BEFORE THE STATE COMMISSIONER FOR PERSONS WITH DISABILITIES
ADD; 1ST FLOOR, BUILDING 'B', GOA HOUSING BOARD,
NEW MARKET COMPLEX, PORVORIM GOA.

CaseNo:09/ComPwDs/2022-23/
Decided on: 29/02/2024

Sudesh KumarWaingade
Flat no: C5/8, Dhanlaxmi Colony,
Bhatlem, Panaji Goa. **- Complainant**

V/s

The Director,
Directorate of Food & Drugs, Admn.
"Dhanwantari"
Opposite Shrine of Holy Cross,
Bambolim Goa. **-Respondent**

29/2/24
Directorate of Food and Drugs Administration Bambolim Goa

The present complaint is against the Directorate of Food & Drugs Administration who is represented through its Director having office at Bambolim-Goa. The complainant in his complaint has stated that he was appointed as Food Inspector in 1992 with the Respondent Department and during the period of employment he was diagnosed with Schizophrenia and same was certified by Institute of Psychiatry and Human Behavior which is the Medical Board in the State of Goa in 2001.

It was further his case that because of said illness he was always under mental stress and was always panicking over issues in his regular work in addition to work stress and pressure of office work and that he felt threat to his life on account of mental illness and under such circumstances he had resigned stating ground of risk to his life.

Initially original complaint address to this office was rejected by this Commission vide its order dated 09/05/2023. However, said order of this Commission was challenged before Hon'ble High Court of Bombay in writ petition no 480/2023 wherein Hon'ble High Court in its Oral Judgement has quashed and set aside order of this Commission and has directed to decide application of complainant afresh considering whether case of complainant requires any benchmark to be considered or whether it comes under Section 2(s) r/w Section 80(b) of the Act 2016.

The Hon'ble High Court in its oral judgement has clearly stated that it has not gone in other aspects of the matter and therefore Commissioner is entitled to look into all relevant provisions for deciding such application afresh. The Hon'ble High Court has given time bound direction to dispose complainant's application within one month from date of passing of oral judgement i.e 31/01/2024.This Commission in order to comply with time bound directions issued by Hon'ble high Court upon receiving copy of Oral Judgement immediately issued notice of hearing to both the Parties fixing hearing on 06/02/2024.

o/c

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In pursuance to notices both parties attended hearing, Complainant was represented by Advocate who filed comprehensive written submissions whereas Respondent was represented by its Deputy Director who sort time to file their written submissions, on the same day the Complainant was directed to approach IPHB for fresh medical examination for obtaining certificate.
This Commission also issued letter to the Medical Superintendent of Institute of Psychiatry and Human Behavior to furnish report to this Commission before 15/02/2024 to make sure that this Commission complies with time bound directions issued by Hon'ble High Court.

The Hearing was again fixed on 15/02/2024. However, Due to some unavoidable circumstances the hearing was rescheduled and fixed on 16/02/2024 wherein copy of report received from IPHB was given to both parties and written submission filed by Respondent was taken on record.

The Hearing was again fixed before this Commission on 26/02/2024 however due to unavoidable circumstances was postponed and fixed on 27/02/2024 enabling both the parties to file their objections on medical report received from IPHB.

During the hearing both the parties have filed additional written submission on the medical report submitted by IPHB which has been duly considered by this Commission.

This Commission has gone through oral Judgement passed by Hon'ble High Court, so also comprehensive written submissions filed by both parties along with citations relied by complainant dealing with powers and scope of Commission and validity of resignation tendered by unsound person and so also considered the medical report received from IPHB.

The issue which arises for consideration of this Commission is **whether the case of complainant requires to be considered in terms of benchmark disability or whether it comes under Section 2(s) r/w Section 80(b) of the Act? And if yes, whether petitioner is entitled for any relief as prayed by him?**

The sec 80 (b) of rights of Persons with Disability Act 2016 reads as follows;

Sec.80 (b) Functions of State Commissioner. —The State Commissioner shall—

inquire, suo motu or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

The present complaint was filed U/s 80(b) of the Act which deals with inquire Suo Moto or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective actions.

It is pertinent to note that for the purpose of availing benefit under sec 80(b) of RPwD Act 2016 one must first prove that he is person with Disability for that either he should posses' disability Certificate issued by competent Authority or as Pointed by Hon'ble high Court in its oral judgement should be covered under definition of Person with Disability as provided under sec 2 (r) or (s) of the Act.

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Section 2 (r) of the RPwD ACT 2016 reads as follows:

Sec 2(r) "person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

On carefully reading of above definition of "person with benchmark Disability" it says person of not less than 40% of Disability, this in other words emphasized that in order to claim disability person should possess disability which should be more than 40% and if it is below 40% it cannot be considered as Benchmark Disability. It further says where specified Disability has not been defined in measurable terms and includes a person with Disability which has been defined in measurable terms as certified by certifying authority. This means in case of person whose Disability has not been defined in measurable terms it has to be opined by authority. But in present case Disability of the complainant is evaluated and defined in both measurable and in terms of percentage by IPHB who is an expert body dealing with such medical illness.

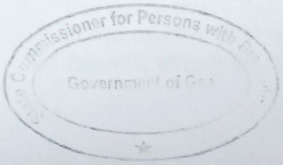
This Commission vide its letter dated 06/02/2024 had called for report from medical superintendent IPHB. In pursuance to which complainant was examined, by IPHB on 07/02/2024 and report was submitted to this office on 08/02/2024 The medical report submitted to this office by IPHB has stated that complainant in terms of Indian Disability Evaluation and Assessment scale is suggestive of mild Disability by Institute of Psychiatry and Human Behaviour Bambolim Goa.

Whereas Section 2 (s) reads as follows:
(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

The Commission after going through medical report submitted by IPHB has noticed that IPHB has observed that complainant's "Psychological testing done by Clinical Psychologist, IPHB on 09/12/2022 is suggestive of below Average intellectual functioning (IQ-82) with deficit in coping, impulsive tendencies, difficulties with interpersonal interactions." This is in line with wording of sec 2 (S) which says person with Disability is a person who has long term physical, mental, intellectual, or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.
As such the complainant is covered under definition of "Person with Disability" given under sec 2(S) of the Act.

The Report from IPHB further indicates that complainant psychological testing done by clinical psychologist; IPHB on 09/12/2022 is suggestive of below average intellectual functioning (IQ-82). Which is in line with the Notification issued by the Department of Empowerment of Persons with Disabilities dated 4th January 2018 regarding Guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016 (49 of 2016) Point 21.4 (v) Disability Calculation: VSMS score 70-84: Borderline Disability-25%.

After going through entire material on record this Commission is of considered opinion that case of complainant falls within criteria of Person with disability as defined under sec 2(S) of the RPwD Act 2016 hence is entitled to protection under sec 80(b) of the Act.



Now coming to the consequential part, that is Complainants resignation whether it is valid resignation or whether complainant application for withdrawal of resignation ought to have been considered or not?
It is true that Complainant had resigned on 26/02/2002 stating the grounds of risk to life, custodial arrest and better prospects. However vide application dated 04/03/2002 which was received by Respondent in their office on 02/04/2002 complainant requested the Director to cancel his resignation and further allow him to resume his duties. However on 05/03/2002 his resignation was accepted with immediate effects and was relieved of his services from the post of Food Inspector w.e.f 22/03/2002 A.N

It is pertinent to note that Complainant has produced documents under RTI showing that even after relieving order from Respondent he has address several applications for leaves which prima facie shows his state of mind and mental aptitude.

The Document produced under RTI By Complainant also shows that medical certificate dated 09/02/2001 was submitted to the Respondent, the very fact is also admitted by the Respondent in their reply filed before this Commission, this presupposes that Respondent were fully aware of the medical condition of the Complainant and in this situation it was incumbent upon the respondent to empathetically deal with complainant by doing counselling, having dialogues with Complainant to ascertain whether Resignation was tendered out of state of mind caused due to medical illness or was a thoughtful decision after consultation with doctor and family members.

This Commission has gone through written submission of Respondent which are nothing but reproduction of facts and denials and have not taken any specific stands except that cause of action of present complaint arose in 2002 whereas present act came in to force in 2016 and as such complainant is not entitled for any benefit of the act however this Commission is of opinion that although resignation was tendered in 2002 but the Person with Disabilities (equal Opportunities, protection of Rights and Full Participation) Act came into force in 1995 which was subsequently repealed in 2016 and the cause of action is recurring in nature because complainant on account of acceptance of his resignation is still suffering Socio, economic harassment in otherwards still facing brunt of said action of Respondent.

The decision relied by Complainant in the case of Bhag Chand Vs Union of India. 2007(115) FLR 1175 squarely applies to the case of Complainant there also a constable suffering from schizophrenia and had undergone treatment for the same in Government hospital, he tenders his resignation accepted in haste by the respondent Hon'ble High Court has held that, resignation could not be said to be voluntary and has set aside order of Accepting resignation. As the present case is identical same ratio can be squarely applied and in view above judgment of Hon'ble High Court the Acceptance of Resignation by Respondent without making any efforts to ascertain whether Resignation was after due deliberations with family members and after consultation with doctor cannot be considered as valid resignation hence this commission recommends Director of Food and Drugs to reinstate complainant back in service with all benefit entitled by him.

The Complainant has also relied upon Bhagwan Dass and Ano Vs Punjab State Electricity Board here also petitioner when in service has developed blindness and applied for Retirement in view of his blindness but subsequently sort of withdrawal which was not accepted by Authorities Hon'ble Supreme Court in said case has directed State authorities to reinstate him with all consequential benefits here Hon'ble Supreme court has also elaborately discussed sec 47 of Persons with Disability (equal Opportunities, protection of Rights and Full Participation) Act 1995. In view of above judgment of Hon'ble Supreme Court, we recommend Director of Food and Drugs Administration to grant him all service benefit which he was otherwise entitled in the course of his employment.

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This Commission has also gone through other Citations relied by complainant Geetaben Ratilal Patel Vs District Primary Education Officer and Brihan Mumbai Electric supply and Transport Undertaking, Mumbai Vs Sadashiv Dnyandeo Gaikwad & ors basically dealing with powers of commission, having considered the same this Commission is of opinion that it has power to issue recommendations to Director Of Food and Drugs Administration to Reinstate complainant and give him all service benefits
which he was otherwise entitled in the course of regular employment.

We have duly considered the complaint filed by the complainant viz a viz the reply of the respondent and after carefully examining the same we pass the following order:

ORDER

The Rights for Persons with Disabilities Act 2016 is a Special Legislative enacted by Parliament of India with the sole objectives for safeguarding the Rights and Principles of Persons with Disabilities. The said Act has been enacted to give effect to the United Nation Convention of the Rights of Persons with Disabilities which lays down certain principles for empowerment of Persons with Disabilities.

The RPwD Act 2016 seeks to operationalize and give concrete shape to the promise of full and equal citizenship held out by the Constitution to the disabled and to execute its ethos of inclusion and acceptance. By recognizing a statutory right and entitlement on the part of persons who are disabled, Section 3 seeks to implement and facilitate the fulfillment of the constitutional rights of persons with disabilities. As a society, we must provide Persons with Disabilities the additional support and facilities that are necessary for them to offset the impact of their disability.

The Director Of Food and Drugs Administration is hereby recommended to reinstate Complainant in service as expeditiously as possible considering age of complainant and grant him all service benefit which he was otherwise entitled in the course of his regular employment.

In above terms present complaint is hereby allowed.

Given under my hand and seal of this Commission 29th day of February 2024.

State Commissioner for Persons with Disabilities
Government of Goa

(Guruprasad R. Pawaskar)
State Commissioner for Persons with Disabilities