

Case No: 9943/1021/2018

Dated : 29.07.2019

Dispatch No.

In the matter of :

Shri N. Ramanujam.,
19, Southmada Street,
Triplicane,
Chennai – 600 005

.....Complainant

Versus

Principal Chief Commissioner of Income Tax,
Aaykar Bhawan,
121, Nungambakkam High School,
Chennai – 600 034

.....Respondent

Date of Hearing : 18.06.2019

Present :

1. Shri Surjeet Singh, Advocate for the complainant.
2. Shri Michael Jerald, Jt. Commissioner of Income Tax, Chennai, for Respondent.

ORDER

The above named complainant, a person with 100% visual impairment, has filed a complaint dated 08.06.2018 under the Rights of Persons with Disabilities Act, 2016 against denial of promotions on the basis of his disability.

2. Shri N. Ramanujam, the complainant, has submitted that he is presently working as Inspector of Income Tax in the Office of Principal Chief Commissioner of Income Tax, Chennai. He joined the post of Group 'D' on 09.10.1992. He cleared the departmental examination for promotion and qualified for the post of LDC in the year 1998, but was denied the promotion on the basis of his disability. He further submitted that more than 100 posts of LDCs were filled up, but the complainant was not promoted under VH quota. He was the only candidate available under the said quota in the entire Tamil Nadu. The complainant was promoted as Tax Assistant later in the year August 2005. Thereafter he qualified for departmental ministerial examination and was promoted as Senior Tax Assistant in July 2009. The complainant then qualified the departmental examination in the year 2013 for promotion to the post of Inspector of Income Tax. He was then promoted to the post of Office Superintendent on 31.10.2014 after completing five years of service in the post of Senior Tax Assistant.

3. The matter was taken up with the Respondent under Section 75(1) of the Rights of Persons with Disabilities Act, 2016 vide this Court's letter dated 01.11.2018.2/-

4. The Dy. Commissioner of Income Tax (Hqrs.) (Admn), Chennai vide her letter no. 5(1)/Estt/ITI/REP/2018 dated 10.12.2018 submitted that the complainant joined the Income Tax Deptt as Group 'D' in the year 1992 under visually impaired quota. He was promoted as Group 'D' (Daftry) on 27.06.2001. He cleared the LDC Exam in the year 1998. He was further promoted as TA, Sr. TA, OS and Inspector of Income Tax. The representation of the official has been perused and the request of the official was duly considered. For promotion to the cadre of LDC, Group 'D' Officials with five years of regular service are eligible as per recruitment rules. He submitted that though the complainant became eligible for promotion in the year 1998, there were no vacancies under promotion quota for LDC posts during the year 1998-2000 and hence no DPC got convened. As per recruitment rules, unfilled vacancies, if any under promotion quota, would not be carried forward. The rule governing implementation of PH quota stipulates that for every 33 posts one post should be earmarked for PH. Since the total number of posts sanctioned is only 24, the individuals to be promoted under PH will have to wait till the next cycle of promotion if effected. The complainant did not become eligible for consideration both under continuing seniority list and under Ph category, either on 2/3rd quota for the year of passing or to 1/3rd quota for seniority. Moreover, as per the seniority list, Shri Ramanujam stands at 27th position of Group 'D' officials and there were 3 PH officials senior to him. Regarding promotion to the cadre of Tax Assistant, as the requirement of 23 PH candidates for cadre strength of 760 Tax Assistants has already been met, the complainant even though comes under PH quota, was promoted as Tax Assistant under continuing seniority, on 01.08.2005. Since the proposal for convening the DPC for the Panel Year 2002-03, 2003-04 & 2004-05 was sent on 06.06.2005, the official's claim for revision of seniority from 01.04.2003 finds no merit and hence, could not be considered. Regarding promotion to the cadre of Sr. Tax Assistant, the complainant was considered for promotion to the post of Sr. Tax Assistant as he qualified the departmental examination for the Ministerial Staff in the year 2008 and also has completed three years of regular service in the Panel Year 2008-09, he was promoted to the post of Sr. Tax Assistant on 14.07.2009. He submitted that since the official was promoted as Sr. TA after 3 years, the question of considering him under PH quota does not arise. The complainant's name was considered in the review of fourth DPC for the Panel Year 2013-14 and he was promoted as Office Superintendent on 01.10.2014. He was then promoted as Inspector of Income Tax on 01.01.2016 as he qualified the departmental examination for the Inspector of Income Tax in the year 2013.

5. The complainant vide his rejoinder dated 18.02.2019 has submitted the whole factual matrix of the case filed by the complainant was relating to his grievance of not adhering to roster point quota of 3% meant for PH persons in the promotions made in the grades to Lower Division Clerks, Tax Assistant, Senior Tax Assistants, Office Superintendent and Income Tax Inspector. In the extant case, the quota prescribed for PH persons was not applied by the Respondents. The Respondent had failed to follow the reservation quota for disabled persons earmarked for them. He submitted that out of 542 posts of LDC, the promotee quota as 81 posts and promotions were granted and 5 persons with disabilities figured in it but they failed to furnish the Roster Register and

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other supporting documents to substantiate their claim how they have filled the said posts. The complainant who was considered for the Panel Year for 2002-03 has been given promotion just because the said promotion DPC was held in the year 2005, which is untenable for the eligible candidates promotions stands delayed due to the non-convening of DPC during the specified year and promotions are given randomly, thereby denying promotion to genuine eligible candidates. In the instant case, the complainant has not only been deprived of the rightful promotion due to non-conduct of regular DPC for the period 2002-03 in the said year and also by not following the reservation quota meant for persons with disabilities. The complainant has become a victim of double discrimination by the Respondents, in denying his rightful promotion as Tax Assistant in the year 2003 which had its repercussions in delaying the subsequent promotions to the higher posts. He submitted that thus the administration cannot take advantage of its own fault in non-convening of the DPCs, at regular intervals, to deny the rightful promotion to a visually impaired person like the complainant which is nothing but a travesty of justice. He submitted that if the complainant was promoted as Tax Assistant based on the DPC held for the Panel Year 2002-03 by the DPC in the year 2003 itself, he would have been able to write the departmental examination for next promotional post of Senior Tax Assistant and thereafter would have got his next promotion, i.e. Senior Tax Assistant two years ahead of time in the year 2007. He submitted that the Respondent department had failed to conduct regular DPC for promotion in 2003 itself which had a bitter cascading effect on the further promotions to the higher posts more so for persons with disabilities who had been affected badly by not following the Model Calendar for conducting DPCs and also failing to adhere to the reservation for persons with disabilities as per 3% quota assigned for them and thus having been hit by double jeopardy in the eyes of law.

The complainant was given the promotion in the year 2016 as Inspector but as per the categorical admission that the eligibility criteria is 3 years in the post of Senior Tax Assistant and as the complainant had completed the requisite qualifying service and cleared the departmental examination in the year 2013 itself, he was denied promotion during the said year. Further, Respondent's inaction of getting the Inspector post, identified under disabled quota had led the complainant to choose the Superintendent's Post, but even promotion to Superintendent Post was delayed due to the delay in promotion to the post of Tax Assistant in the year 2003 itself which had cumulative effect on all his subsequent promotions. The department's contention to deny the complainant under disability quota in the Inspector's post is that it is not an identified post which is totally incorrect and unjustified. The complainant has requested to direct the Respondent to produce all the Roster Registers meant for disabled quota for promotions made to the posts of LDCs, Tax Assistant, Senior Tax Assistant, Office Superintendent and Inspector.

6. After considering Respondent's reply dated 10.12.2018 and complainant's rejoinder dated 18.02.2019, a personal hearing in the matter was scheduled on 18.06.2019.

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7. During the hearing the Learned Counsel for the complainant reiterated that he is working as Inspector of Income Tax in the Office of Principal Chief Commissioner of Income Tax, Chennai. He joined the post of Group 'D' on 09.10.1992. He cleared the departmental examination for promotion and qualified for the post of LDC in the year 1998. He was the only candidate available under the said quota in the entire Tamil Nadu. He was promoted as Tax Assistant later in the year August 2005. In July 2009, after qualifying the departmental ministerial examination, he was promoted as Senior Tax Assistant. In the year 2013, he qualified the departmental examination and was promoted to the post of Inspector of Income Tax. He was finally promoted to the post of Office Superintendent on 31.10.2014 after completing five years of service in the post of Senior Tax Assistant. He submitted that the Respondent has failed to follow the reservation quota for disabled persons earmarked for them. The complainant submitted that he was deprived of the rightful promotion not only due to non-conduct of regular DPC for the period 2002-03 but also due to not following the reservation quota meant for persons with disabilities.

8. The Representative of the Respondent reiterated that the complainant joined the Income Tax Deptt. as Group 'D' in the year 1992 under visually impaired quota. He was promoted as Group 'D' (Daftry) on 27.06.2001 and was further promoted as TA, Sr. TA, OS and Inspector of Income Tax. He submitted that though the complainant had become eligible for promotion in the year 1998, there were no vacancies under promotion quota for LDC posts during the year 1998-2000 and hence no DPC got convened. The rule governing implementation of PH quota stipulates that for every 33 posts one post should be earmarked for PH. Since the total number of posts sanctioned is only 24, the individuals to be promoted under PH quota will have to wait till the next cycle of promotion if effected. The complainant did not become eligible for consideration both under continuing seniority list and under Ph category, either on 2/3rd quota for the year of passing or to 1/3rd quota for seniority. Moreover, as per the seniority list, Shri Ramanujam stands at 27th position of Group 'D' officials and there were 3 PH officials senior to him. Regarding promotion to the cadre of Tax Assistant, as the requirement of PH candidates for cadre strength of 760 Tax Assistants has already been met, the complainant even though comes under PH quota, was promoted as Tax Assistant under continuing seniority, on 01.08.2005. Since the proposal for convening the DPC for the Panel Year 2002-03, 2003-04 & 2004-05 was sent on 06.06.2005, the official's claim for revision of seniority from 01.04.2003 finds no merit and hence, could not be considered. Regarding promotion to the cadre of Sr. Tax Assistant, the complainant was considered for promotion to the post of Sr. Tax Assistant as he qualified the departmental examination for the Ministerial Staff in the year 2008 and also has completed three years of regular service in the Panel Year 2008-09, he was promoted to the post of Sr. Tax Assistant on 14.07.2009. He submitted that since the official was promoted as Sr. TA after 3 years, the question of considering him under PH quota does not arise. The complainant's name was considered in the review of fourth DPC for the Panel Year 2013-14 and he was promoted as

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Office Superintendent on 01.10.2014. He was then promoted as Inspector of Income Tax on 01.01.2016 as he had qualified the departmental examination for the Inspector of Income Tax in the year 2013.

9. The Court after hearing both the complainant and Respondent, informed the parties that at present there is no reservation in promotion for persons with disabilities as per DoP&T O.M. and Rights of Persons with Disabilities Act, 2016. However, the Court observed that the Respondent has given due promotions to the complainant considering his seniority and disability.

10. The case is disposed of.

(Shakuntala Doley Gamlin)
Chief Commissioner
for Persons with Disabilities