized and non disabled employees were promoted under disabled quota. He was not been given promotion which was due to him since the year 2002. He stated that the officers who denied his promotion from the year 2002 should be punished. He was given Charge Sheet on 15.05.2012, i.e. one day before DPC meeting, i.e. 16.05.2012. He has not received the payment of Rs.1,71,251/- so far, which is bonafidely due to him.

15. During the hearing, the representatives of Respondent, as directed by this Court vide ROP dated 05.04.2017, submitted their written submission dated 18.04.2017. In the submission, the Respondent furnished that in so far as the contention of non grant of promotion under the PH quota is concerned, it has been clarified vide letter dated 18.03.2015 that the

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Complainant has acquired disability w.e.f. 06.11.2003, i.e. after the date of promotion to the post of UDC which is feeder cadre for granting promotion to the post of Section Supervisor. The complainant's initial appointment was in the cadre of LDC under General (Unreserved) category in 1979 followed by promotion to the post of Upper Division Clerk also in the unreserved category) vide Order dated 07.10.81. It is stated that as far as promotion in the cadre of Section Supervisor is concerned, the post of Section Supervisor has been classified as a Group B post vide notification of Reclassification of various posts in EPFO as intimated by the Head Office on their department in its letter dated 19.08.2010 by virtue of the post carrying a Grade pay of Rs.4200/- by this reason, no reservation under the category of PH was applicable as per the reservation policy. The contention of the Complainant in his representation dated 05.05.2015 that he was due for promotion in 2005 under PH quota is also not substantiated with any cogent evidence. The complainant did not fall within the zone of consideration in the Departmental Promotion Committee meetings held prior to 19.08.2010, i.e. from which date the reclassification of posts as stated above took effect. Therefore, the Complainant could only have been considered as a candidate from the Unreserved Category. He was granted Ad-hoc promotion in the cadre of Section Supervisor vide Office Order dated 26.02.2015/02.03.2015. He eventually fell within the zone of consideration for regular promotion in the DPC held on 25.08.2015 under Unreserved Category and was subsequent granted promotion on regular basis. The Complainant's contention that he was issued two Charge Memorandums prejudicially, is however without any substance. He was issued Charge Memorandums dated 26.03.2007 and 15.05.2013 under Rule 12 and Rule 10 respectively of the EPF Staff (CCS) Rules, 1971. The Respondent further stated that so far as the contention of discrimination and harassment as alleged by the Complainant is concerned, the same are not sustainable. As far as the question of non-grant of Special Disability leave from 20.04.2015 to 18.08.2015 is concerned, a letter dated 15.04.2015 was issued to the Complainant with a request to furnish documentary proof as required under Rule 44 of the CCS (Leave) Rules 1972, viz. a declaration that the disability

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occurred while performing official duties or in consequence of his official position with date of sustaining such injury and a Medical Certificate from an Authorised Medical Authority recommending the period of absence with reason thereof and certifying the injury. The Compliance on the part of the Complainant in this regard was not found on record. The Respondent stated that as regards the question of non compliance of the Order of the Court for the Welfare of Disabled, Pune is concerned, it is stated that the Complainant did not work for the period from 07.01.05 to 22.04.05 in the section to which he was posted. The above period was treated as 'No Work No Pay' and a note dated 25.05.05 was issued to effect the recovery of salary already paid to him for the said period which was later modified vide note dated 05.07.05. The Complainant had filed a case with the Human Right Commission which was subsequently transferred to the Disability Court, Pune. By an Order dated 19.04.2008, it was directed to pay the salary along with other dues for the period from 07.01.2005 to 22.04.2005. In compliance of the Order, the payment for the said period along with admissible dues and bonus were paid to the Complainant. The Respondent also filed a compliance report dated 20.06.2008 before the Court. As far as the question of posting in a section situated on the ground floor is concerned, the Respondent stated that the Complainant was posted in Pension Pre-Audit Section which was then on the ground floor. He was provided with all the benefits admissible to disabled employees. All the medical bills eligible for reimbursement were duly paid. Though the Complainant's leave period from 11.10.04 to 10.12.04 was treated as Extra Ordinary Leave, entitling the official with no wages for the leave period, the said period was sympathetically considered and leaves for 61 days were granted entitling the Complainant the Pay and Allowances admissible under rules. The salary was paid to the Complainant according to the rules. The Respondent further stated that the Complainant had made certain contentions vide his Reminder-I dated 07.05.2015 regarding motor cycle advance. In this connection the Respondent stated that vide office order dated 01.05.2015, the said bill was cancelled on 08.01.15 as Complainants' request letter dated 25.11.2014. The official had wrongfully accepted the amount sanctioned against Motor Cycle Advance as on 18.12.2014.

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Hence, it was ordered to recover an amount of Rs.24000/- plus interest of Rs.943/- from the salary. The interest was calculated from 18.12.14 to 30.04.2015. The Respondent further stated that all benefits admissible to an official of PH category were given to the Complainant. It is pertinent to note that some of the contentions made in the instant representation dated 05.05.2015 were also the subject matter of a Writ Petition No. 6563/2009 which was pending before the Hon'ble High Court of Bombay. The matter was last listed on 10.01.2017.

16. The case was then adjourned to 06.06.2017 at 15.00 Hrs.

17. During the hearing, the complainant vide his written submission dated 18.05.2017 submitted that his application was at the final stage of argument and decision. The Respondent was intentionally seeking time with malafide and ulterior motive and is not appearing before the Honourable Court and seeking adjournment by giving false excuses. The Complainant further submitted that he is a disabled person, who has retired and has no source of proper income. He is a resident of Mumbai and it is difficult for him to travel from Mumbai to Delhi incurring heavy travelling expenses which is beyond his control as he is surviving on pension. The complainant requested to direct the Respondent to reimburse him the travelling cost to him for attending the hearings. He further submitted that his grievance/Complaint before the High Court was totally different from the grievance he has filed before this Court.

18. During the hearing, the representative of the Respondent vide written submission dated 05.06.2017 furnished that with reference to para 2 of the response dated 28.04.2017 filed by the Complainant, the Respondents were to deny the contentions in toto. With reference to para 3, the Respondents wish to submit that the written statement was filed in response to the representation dated 05.05.2015. The issues raised in the said representation include non grant of promotion under the PH quota, discrimination and harassment in contravention of the provisions envisaged in Section 47 of the Persons with Disabilities, Act, 1995 including non-grant of Special Disability Leave, issue of charge memorandums prejudicially, non compliance of Order of Hon'ble Commissioner, Court for Welfare of Disable, Pune, Non-payment of interest

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on salaries for thirteen months and non consideration of complainant's request for ground floor posting. All the above have been countered in the written statement dated 18.04.2017, hence the contention made in this para is not sustainable. With reference to para 4, the Respondents submitted that ineligibility of the Complainant for being promoted as Section Supervisor has been explained at para 4 of the written statement dated 18.04.2017 filed by the Respondent. As per the Respondent, the Complainant has claimed his eligibility for promotion from year 2003, i.e. the year from which he was declared as physically handicapped. However, the records of the Departmental Promotion Committee (DPC) proceedings held after 2003, a summary of which was presented as below, refute the contentions of the Complainant:

Date of DPC	Total vacancies	Panel year	Vacancies earmarked for PH	Remarks
20.10.2005	104	2001-02 to 2005-06	03	3 Officials in PH category promoted (Snty nos. 237, 286 & 322) while the Complainant was at Snty No.502 (Annexure 1)
05.01.2007	56	2006-07	01(Shown Excess)	No official promoted in PH Category (Annexure 2)
18.05.2009	A review DPC was held reviewing all DPC's from 2.7.1997 till 2008-09 due to introduction of Post Based Roster from 2.7.1997 (Annexure 3)			
19.03.2010	12	2009-10	01 Vacancy	01 official Shri K.K. Anchan (Snty no. 330) promoted (Annexure 4)
06.12.2010	41	2010-11	Nil	As there was a notification reclassifying the post of Section Supervisor as

				Group B post without reservation under category Ph (Annexure 5)
26.02.2015	Screening Committee for Adhoc Promotion	Screening Committee was held on 26.2.2015 to consider grant of Ad-hoc promotions to eligible officials and the Complainant was recommended for Ad-hoc promotion by the Screening Committee (Annexure 6)		
06.12.2010	41	2010-11	Nil	As there was a notification reclassifying the post of Section Supervisor as Group B post without reservation under category PH (Annexure 5)
26.02.2015	Screening Committee for Adhoc Promotion	Screening Committee was held on 26.2.2015 to consider grant of Ad-hoc Promotions to eligible officials and the Complainant was recommended for Ad-hoc promotion by the Screening Committee (Annexure 6)		
		Further in the intervening period, the VCC of the Complainant was also denied on 23.7.2013 as the disciplinary proceedings in respect of Charge Memorandum dated 15.5.2013 were in progress.		
		In this case a penalty of 'Censure' later came upon to be imposed vide order dated 20.3.2014. The review was also disposed off with the penalty of Censure.		
25.08.2015	The Complainant was granted regular promotion in this DPC			

The Respondent further submitted that after going through the above chronology, it shows that the Complainant was not denied promotion as alleged by him. In so far as the letter dated 31.12.2014 is concerned, the same was apparently in response to this office letter dated 09.06.2014 and the subsequent rejoinder dated 24.7.2014 filed by the Complainant against this

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letter. In so far as the contention regarding non reflection of the Complainant's name under PH quota in the Screening Committee Proceedings dated 26.2.2015 is concerned, the post of Section Supervisor did not entail any reservation under the category of PH. Hence, no reservation point was admissible to PH category. The Complainant could only have been considered as a candidature from the UR category which was done by the Respondent when he was granted adhoc promotion vide recommendations of Screening Committee dated 26.2.2015 followed by regular promotion on 25.8.2015. The Screening Committee dated 26.2.2015 had recommended ad-hoc promotions to only 32 officials and not 80 officials as contended by the Complainant. Moreover, the reference to office order dated 16.11.2016 is not relevant as the Complainant was already granted regular promotion on 25.8.2015. Further, Limited Departmental Promotion Examination for the post of Section Supervisor under Exam Quota were also held from time to time, the last of which was held from 18-19 December 2007. The Complainant has not qualified in any of these exams. The foregoing table reveals that the Respondents have been adhering to Section 47 of Persons with Disabilities Act, 1995 in regards to reservation for PH in promotion to post of Section Supervisor upto the year 2009-10. Since the post was classified as Group 'C' till 19.08.2010, the officials in PH category senior to the Complainant were given promotion against vacancy arising up to 2009-10. The Respondent submitted that with reference to para 5 of the complainant's submission, they deny the contentions made by the Complainant. They further submitted that submissions regarding issue of charge memorandums are already on record in the written statement dated 18.04.2017 filed on behalf of the Respondent. With reference to Para 6 of the response of the Complainant, the Respondents wished to submit that this para was filed in response to Para 6 of the written statement dated 18.04.2017 of the Respondent. The Complainant was referring to an order dated 19.02.2008 of the Disability Court, Pune whereas Para 6 of the written statement filed on behalf of Respondent speaks about provisions of Section 47 of Persons with Disabilities Act, 1995. Notwithstanding the above, it was added that the order referred by the Complainant in this Para is actually dated 19.4.2008 and the compliance in the matter was effected by the

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Respondent. With reference to Para 7, the Respondents submitted that Rule 44 of the CCS (Leave) Rules 1972 prescribes grant of Special Disability leave to a government servant who is disabled by injury intentionally inflicted or caused in or in consequence of due performance of his official duties or in consequence of the due performance of his official duties or in consequence of his position. It further prescribes that the disability itself should have manifested within 3 months of the occurrence to this it is attributed and the person disabled had acted with due promptitude in bringing it to the notice and the period of leave granted will be as such as certified by an authorized Medical Attendant. This fact was also conveyed to the Complainant by a letter dated 15.04.2015. However, there is nothing on record to prove compliance of the complainant in this regard. The requirement under Rule 44 of the CCS (Leave) Rules 1972 is a specific requirement independent of the disability certificate issued declaring the Complainant as handicapped. The office order dated 10.03.2004 declaring the Complainant as handicapped w.e.f. 06.11.2003 only grants him entitled to certain concessions and enhanced allowances and not to Special Disability leave which is admissible only after the conditions specified in Rule 44 of CCS (leave) Rules 1972 are satisfied. Hence the two matter cannot be accorded a conjoined reading. With reference to Para 8, the Respondent wished to submit that all the dues were paid to the Complainant pursuant to the order dated 19.04.2008 of the Disability Court, Pune. The Complainant had not adduced any new facts in his response. In so far as the contention of provision of information under RTI Act is concerned, it was stated that RTI application dated 07.12.2016 was replied by CPIO on 06.03.2017 and First Appeal filed by the Complainant was under process. Further, as submitted in the written statement dated 18.04.2017, leave for 61 days was granted with consequential pay and allowances admissible under rules. With reference to para 9, the Respondent denied any harassment as alleged by the Complainant. As per Respondents, the contentions regarding the issue of Competent Authority for representing the case were already replied at Para 5 of their submission while that of the Complainant's claim for promotion w.e.f. 06.11.2003 was replied in Para 7 of the

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submission. The issue of chargesheet has been dealt with at Para 8 of the submission. All the above contentions are repetitive in nature. Further, certain hypothetical contentions regarding promotions have been made by the Complainant in this para without cogent evidence. The Respondent further submitted that thus the Complainant is not entitled to any relief.

19. During the hearing the Respondent informed the Court that the present grievance of the complainant is also currently pending before the Hon'ble High Court of Bombay.

20. Taking cognizance of the fact that the matter is sub-judice before a judicial forum (i.e. Hon'ble High Court of Bombay), the case is disposed off without any direction to the Respondent.



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