



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.: 6574/1021/2016

Dated: 08.09.2017

Dispatch No.....

In the matter of :

Shri Bikash Patra,
Central Forensic Science Laboratory
30, Gorachand Road,
Kolkata – 700 014

R 3566

.....Complainant

Versus

Ministry of Home Affairs
(Through the Director-Cum-CFS)
Block No.9, 8th Floor,
C.G.O. Complex,
Lodhi Road,
New Delhi – 110 003

R 3567

.....Respondent

Date of Hearing : 12.07.2017

Present :

Shri Bikash Patra, Complainant, Present
Dr. R.M. Tripathi, Deputy Director & Scientist 'D', Shri Yoginder Kumar, Admn. Officer, Shri S.K. Saxena, Present on behalf of Respondent

ORDER

The above named complainant, a person with 40% locomotor disability had filed a complaint dated 25.01.2016 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, against deprivation and discrimination.

2. The Complainant submitted that he is presently working as Senior Scientific Assistant (Toxicology) in the O/o Director, Central Forensic Science Laboratory, Kolkata. He was appointed to the post of Laboratory Assistant on 16.12.1991. He was promoted to the post of Scientific Assistant (SA) on 11.06.2001 and to the post of Senior Scientific Assistant (SSA), Toxicology on 02.04.2007. He further submitted that he could have been promoted quite earlier to these posts, had his establishment complied with the Govt. Order dated 20.11.1989. No reservation has been made for persons with disabilities even though the post was identified to be reserved for employees with disabilities. The advertisement dated 11-17 May, 2013 for direct recruitment for two posts of Junior Scientific Officer (Toxicology) has been challenged before Hon'ble CAT, Calcutta Bench. There is discrimination in the recruitment since 1991 recruitment has been made to 19 vacancies to the posts of JSO (Chem) with 11 vacancies by direct recruitment and 9 vacancies by promotion. The complainant made representations to Chief Forensic Scientist,

...2/-

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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)

DFSS, New Delhi, requesting him to consider his case for promotion to the post of Junior Scientific Officer (Toxicology), which was rejected by his establishment vide their letter dated 11.01.2016, stating that there is no vacancy for promotion. The complainant has requested this court to direct to cancel, withdraw and / or set aside the action for direct recruitment to the post of Junior Scientific Officer (Toxicology) and to consider his name for promotion to the post of JSO, CFSL with retrospective effect from 11.06.2009.

3. The matter was taken up under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 with the respondent vide our letter dated 17.08.2016.

4. The Respondent vide their letter no. DFSS/4/39/2012/385 dated 28.04.2016 submitted that the complainant had earlier also registered a similar complaint dated 19.08.2011 in the Office of the Chief Commissioner for Persons with Disabilities and the same was disposed of by this Court vide Order dated 06.03.2014 in Case No. 203/1021/11-12. As directed in the said Order, review DPC in respect of post of SA, during the period from 1997 to 2001, was convened by the Department on 04.09.2014. The Committee observed that during the period in question, i.e., from the year 1997 to the year 2001, the post of Scientific Assistant, a Group C posts, was not identified for PH persons and as per DoP&T O.M. dated 20.11.1989, in question, the reservation in promotion to Group C & D posts are limited only to the identified posts. Therefore, the provisions of DoP&T O.M. no. 36035/1/89-Estt.(SCT) dated 20.11.1989 were not applicable to the post of Scientific Assistant, CFSLs during the period from the year 1997 to the year 2001. In terms of above observations made, the Committee finds that there is no change in the reservation position, number of vacancies reported to the DPCs and other relevant factors relating to convening of DPCs held during 1997 to 2001 in the grade of Scientific Assistant, CFSLs. The Committee is of the view that the panel recommended by the earlier DPCs held on 30.07.97, 21.9.99 and 24.5.01 for considering promotion to the post of Scientific Assistant, CFSLs in pre-revised pay scale of Rs.4500-125-7000/- are in order and need no revision. On the basis of above recommendations, of the Review DPC their Department issued Order dated 11.09.2014, stating that the promotion made to the complainant to the post of SA w.e.f. 11.06.2001 was in order in consonance with the relevant guidelines on the subject and hence accordingly need no revision. Subsequently, the complainant filed an OA No. 350/00879 before the Hon'ble CAT, Kolkata Bench, thereby challenging the above Order dated 11.09.14. Besides this the complaint has also filed one more OA No. 580/2013 before the Hon'ble CAT, Calcutta Bench seeking the following relief:-

- (i) To change advertisement no. 06/2013 relating to direct recruitment to the two posts of Junior Scientific Officer in the C.F.S.I., Kolkata as notified in employment news dated 11-17 May 2013 and to grant him promotion to the post of Junior Scientific Officer notionally w.e.f. 02/04/2007.

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- (ii) To hold DPC and prepare yearwise panel since 2009-10 and consider the applicant for promotion to the post of J.S.O (Toxicology) and to make pay fixation consequent upon such promotion and pay all the arrears of Pay and Allowances with interest.

The respondent further stated that the reliefs sought by the complainant from the Office of Chief Commissioner for Persons with Disabilities through his representation dated 25.01.2016 are already sub-judice before the Hon'ble CAT, Kolkata Bench.

5. The complainant, vide his rejoinder dated 21.10.2016 submitted that he made complaint dated 25.01.2016 due to continuous deprivation and discrimination against him in the matter of promotion, least to mention about making reservation in promotion for PH persons serving in the department. His department has been continuously making direct recruitment to the post of Junior Scientific Officer (Toxicology) with malafide intention, without making any promotion to the post through the relevant Recruitment Rules, i.e. GSR 546 dated 16.09.1991 which mandates that 33 1/3% of vacancies to be filled up by promotion and 66 2/3% by direct recruitment. The department as also the Review Department Promotion Committee (DPC) had travelled beyond their jurisdiction and misdirected themselves by stating that the Committee had gone through the list of posts identified for being held by PwDs which was issued by DoP&T vide their O.M. No.36035/5/84-Estt(SCT) dated 28.02.1986 and the Committee was of the view that no other list in supersession of the list issued on 28.02.1986 was published till the year 2005 and the Committee found that in the list of identified posts, the post of Scientific Assistant had not been mentioned. The complainant submitted that being dissatisfied with the non compliance of this Court's Order dated 11.09.2014 in his earlier complaint, he filed an original application bearing O.A. No.350/00879 of 2015 before CAT, Calcutta Bench challenging the Order dated 11.09.2014 passed by CCPD. He further submitted that his department had advertised for two vacancies of Jr. Scientific Officer (Toxicology) for direct recruitment without holding any DPC for promotion to the post even though as per recruitment rules every third vacancy has to be filled up by promotion. He was eligible to for promotion to the post in 2009 and without considering him for promotion, the department made direct recruitment to one vacancy each in 2009, 2011, 2012 and two vacancies in 2014. He submitted that there is separate sanction for the post of Jr. Scientific Officer (Toxicology) and separate seniority list is maintained for the post. Hence, as per the complainant, the action by his department is vindictive one, aimed to deprive him from his rightful due. In the year 2013, the department proceeded to make direct recruitment to two vacancies of Jr. Scientific Officer (Toxicology) without holding any DPC for promotion from lower post even through such

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direct recruitment was made in the year 2011 and 2012. The fact is that his department is making direct recruitment to the post of Jr. Scientific Officer one after another without holding DPC for promotion in violation of the statutory rules (RRs). While direct recruitment has been made to three vacancies of Jr. Scientific Officer (Toxicology) during 2013 to 2016, no promotion has been made. But the department has ordered promotion of one Shri Cijo John (Junior most SSA) to the post of Jr. Scientific Officer (Explosive) w.e.f. 24.11.2015 who joined as Senior Scientific Assistant on 09.01.12 (No DFSS/4/40/2016 3001 dated 28.09.2016) while the complainant was holding the post of Senior Scientific Assistant since 02.04.2007 and has not yet been promoted to post of Jr. Scientific Officer. He became eligible in the year 2009 for promotion and the department in a malafide manner is making direct recruitment to the post of Jr. Scientific Officer (Toxicology), without holding any DPC for promotion.

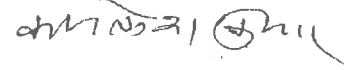
6. Upon considering respondent's replies dated 28.04.2016, 29.09.2016 and complainant's rejoinder dated 21.10.2016, a personal hearing in the matter was scheduled on 12.07.2017 at 16:00 Hrs.

7. During the hearing, the complainant reiterated that he may be promoted to the post of JSO CFSL with retrospective effect from 11.06.2009 with all consequential benefits.

8. During the hearing, the Respondent informed this Court that the Complainant has already brought out the same issue before the Hon'ble CAT, Calcutta through a petition.

9. In view of the fact that the matter is sub judice, the Court took the view not to intervene in the matter.

10. The case is accordingly disposed off.



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