

In the Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
Phone-011-23216002-04, Telefax: 011-23216005, Email: comdis.delhi@nic.in
[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No. 4/1015/2015/Wel./CD/1473-74

Dated: 01/8/2017

In the matter of:

Sh. Akshnee Kumar Sharma
BC-686,(East), Shalimar Bagh
Delhi -110088.

..... Complainant

Versus

Sr. General Manager (Humah Resources)
TATA Power Delhi Distribution Limited,
NDPL House, Hudson Lines,
Kingway Camp, Delhi-110009.

..... Respondent

Date of Hearing : 13.04.2017

Present : Indu Mishra, Sr. Manager for Respondent
A.K.Sharma, S.O for respondent
Sh. Akshnee Kumar Sharma, Complainant

ORDER

The above named complainant, a person with more than 40% loco motor disability, vide his complaint dated 24.06.2015 submitted that he was working in the post of Assistant Accountant in TATA Power Delhi Distribution Limited.(TPDDL). He was appointed as Junior Clerk in the erstwhile Delhi Vidyut Board (DVB) on 26.09.1994. He has been deprived of the benefit of disability quota in promotion despite repeated correspondence. As per tripartite agreement, FR-SR and all other Government instructions are applicable to the employees of TPDDL. He contended that reservation for persons with disabilities in promotion to

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the post of Assistant Accountant which is filled up 20% by departmental examination and 80% by seniority should have been provided. However, the organization did not reserve the vacancies for persons with disabilities. He had given the option for promotion, yet he was not considered against the 80% vacancies which were filled in 2009, 2010 & 2012. He was promoted as Assistant Accountant in the year 2013.

2. The complaint was taken up with the respondent vide communication dated 30.06.2015. The respondent vide letter dated 17.07.2015 submitted that TPDDL is a private company and hence the Persons with Disabilities Act, 1995 was not applicable to it, as held by the Apex Court in Dalco Engg. Pvt. Ltd and Fancy Rehabilitation Trust. Without prejudice to their contention about applicability of the said Act, the respondent further stated that as the complainant was appointed in erstwhile DVB on 26.09.1994, his contention that he was appointed against the quota for persons with disabilities has no basis as the Act was passed in 1996. TPDDL came into existence on 01.07.2002 and the complainant was transferred to it as AG III. 104 AG III were promoted as AG II w.e.f 01.07.2005 along with four employees with disability who were senior to the complainant. The complainant was promoted to the post of AG II on 01.04.2008. He appeared in the competitive examination for the post of Assistant Accountant in 2009 but he could not succeed. He was promoted to the post of Assistant Accountant w.e.f 01.7.2013. The respondent further submitted that Smt. Suresh Sudan was promoted as Assistant Accountant w.e.f 01.05.2009 against PH quota by filling up 20% selection quota. Against the 80% promotion quota, none of the AG II had completed qualifying service of 5 years in 2009. Therefore the said quota could not be filled.

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3. The complainant in his rejoinder dated 06.08.2015 refuted the contention of the respondent regarding non applicability of the Act on the ground that TPDDL is a joint venture of TPDDL & Delhi Govt. As regards his appointment against the reserved vacancies for persons with disabilities, he cited his appointment order in DVB which clearly indicated that he was appointed against PH quota. Despite this, the respondent treated him as general category employee. He was promoted as Assistant Accountant on 01.07.2013 whereas he should have been promoted much earlier. He also cited the case of Ms. Suresh Sudan, who was promoted after the order dated 01.05.2009 of the Chief Commissioner for Persons with Disabilities.

4. The respondent reiterated their contention vide letter dated 04.11.2015 and 5.07.2016 and also indicated the status of promotions to the post of Assistant Accountant in TPDDL and the career progression of the complainant, which is as under :

- (i) 11AG-IIs w.e.f May 2009 under 20% quota on selection basis.
- (ii) 11AG-IIs w.e.f May 2010 under 20% quota on selection basis.
- (iii) 02AG-IIs w.e.f August 2007 on retrospective effect under 80% quota
- (iv) 10AG-IIs w.e.f July 2011 under 80% quota
- (v) 51 AG-IIs w.e.f July 2013 Under 80% quota
- (vi) 02 AG-IIs as mentioned at S.No. (iii) were promoted as SO(A/c) in August-2010.

5. The respondent further submitted as under:

"(a) From May 2009 to July 2011, 34 employees were promoted from the level of AG-II to Assistant Accountant and 02 as SO(A/c) which

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means that as on August-2010, 32 employees were existing in the cadre of Assistant Accountant.

(b) Roster fitment against disabled category quota is against 100 points system, under 3% vacancies reserved for disabled category i.e S.No. 01, S.No. 34. And S.No. 67 of the roster are reserved to be filled by disabled candidates.

(c) As only 32 candidates were existing by Aug 2010, as per roster, S.No. 01 could only be occupied by the persons with disabilities and to that effect Ms. Suresh Sudan was considered who was promoted as Assistant Accountant in May, 2010. She was extended the benefit w.e.f May, 2009.

(d) As there were existing only 24 employees by May 2010, Mr. Akshnee Kumar Sharma was not considered as he could have only be placed at S.No. 34 of the roster, the S.No. which was not existing.

(e) In July 2013, 51 employees were considered for promotion to Assistant Accountant when Mr. Akshnee Kumar Sharma was considered".

6. Vide letter dated 27.07.2016, the respondent added that Ms. Suresh Sudan, a person with disability who was promoted w.e.f 01.05.2010 approached the CCPD with the plea that she should have been promoted w.e.f 01.05.2009. In compliance with the instructions of CCPD dated 10.03.2010, she was promoted w.e.f 01.05.2009 instead of 01.05.2010. The respondent further submitted that on 01.05.2010, there were 24 employees in the cadre of Assistant Accountant. On promotion of 10 more employees on 01.07.2011 against 80% quota, the total employees in the cadre became 32. The next reserved posts were to come at S.No. 34 & 67. Sh. Vijay Kumar was next to Ms. Suresh Sudan and thereafter the complainant, when next promotion happened on

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01.07.2013. The respondent thus concluded that point No. 34 did not exist in 2009 & 2010 and Ms. Suresh Sudan was adjusted against point No – 1. As per them, the claim of the complainant for promotion w.e.f 01.05.2009 has no merit, as even Sh. Vijay Kumar who was senior to the complainant could not be considered in 2009.

7. The case was heard on 01.09.2015, 5.10.2015, 5.11.2015, 23.11.2016, 23.12.2016 and 09.02.2017. As details of record of proceedings were not available, the last hearing was held on 13.04.2017.

8. During the hearing on 13.04.2017, after an analysis of the promotion made by the respondent from the post of Junior Clerk to the post of Senior Clerk and from Senior Clerk to the post of Asstt. Accountant between the years 2002-2013, the complainant strongly felt that he could have been promoted to the post of Senior Clerk before 2008. On the other hand, as per the respondent, there were persons with disabilities in the post of Junior Clerk above the complainant before 2008. They were also promoted in 2008. Therefore, the question of the promotion of the complainant before 2008 would not have arisen. In view of the conflicting contentions, the complainant was directed to frame his specific points based on which he felt that he could have been promoted to the post of Senior Clerk before 2008 by 18.04.2017. The respondent was directed to submit point wise replies alongwith supporting documents by 26.04.2017.

9. The complainant vide his letter dated 18.04.2017 inter-alia submitted that as per the order of Supreme Court in Civil Appeal No. 633 of 2004, the erstwhile DVB employees would be treated as transferee

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employees and company would be responsible for all the benefits. The complainant also contended that 3% reservation in appointments and promotion to persons with disabilities is to be as per the Persons with Disabilities Act, 1995. He also submitted that 185 persons were promoted from AG-III to AG-II from the year 1994 to January, 2002 by DVB and 104 persons were promoted on 01.07.2005 by TPDDL. Therefore, according to him 8 to 9 persons with disabilities should have been given the benefit and promoted till 2002 and four employees with disabilities should have been given the benefit in the year 2005. The complainant further submitted that as per the submissions of the respondent, there were only 11 employees with disabilities and only one Asstt. Accountant. He also contended that Smt. Suresh Sudan passed the promotion test on general merit and therefore, should not have been adjusted against the reserved vacancies.

10. The respondent submitted their para-wise comments to the submissions of the complainant vide letter dated 04.05.2017. The main contention of the respondent is that TPDDL came into existence in 2002. As per the prescribed roster points, the details of vacancies falling to the quota of persons with disabilities during the period of erstwhile DVB prior to 2002 cannot be ascertained as such details were not transferred to TPDDL at the time of unbundling. The order of Hon'ble Supreme Court referred to by the complainant pertained to addition of service for the purpose of computation of pension and does not pertain to promotion from retrospective effect. The respondent also gave the details of promotions from the post of Junior Clerk AG-III to Senior Clerk, AG-II and from Senior Clerk AG-II to Assistant Accountant, which are as under:-

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Promotion from Junior Clerk (Assistant Grade-III) to Senior Clerk (Assistant Grade-II):

S. No.	Year of Promotion	No. Of Promotions	Cumulative	Roster Point Position under PH Category						
1.	2005	103	103	1	34	67	101	Roster point No.1 was not considered		
2.	2006	33	136		134					
3.	2008	259	395	167	201	234	267	301	334	367

The respondent also submitted that the first promotion of AG-III to AG-II was done in 2005 and till 2008, 395 employees were promoted.

11. As per respondent, against 395 promotions made to the post of AG-II points Nos. 34,67,101,134,167,201,234,267,301,334 and 367 of the roster were earmarked for persons with disabilities and 11 persons with disabilities including the complainant were promoted. The complainant was placed at 201. The respondent also submitted that PH category at roster position no. 1 was not considered as the same was already occupied.

12. From the submissions of the respondent it is observed that 5 persons with disabilities were senior to the complainant for promotion from AG-III to AG-II. It is further observed that the purpose of earmarking of points for persons with disabilities in 100- points vacancy based reservation roster is to compute the reserved vacancies. The reserved vacancy is to be kept unfilled in the initial recruitment year and

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person with disability selected in the subsequent recruitment year is to be adjusted against the reserved point. In this case the point no.1. Therefore, the contention of the respondent that point No. 1 in the roster was not considered for persons with disabilities as that point was already occupied, is not right. Thus, the respondent was required to reserve 12 vacancies for persons with disabilities against 395 promotions made from AG-III to AG-II upto the year 2008. By doing so, the complainant would improve his position. In the year 2005 and 2006, a total of 136 promotions were made and 5 should have been reserved for persons with disabilities. As per the respondent the complainant was the 6th person among the persons with disabilities for promotion to the post of AG-II. The respondent needs to check as to when could the complainant have become eligible for promotion to AG-II based on this computation and ante-date his promotion accordingly.

Promotions from Assistant Grade-II (Senior Clerk) to Assistant Accountant :

S.No.	Year	Under 20% Quota	Under 80% Quota	Total	Cumulative
1.	2007	0	2	2	2
2.	2009	11	0	11	13
3.	2010	11	0	11(-2)*=9	24(-2)*=22
4.	2011	0	10	10	32
5.	2013	0	51	51	83
Total		22	63	85	

*Note: The 02 Promotees of 2007 were promoted as Section Officer(Accounts) in 2010 hence only 32 employees were left in the cadre by 2011

13. From the information in the above table supplied by the respondent, 85 AG-II were promoted to the post of Asstt. Accountant

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from the year 2007 till 2013. The Note below table-II says that "two promotees of 2007 were promoted as Section Officer (Accounts) in 2010 and thus only 32 employees were left in the cadre by 2011". On that basis the respondent has drawn the conclusion that because there remained only 32 promoted employees and hence the roster moved up only up to point no. 32. This conclusion does not appear to be correct. Reservation for persons with disabilities is vacancy based and once a person is promoted and joins, he / she would consume that point and the roster point would move up. Therefore, even though two promotees of 2007 may have been promoted as Section Officers(Accounts) in 2010, yet they did consume the points in the roster. Consequently 24 promotions had taken place till 2010, and not 22. With 10 promotions in July, 2011, the roster would have moved to the 34h point which should have been reserved for persons with disabilities. So, the complainant could have been considered for promotion to the post of Asstt. Accountant (Accounts) in the year 2012 against the carried forward reserved vacancy of 2011, if eligible, following the anti-dation of his promotion in the post of AG-II. His seniority should be fixed accordingly and he should be considered for further promotions based on his revised seniority.

14. With regard to the complainant's claim that he and other persons with disabilities were not extended the benefit of reservation in promotion by erstwhile DVB, availability of relevant record and facts is indeed essential. The respondent in their reply have submitted that the erstwhile DVB did not transfer the relevant records at the time of its unbundling in the year 2002. It is also observed from the judgements dated 30.03.2006 of the Courts in LPA No. 98/2005, Govt. of NCT of Delhi Vs. K.R. Jain & Ors that in the cases pending or filed by the retired

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employees claiming their service benefits create liability of the DVB and hence the transferee company would have to be substituted for DVB.

15. Therefore, in my view if any representation of the complainant regarding reservation in promotion was pending decision by DVB at the time of its unbundling in 2002, the respondent would be obliged to settle that grievance and extend the benefit if due as per the extant provisions. In the result, therefore, the representation if any submitted by the complainant to the erstwhile DVB against denial of reservation in promotion to him he should submit the copies of such representations which should be examined and decided in accordance with the then applicable policy / instructions by the respondent.

The matter is disposed of accordingly.

Given under my hand and the seal of the Court this 1st day of August, 2017.



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(T.D. Dhariyal)

State Commissioner for Persons with Disabilities