

(130)

In the Court of 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 Persons with Disability (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995]

Summons to appear u/s 82 of the RPwd Act, 2016

Case No. 78/1011/2018/01 | 3881-82

Dated: - 16/1/18

In the matter of:

Suo-Motu

.....Petitioner

Versus

Addl. Medical Superintendant (Admn.)
Govt. of NCT of Delhi
Lok Nayak Hospital
New Delhi -110002

.....Respondent No. 1

Secretary
Department of Health & Family Welfare
Govt. of NCT of Delhi
Room No. A-907, A-Wing,
I.P.Estate, New Delhi -110002

.....Respondent No. 2

Date of Hearing: 15.01.2018

ORDER

Suo-motu cognizance of an advertisement published in Hindustan Times dated 06.01.2018 regarding filling up of 201 vacant posts of Junior Residents, the respondent hospital was taken under section 80 (b) of the Rights of Persons with disabilities Act, 2016, herein after referred to as the Act and a Show Cause-cum-Hearing Notice dated 10.01.2018 was issued.

2. In the said advertisement it was mentioned that 3% seats shall be reserved for persons with disabilities on horizontal basis.

3. Section 34 of the Act provides as under:

"34. (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the

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total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit."

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4. Para 25 of DOP&T's O.M. No. 36035/3/2004-Estt (Res)/ dated 29.12.2005 prescribes the notices of vacancies should contain the following information:

" 25. NOTICE OF VACANCIES: In order to ensure that persons with disabilities get a fair opportunity in consideration for appointment to an identified post, the following points shall be kept in view while sending the requisition notice to the Employment Exchange, the SSC, the UPSC etc. and while advertising the vacancies:

- (i) Number of vacancies reserved for SCs/STs/OBCs/Ex-Servicemen/ Persons suffering from Blindness or Low Vision/Persons suffering from Hearing Impairment, Persons suffering from Locomotor Disability or Cerebral Palsy should be indicated clearly.*
- (ii) In case of vacancies in posts identified suitable to be held by persons with disability. it shall be indicated that the post is identified for persons with disabilities suffering from blindness or low vision; hearing impairment; and/or locomotor disability or cerebral palsy, as the case may be, and that the persons with disabilities belonging to the category/categories for which the post is identified shall be allowed to apply even if no vacancies are reserved for them. Such candidates will be considered for selection for appointment to the post by general standards of merit.*
- (iii) In case of vacancies in posts identified suitable for persons with disabilities, irrespective of whether any vacancies are reserved or not,*
- (iv) The categories of disabilities viz blindness or low vision, hearing impairment and locomotor disability or cerebral palsy, for which the post is identified suitable alongwith functional classification and physical requirements for performing the duties attached to the post shall be indicated clearly.*
- (v) It shall also be indicated that persons suffering from not less than 40% of the relevant disability shall alone be eligible for the benefit of reservation."*

5. The respondent was directed to issue a corrigendum providing for reservation of not less than 4% of the vacancies and to mention the number of vacancies reserved for persons with disabilities by 12.01.2018 and to submit a report and appear on 15.01.2018.

6. A Corrigendum providing for 4% reservation for the persons with disabilities i.e. 8 vacancies of Junior Resident was issued.

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7. On 15.01.2018, the representatives of the complainant also submitted the Action Taken Report.

8. In view of the prompt and positive action, the case is closed.

9. Given under my hand and the seal of the Court this 16th day of January, 2018.



STATE COMMISSIONER FOR PERSONS WITH DISABILITIES

[Signature]
(T. D. JAYARAMAN)
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