



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 12929/1021/2021

Complainant: Shri Shankar Lal Verma
S/o Shri Jugal Kishore Verma
C-I, BSNL Colony, behind Janana Hospital
Nehru Park, Sikar – 332001, Rajasthan
E-mail: <shankarverma990@gmail.com>

Respondent: The Chairman-cum-Managing Director
Bharat Sanchar Nigam Ltd
Bharat Sanchar Bhawan, Harish Chandra
Mathur Lane, Janpath, New Delhi -110001
E-mail: <ddadmin@bsnl.co.in>
Tel: 011-2373161

Complainant: 45% locomotor disability

GIST of the Complaint:

Complainant Shri Shankar Lal Verma, SDE vide complaint dated **24.09.2021** submitted that BSNL is neither maintaining reservation roster for promotion nor providing reservation in promotion to persons with disabilities.

2. The matter was taken up with the Respondent vide letter dated **12.10.2021** under Section 75 of the RPwD Act, 2016 but despite reminders dated **28.10.2021 & 18.11.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **04.01.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **04.01.2022**. The following were present:

- Shri Shankar Lal Verma - Complainant
- None appear on behalf of respondent

Observation/Recommendations:

- 3 Complainant submitted that he was recruited on the post of JTO on disability quota in year 2010. As per promotion policy, he was eligible to be promoted to the post of Sub-Divisional Engineer (SDE) after 3 years of service. Hence he was eligible for promotion in year 2013. Due to non maintenance of the Reservation Roster for Divyang employees, benefits of reservation in promotion has not been extended to him. In year 2018 other employees were promoted but he was left out.
4. During online hearing, Complainant informed this court that his colleagues who were appointed along with him and belong to non divyang category have also not been promoted. Hence, it is certain from the facts that the Complainant has not made out the case of discrimination vis a vis non divyang employees. Grievance of Complainant is related to non extension of reservation in promotion to divyang employees.
5. On the issue of reservation in promotion, it is indispensable to note that RPwD Act, 2016 is not the first legislation for rights of Persons with Disabilities. Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995 by virtue of Section 32, provided for 3% reservation of posts. Hon'ble Supreme Court in of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153 held that ones the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Therefore, Hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision.
6. The judgment was delivered in year 2016 and the judgment was related to 1995 Act. New legislation was passed by Hon'ble legislature of the country in year 2016. Title of the legislature is – RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016. It came into effect on 19.04.2017. This act of 2016 has specific provision for reservation in promotion for persons with disabilities (Section 34). It also contains other provisions which grant more rights to Persons with Disabilities. This legislation also contains certain provisions which determine duties of appropriate government establishments towards Persons with



Disabilities. Perusal of both 1995 Act and 2016 Act does not in any way reflect that legislature, by introducing 2016 legislation, intended to diminish or shrink the rights of Persons with Disabilities. Similar view was adopted by Hon'ble High Court of Uttarakhand, whereby court held that judgments rendered in the light of provisions contained in Act no. 1 of 1995 still hold good under the new Act (2016 Act).

7. Hence, not extending reservation in promotion to PwDs because of absence of guidelines from 'appropriate government' is contrary to mandate of 2016 Act and judgments of hon'ble Supreme Court and High Court.

8. This Court has received similar complaints regularly. Order have been passed by this court in the similar complaints titled as B. UMA PRASAD v. CEO Employees Provident Fund Organisation, 11183/1021/2019; C.G. SATHYAN v. DIRECTOR AIIMS, 12376/1021/2020; SRI RAJESH v. DIRECTOR AIIMS, 12592/1021/2020; RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EDUCATION, 12349/1011/2020; MANMOHAN BAJPAI v. KHADI & VILLAGE INDUSTRIES COMMISSION, 12485/1011/2020 in which legal position on the issue was delineated. Copy of the Orders are attached herewith.

9. In view of the clear directions of the Hon'ble Supreme Court and as fully detailed in the enclosed Orders, this Court recommends that the Respondent shall pursue the Orders attached herewith and shall give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 and judgments of Hon'ble Supreme Court delineated in the Orders attached.

10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022