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In the Court of the 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-23216002-04, Telefax: 23216005
[Vested with power of Civil Court under the Rights of Persons with Disabilities Act,
2016]

Case No. 4(608)/2014-Wel./CD/1921-22 Dated: 10/7/17

In the matter of:

Sh. Tarun Kumar,
A/G-620, Shalimar Bagh,
Delhi-110088

..... Petitioner
Versus

The Director,
Directorate of Education,
Old Sectt.
Delhi-110054

..... Respondent

Date of Hearing 21.06.2017

Present: Sh. Tarun Kumar, Complainant
Sh. Pawan Kumar, DDE (ASB)
Sh. Sunil Aggarwal, OSD, Distt W-B
Sh. Manjeet Singh Hudda, Suprintendent, Education deptt.

ORDER

The above named complainant vide his complaint dated 28.03.2014 informed that Delhi Tamil Education Association, Lodhi Estate advertised various vacant posts but did not provide correct reservation for persons with disabilities as they did not seem to be preparing 100 points and 200 points roster. He further stated that in response to his complaint to the Directorate of Education, Assistant Director (Education) (Act-II) informed him that the Recruiting Agency had calculated correct reservation on total sanctioned posts and the backlog vacancies would be filled later on. The complainant also pointed out that as per Hon'ble Supreme Court of India's Order, the reservation is to be calculated for each cadre

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strength. He also pointed out that Jain Girls Senior Secondary School, Dharmapura, Delhi issued misleading advertisement as it did not mention clearly as to which post was reserved for persons with disabilities. In his letter dated 21.02.2014, which is annexure 'A' to his complainant, he pointed out that Govt. Aided Schools in Delhi are not implementing reservation for persons with disabilities.

2. The complainant requested to issue the following directions to the Department of Education:-

i) To reject all appointments of DTEA till reservation of posts for persons with disabilities is provided including backlog vacancies:

ii) Advertisement in respect of Jain Girls Senior Secondary School Dharmapura Delhi be cancelled and the post re-advertised with backlog vacancies reserved for persons with disability.

iii) Marking scheme in r/o of PET, Librarian, Drawing teacher, Computer teacher, etc may be issued by the Department and Department be directed to check 100 points roster that correct reservation is provided.

v) Identify the posts on the basis of disabilities and as per DOP&T's instructions. The advertisement should contain the approval number of the concerned DDEs.

3. The complaint was taken up with the respondent vide communication dated 28.03.2014 followed by hearings. The respondent vide letter dated 16.04.2014 informed that the matter was taken up with the concerned DDEs who have clarified the position. Marking scheme in r/o of PET, Librarian, Drawing Teacher etc has been issued vide order dated 26.02.2014. Direction to maintain separate rosters for persons with disabilities as per DOP&T's instructions was also issued vide circular dated 13.03.2014. The directions of the Commissioner for Persons with Disabilities were circulated vide order dated 10.01.2014 to all the HOS/Managers of the Govt Aided Schools vide circular dated 10.03.2014 for adhering and they were directed to advertise the vacancies only after approval of the concerned DDE of the District. The DDEs were also directed to monitor reservation for persons with disabilities as per the guidelines of DOP&T while clearing the recruitment.

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4. The respondent vide letter dated 20.08.2014 informed that as per the direction of this court, a training workshop on implementation of reservation for persons with disabilities was organised for DDEs on 06.08.2014 after receiving various status reports/compliance reports from the DDEs, Education Officers/Aided schools.

5. The office of Commissioner for Persons with Disabilities inspected the reservation rosters of 11 aided schools including DTEA School New Delhi and Jain Girls Senior Secondary School. The observations were brought to the notice of the respondent. After the hearings, the respondent submitted ATRs vide letter dated 23.11.2016 and informed that 100 and 200 points rosters were being followed by all the aided schools. The DDE of the concerned District inspected the roster register for proper maintenance and all the DDEs certified that 100 and 200 points roster registers were checked and found correct. Directorate of Education issued clearance for direct recruitment of 28 PGT, 121 TGT, 62 Assistant Teachers and 16 ministerial staff in different Govt. Schools out of which 48 posts were identified for persons with disabilities. The respondent however stated that Sh. Tarun Kumar did not meet the Deputy Director though he was also contacted on his cell phone. He did not respond.

6. During the hearing on 20.03.2017, the representatives of the respondent submitted that 48 vacancies reserved for persons with disabilities in 21 schools as indicated in Annexure 2 to the submissions dated 05.07.2016, had been arrived. It was based on the reservation roster register maintained by each school. As had been submitted vide action taken report on 05.07.2016, the process of recruitment to fill up those 48 vacancies was at various stages. From perusal of the action taken reports dated 05.07.2016 and 23.11.2016, it was observed that there was no progress in the recruitment exercise after 48 vacancies were identified for filling up by persons with disabilities in 21 schools which pertained to the period 01.01.2016 and 30.06.2016. Action taken report dated 23.11.2016 also states that all the DDEs of the concerned Districts of Directorate of Education had certified that 100 and 200 point roster registers have been checked and found to be correct. It was also observed that the complainant was supposed to test check the rosters of some of the schools to see whether the same were being maintained properly as per the instructions. However, the complainant said that he did not go to check the rosters as he was not called for that purpose. The parties had agreed that the petitioner shall visit Directorate of Education on 27th March

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2017 at 3.30.P.M to inspect reservation rosters submitted by some of the schools to satisfy himself and to suggest to the Directorate of Education any improvement if required.

7. The respondent was advised to submit the following information/action taken by 31.05.2017.

(i) Prepare 100 points vacancy based reservation roster registers in respect of all the 211 aided schools in accordance with DOP&T's O.M No. 36035/3/2004 Estt (Res) dated 29.12.2005 and subsequent modifications and produce the same for perusal.

(ii) Indicate no. of vacancies reserved for persons with different categories of disabilities indicating their disability namely, blindness or lower vision; loco-motor disability or cerebral palsy and hearing impairment.

(iii) Obtain certificate from the concerned Liaison Officer for persons with disabilities that the instructions issued by DOP&T have been complied with in accordance with para 28 of the DOP&T's O.M dated 29.05.2005 in respect of all the 211 schools.

(iv) Indicate the stage of recruitment exercise for filling up the reserved vacancies for persons with disabilities in each aided school.

8. It was also pointed out that in order to report proper compliance, names and addresses of the persons with disabilities appointed against the reserved vacancies also should be submitted. The respondent was also advised that action to fill up the vacancies computed as reserved for persons with disabilities on the basis of reservation rosters in the remaining 190 aided schools should also be initiated within ten days from the date of receipt of the said proceedings indicating the schedule for completion of the recruitment process. A copy of the schedule and the instructions that may be issued be submitted before the next date of hearing. The parties were also directed to come prepared along with the relevant record on the next date of hearing so that the case could be disposed off.

9. During the hearing on 21.06.2017, the representatives of the respondent submitted a written statement dated 20.06.2017, the relevant contents of which are reproduced below:-

"In this regard, the following actions have been taken by the aided school branch:-

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The petitioner, Sh. Tarun Kumar was called for the discussion in the aided school branch in the month of April, 2017. He visited the aided school branch office and discussion was held with him to sort out the matter.

The 100 point vacancy based reservation roster registers for persons with disabilities have already been prepared in respect of all 211 aided schools in accordance with DOP&T's O.M No. 36035/3/2004 Estt (RCS) dated 29.12.2005. The Manager/Principal, DDE Zone and DDE District have already given certificates for checking the same in this regard (file containing such certificate is enclosed for ready reference).

E-mails dated 19.05.2017 & 15.06.2017 were sent to all the govt. aided school for providing the (consolidated) required information. In this regard, reply has been received from 117 govt. Aided schools and is placed in the enclosed file. Further, out of the 211 govt. Aided school 14 schools are taken over by the Directorate of Education (no recruitment takes place in the govt. Aided taken over schools). The reply from the remaining schools is awaited.

Further out of the reply received, there are 19 govt. aided schools who have filled the vacancies of PH through SSC (list of names of such schools enclosed and details may be seen in the reply of the concerned school placed in the enclosed file).

On examining the above stated replies received from various govt. aided schools, it has come to the notice that two govt. aided schools namely 1. Guru Nanak Girls Sr. Sec. School, Gandhi Nagar 2. Kerala Education Society Sr. Sec. School, Sector-8, R.K.Puram, have got the clearance to fill the vacant posts and completed the SSC but did not fill the vacancies of PH category citing the reason that no application was received in respect of PH category. In this regard directions have been issued to these schools to initiate the procedure to fill up the vacant posts of PH category."

10. The complainant pointed out that aided schools were not providing reservation for persons with disabilities as per the direction of Hon'ble Supreme Court i.e the reservation was not being calculated on the basis of cadre. He also pointed out that the schools cannot group various posts for calculating reservation for persons with disabilities. As per him, roster for each post should be separate, otherwise appointing authorities would reserve the vacancies in their preferred posts as has been done by ESSES Baba Nebh Raj Sr. Sec. School by reserving the vacancy of TGT (Sindhi).

11. Upon perusal of the case file and the documents submitted by the parties during the proceedings of this case over a period of more than three years, my observations are recorded in the following paragraphs:

- (i) Persual of various Action Taken Reports submitted by the Directorate of Education (Aided School Branch), random inspection of the reservation rosters and training of the concerned officials by the Office of the State Commissioner for Persons with Disabilities reveals that a fairly good amount of awareness and capacity building exercise has taken place.

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(ii) There is improvement in implementation of reservation of vacancies and preparation of rosters for persons with disabilities.

(iii) Perusal of the emails/letters containing information in respect of the concerned schools submitted in pursuance to the record of proceedings dated 08.05.2017 on the last date of hearing on 21.06.2017, it is observed that while some schools have appointed persons with disabilities against the reserved vacancies and given their names, even initiate action to fill up the vacancies by some schools has taken rather too long. This needs to be expedited in light of the time frame fixed for special recruitment drive by Department of Personal & Training in pursuance to the directions of the Hon'ble Supreme Court in civil Appeal No. 9096 of 2013. It is expected that Directorate of Education will ensure that the reserved vacancies are filled up with persons with disabilities strictly in accordance with the instructions of DOP&T as the concerned schools will require approval of the Directorate of Education for filling up the vacancies.

(iv) As regards computation of reserved vacancies and maintenance of rosters, DOP & T's OM No. 36035/3/2004-Estt (Res) dated 29.12.2015 explains as to how the reserved vacancies are to be computed. Para 15 of the said O.M elaborates the procedure for maintenance of rosters to effect reservation. Para 28 of the said OM also provides that Liaison Officer appointed to look after reservation for SCs STs, shall also work as Liaison Officer for reservation matters relating to persons with disabilities and ensure compliance.

(v) After the judgment dated 08.10.2013 of Hon'ble Supreme Court in Civil Appeal No. 9096 of 2013 (arising out of SLP (civil No 7541 of 2009) titled Union of India & Anr V/s National Federation of the Blind & Ors, DOP&T amended para 14 & para 15 of the OM dated 29.12.2005 vide their OM No. dated 3.12.2013, 20.03.2014 and 06.01.2015. The said instructions of DOP&T very clearly provide that reservation for persons with disabilities shall be computed in the Group A posts or Group B posts on the basis of total no. of vacancies occurring in direct recruitment quota in all the Group A posts or Group B posts respectively in the cadre. These amendments were made because prior to the Hon'ble Supreme Court's Judgment, reservation for persons with disabilities in Group A and Group B posts used to be computed only against the vacancies that occurred in the identified posts. Para 15 of OM dated

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29.12.2005 was reiterated in the OM dated 20.03.2014 which provides that separate 100 points reservation roster registers are to be maintained one each for Group A posts filled by the direct recruitment, Group B posts filled by direct recruitment, Group C posts filled by direct recruitment, Group C posts filled by promotion, Group D posts filled by direct recruitment and Group D posts filled by promotion. So, as per DOP&T's instructions, reservation for persons with disabilities is to be computed based on a roster to be prepared for all the posts belonging to one Group of posts and not for each post.

(vi) As far as earmarking a vacancy for a particular category of disability is concerned, the said instructions provide that the Head of the Establishment shall decide on the basis of the nature of posts, the level of representation of the specific disabled category in the concerned grade/post etc.

(vii) In view of unambiguous instructions in regard to computation of reserved vacancies for persons with disabilities, the plea of the complainant that separate roster should be maintained for each post and that a vacancy in a particular post should not be reserved as per the decision of Head of Establishment, cannot be accepted. However, this has contributed to a better understanding of the provisions for reservation of vacancies for persons with disabilities and implementation thereof and has served the purpose to a large extent.

12. In light of the above, the respondent is advised to ensure computation of reserved vacancies for persons with disabilities strictly as per the instructions issued, by DOP&T referred to in this order and to fill up all the backlog of reserved vacancies in the identified posts in which there are vacancies within three months from the date of receipt of this order in all the aided schools and the establishments under the Directorate of Education, Govt. of NCT of Delhi. The short fall of reservation in the posts in which there are no vacancies at present, may be filled at the earliest opportunity within three months from the date of occurrence of an identified vacancy. This Court has already advised Services Department to conduct a special recruitment drive for filling up the backlog of reserved vacancies for persons with disabilities in all the Departments/Establishments in the Govt. of NCT of Delhi. The Liaison Officer in each Establishment of Directorate of Education be advised to ensure strict compliance with the instructions of DOP&T.

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13. The respondent is also advised to bring to the notice of all concerned in the Directorate, the provisions of Chapter XVI of the Rights of Persons with Disabilities Act, 2016 which provide for punishment for contravention of the provisions of the Act and the Rules and Regulations made there under.

14. The names, contact numbers and addresses of the persons with disabilities appointed against the reserved vacancies be intimated to this court within 15 days of their joining.

16. The complaint is disposed off accordingly.

17. Given under my hand and the seal of the court on 10th day of July, 2017.



T.D. Dhariyal
10.7.2017
(T.D. Dhariyal)

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