

IN THE COURT OF THE STATE COMMISSIONER FOR RPwDS
AT MALAKPET, HYDERABAD

Present: Smt. B. Shailaja, M.A., LLB.,

Dated this the 12th Day of August, 2022

Case No. RPwD Act, 2016/183/2020

BETWEEN

**A.Ravikanth,
Staff No. 6280889,
Temp. Employee (Artisan), BHEL
(Dismissed from Service)**

.... Petitioner

AND

**The Deputy General Manager,
Production (SG) & Discipline Authority,
Bharat Heavy Electricals Limited,
Ramachandrapuram (Switchgear Division),
Hyderabad, TS.**

.... Respondent

Petitioner claim:

The Court of the State Commissioner for RPwDs, Telangana received a petition from BHEL Differently Abled Employees Welfare Association, R.C Puram, Hyderabad dated 22-12-2020, wherein the above organisation has stated that Sri A. Ravikanth, a temporary employee of BHEL was dismissed from service vide Dismissal Order dated 22-07-2020 which is not sustainable and requested the State Commissioner for RPwDs to intervene in the matter to do justice for reinstatement into service of Sri A. Ravikanth.

The above Petition was sent to the Dy. General Manager, Production (SG) & Disciplinary Authority, BHEL, RC Puram, Hyderabad calling a detailed report in the matter including justification for initiating the extreme step of dismissal from service who is stated to be a PwD and the reasons for absorption of other temporary employees into regular grade who were sailing along with Sri A. Ravikanth with reference to their period of absence.

Justification Reply of BHEL

The DGM, Production (SG), BHEL, HPEP, Hyderabad in the reply to the State Commissioner for RPwDs stated that Sri A. Ravikanth Staff No.6280889 was appointed in BHEL for the post of temporary employee (Artisan) against Persons with Disability quota on 29-01-2014 and his appointment was on compassionate grounds as a dependent of deceased employee. As per terms and conditions of the appointment of temporary employee (Artisan), Sri A. Ravikanth was engaged for a period of (1) year on consolidated wage basis. During this one year period, the temporary employees were assessed in performance and attendance. They are required to maintain a minimum of 90% attendance i.e., 270 days for (1) year during initial one year i.e., from 29-01-2014 to 28-01-2015, Sri A. Ravikanth was attended for 199 days only. As he failed to secure required attendance, his temporary period of appointment was extended by (6) months. During this extended period also he was continued to absent unauthorisedly.

Consequently, Sri A. Ravikanth was issued with a Charge Sheet vide ref. No. HY/SG/203P/6280889/15 dated 15-05-2015 under clause No. 20(f) of BHEL Standing Orders for absent from duty for (176) days without sanction of leave or prior permission during the period from 29-01-2014 to 24-04-2015. Though Sri A. Ravikanth admitted the charges in the Charge Sheet an enquiry was ordered to give an opportunity to Sri A. Ravikanth to defend his case by following principles of natural justice. Sri A. Ravikanth attended before the enquiry authority. The enquiry authority submitted the report dated 28-10-2017 with the findings that the charges leveled against Sri A. Ravikanth were proved. A copy of the enquiry report was furnished to Sri A. Ravikanth advising him to submit his representation, if any. Sri A. Ravikanth had submitted his representation on 18-11-2017. On conclusion of disciplinary proceedings, after taking into consideration of the charges specified in the charge sheet, the explanation of the applicant, the enquiry report and the representation of the individual there upon, the DGM, Production (SG), BHEL, HPEP, Hyderabad has awarded the penalty of "dismissal from service" vide order ref. HY/206/6280889/2020 dated 22-07-2020.

Subsequently Sri A. Ravikanth submitted an appeal against the dismissal order but the appellate authority in its order dated 08-10-2020 confirmed the penalty of dismissal from services imposed by the disciplinary authority, as he did not filed any extenuating circumstances to mitigate the penalty awarded to Sri A. Ravikanth and rejected the appeal. Further Sri A. Ravikanth submitted a review application dated 03-11-2020 on the orders of the Appellate Authority, the reviewing authority vide order dated 20-01-2021 confirmed the penalty of the

dismissal from service imposed by the Disciplinary Authority and rejected the review application.

Written Statement of Sri A. Ravikanth on the reply of BHEL:

Sri A. Ravikanth submitted another detailed petition on the reply report of the DGM, Production (SG), BHEL, HPEP, Hyderabad, wherein he stated that:

1. He was absent on medical grounds during the training period, hence he was unable to fulfill the 90% attendance which is required as per terms and conditions.
2. Six months of service was extended as first extension in which he stated that he was absent on medical grounds.
3. Subsequently extended for another six months as second and final extension during the period from 29-07-2015 to 28-01-2016, in which he fulfilled 90% of attendance which is required for absorption into regular grade. Summary of his absence and leaves during the training period of (2) years is as follows.

Period	Leave	Actual Absence	Total Absence
29-01-2014 – 28-01-2015	24.5	76.5	101
29-01-2015 – 28-07-2015	2	147.5	149.5
29-07-2015 – 28-01-2016	9	5.5	14.5

4. BHEL authorities have absorbed other temporary employees of the same batch after fulfillment required attendance criteria in the second extension as specified and hence, they were regularized as Artisan Grade-IV, keeping Ravikanth aside for absorption of regular grade which is highly objectionable, which is amounting to discrimination, harassment and victimization of a PwD. The following are the other employees who were absorbed into regular grade after fulfilling the required attendance in the second and final extension period.

SI. No	Staff No.	Name of the Employee
1	6280870	K. Ravi Chandra Reddy
2	6281060	Vishal Reddy. V
3	6281230	M. Naga Sreekar Reddy

4	6282237	K. Gopala Krishna
5	6282768	Gowri Shankar B V S S N

5. Despite fulfillment of 90% required attendance in the second extension to qualify for absorption into regular grade, he was not considered.
6. During the Disciplinary Proceedings he was not informed to appoint Sign language translator as defense assistant from dumb and deaf school as per RPwD Act. This itself proves that no opportunity is given to the charge sheeted employee. Thus the enquiry authority has violated the norms of standing orders and RPwD Act and also violated the Domestic Inquiry Principles, procedures and Principles of natural justice which is gross abuse of power on the part of the concerned authority.
7. The Enquiry Authority in the analysis of evidence and conclusion stated in point no.3 that the reasons given by the charged employees (CE) that he had not attended duties due to ill health are relevant.
8. Apart from that, while passing the order of dismissal from service the Disciplinary Authority has considered the subsequent absence period at no.3 page 2 of Dismissal Order which is not sustainable. While considering the subsequent period of absence neither a charge sheet calling for his explanation on it nor inquiry was conducted into it as per the standing orders clause 23. He was regular to duties for the mentioned period in para (3) of page (2) of dismissal order. Despite applying, the leaves were not sanctioned/recommended. This clearly shows the unfair treatment by authorities towards a Person with Disability. Hence the conclusion of disciplinary authority, appellate authority and reviewing authority stated that the enquiry was conducted in accordance with the standing orders of the company which is untrue as they have taken (5) years to initiate the action of dismissal from service violating the standing order clause 23(7).
9. The authorities concerned were folded/suppressed the facts in his case and charges leveled against him with a mala fide intension to cover their lapses and inabilities which is deprival of fundamental right under Constitutional provisions.

The DGM, Production (SG)/BHEL was asked for further clarification on the issues raised and issued summons to both the parties to examine the matter in person on 20-04-2022. **During the course of hearing the**

following information has come to the notice of the State Commissioner.

1. That Sri A. Ravikanth was appointed temporarily on compassionate grounds
2. He was fulfilled 90% attendance in his second extension period.
3. BHEL has absorbed (5) other similarly situated persons into regular grade keeping aside Sri A. Ravikanth.
4. The enquiry was held on the first year absent period without looking into attendance of second and final extension period.

The Respondent attended on behalf of BHEL was asked to submit detailed justification report on the above observations of the State Commissioner for RPwDs.

The DGM/HR, BHEL, HPEP, Hyderabad has furnished the reply as desired by the State Commissioner on 10-05-2022. The averments made in the reply is summarized below:

1. Sri A. Ravikanth, Staff No. 6280889 was appointed in BHEL for the post of temporary employee (Artisan) against PwD quota on 29-01-2014 on compassionate grounds.
2. Sri A. Ravikanth was issued with a charge sheet dated 15-05-2015 under clause 20(f) of BHEL standing orders for absence from duties for 176 days without sanction of leave or prior permission during the period from 29-01-2014 to 24-04-2015.
3. Though Sri A. Ravikanth has admitted the charges in the charge sheet, an enquiry was ordered by the disciplinary authority dated 22-02-2016 to give an opportunity to him.
4. Sri A. Ravikanth engaged a co-employee as defence assistant on his own and attended enquiry on dates 29-03-2016, 22-07-2016 and 23-08-2016.
5. The enquiry authority concluded the enquiry wherein it was stated that the charge of unauthorized absence for 176 days leveled against Sri A. Ravikanth is proved. A copy of the enquiry report was furnished to Sri A. Ravikanth advising him to submit his representation if any.
6. The Disciplinary Authority after taking into consideration the charges specified in the charge sheet, explanation of the applicant, the enquiry report and the representation of individual thereupon awarded the penalty of "dismissal from service" vide Ref. HY/203/6280889/2020, dated 22-07-2020.

7. It is pertinent to put forth few facts relating to Sri A. Ravikanth as per the available records for perusal of the State Commissioner. During the course of enquiry Sri A. Ravikanth produced medical records to support his absence. He produced records obtained from Private Hospitals. It was revealed through these documents that he was suffering from mental illness i.e. bi-polar disorder. He was under treatment for depression from the year 2013 but he did not disclose his condition while joining BHEL.
8. During his tenure as Temporary Artisan on 03-07-2014 a Show Cause Notice was issued to him for not performing any work assigned to him and also for misbehaving and slapping a female employee. On numerous occasions Executives from his department have complained that he was present but not working and also hampering production by disturbing other workmen. Though Sri Ravikanth was counseled on various occasions to perform office duty, improvement was not found.

Sri A. Ravikanth has further submitted on the averments made by BHEL that he had completed apprenticeship in BHEL for one year from 01-10-2009 to 30-09-2010 and rendered services in Grama Vikas Seva Samithi which is meant only for deceased employee dependents of BHEL from 2012 to 2014 (approx. 2 years). Therefore he was appointed as temporary Artisan employee against PwD quota on 29-01-2014 and his appointment was on compassionate grounds. During his one year training period i.e., from 29-01-2014 to 28-01-2015 he was absent and was unable to fulfill 90% of attendance which required as per terms and conditions. It was extended for six months as first extension, also in which he could not fulfill 90% of attendance. Subsequently, it was extended another six months for second and final extension during the period from 29-07-2015 to 28-01-2016 in which he fulfilled 90% attendance which is required for absorption into regular grade.

It is pertinent to note that after completing second extension with prerequisite of 90% attendance, his batch mates were absorbed into regular grades keeping him aside. He further stated that he was regular to duties during his apprentices period and as temporary employee since 2009-2010, 2012-2014 and 2014 to 20-07-2020 till the date of dismissal except a few days mentioned in the charge sheet. He submitted that he was fit to perform the work given regularly from 29-07-2015 to till the date of dismissal (i.e., approx. five years). Hence his service in BHEL itself proves issues raised by the BHEL management is erroneous.

OBSERVATIONS OF STATE COMMISSIONER:

As verified with the facts and circumstances referred above by both the parties the following observations are derived:

1. Sri A. Ravikanth was appointed on compassionate grounds as a dependent of a deceased employee of BHEL on temporary grounds for period of one year subject to certain terms and conditions.
2. Sri A. Ravikanth could not fulfill the required attendance in his 1st year. BHEL extended a period of six months but the individual could not fulfilled the required attendance criteria for his absorption in the regular grade, however the petitioner was permitted for second and final extended period of six months, in which the petitioner has fulfilled the 90% attendance in the second and final extension period.
3. Charges were framed on Sri A. Ravikanth for his absence period for which he could not fulfill the required attendance and for his unauthorized absence in the 1st year.
4. The enquiry authority who conducted enquiry has not taken the period of attendance of Sri A. Ravikanth in his second and final extension period in which he fulfilled the required attendance and concluded the enquiry basing on the charge without considering the attendance of second and final extension period.
5. The BHEL has considered for absorption of some other similarly situated employees whose attendance was fell short in the initial period basing on which charge sheets were issued to them but on fulfilling the required attendance in the second and final extended period, they were absorbed into regular grade. But case of the petitioner Sri A. Ravikanth was not considered, for which the authorities of the BHEL could not justify their action in dismissing Sri A. Ravikanth from the services while admitting the others and BHEL authorities remained silent in their reports on the absorption of other similarly situated employees into service. It shows the discriminatory approach towards Sri A. Ravikanth who is a PwD.
6. The reasons put forth before the State Commissioner by the DGM/Production (SG), BHEL in their report dated 10-05-2022 on his health condition stating that he was suffering from mental illness i.e., bi-polar disorder and he was under treatment for depression from the year 2013 but he did not disclose his condition while joining BHEL are not convincing and failed to produce any

recorded evidence in support of their plea on the behavior of Sri A. Ravikanth during the period of his work in BHEL.

7. As seen from the general behavior of the persons suffering from bi-polar disorder it is observed that people with bi-polar disorder can "cycle" from high moods (called mania and hypomania) to extremely low moods (depression). These mood shifts, along with other symptoms of bipolar disorder, can create a unique set of challenges in someone's personal and social life. The experts however say that the work can actually be quite helpful to people who are suffering from bi-polar disorder.

Work can give people a sense of structure, reduce depression and increase confidence. This may help to enhance overall mood and empowerment. People with the condition should look for work that suits them as an individual. For many people with bi-polar disorder, a quiet and relaxed work space can help them to maintain regular schedules which can improve overall performance. A job where co-workers have values in line with his own and who also embrace work life balance, as this is important to overall health and well being. Having supportive co-workers is also helpful for feeling understood and coping during stressful situation, so seek out those that will support the person suffering with bi-polar disorder. It was also observed that many people with bi-polar disorder do best when they have job where they can be creative.

8. The act of BHEL in not reinstating the petitioner, when other similarly situated persons were absorbed, shows the clear discrimination on the part of the management towards the petitioner, a PwD which is not expected from the establishment as it violates the provisions of RPwD Act, 2016.

Therefore it cannot be said the persons who are suffering from bi-polar disorder are not fit to employment. The DGM, BHEL in the report tried to bring the mental illness condition of the petitioner stating that the petitioner is suffering from bi-polar disorder is not capable of attending the duties assigned to him which is not convincing as the persons suffering from bi-polar disorders are capable of attending their assigned duties in a congenial atmosphere at the work place. The BHEL has failed to produce any recorded evidence in support of their plea on the behavior of A. Ravikanth during the period of his work in BHEL. **The petitioner was dismissed for not acquiring required attendance.**

ORDERS OF THE STATE COMMISSIONER:

Basing on the above averments made by both parties and the observations thereupon derived by the State Commissioner the following order is made:

1. The competent authority of BHEL needs to look into the matter of fulfilling the required attendance of 90% of the petitioner Sri A. Ravikanth during the second and final extended period and reinstate him into service by revoking the dismissal orders issued vide order dated 22-07-2020 on par with the other similarly situated persons to whom absorption was made into regular grade basing on the fulfillment of required attendance of 90% in the second and final extended period.
2. The temporary appointment of Sri A. Ravikanth is itself is a compassionate appointment due to death of an employee of BHEL. The BHEL shall also look into his reinstatement keeping in view the well being of the dependents of the family of deceased employee as the BHEL has already absorbed some other similarly situated persons.

The competent authorities shall take appropriate action in reinstating the petitioner and send the Action taken Report to the Court of the State Commissioner within a period of (30) days positively.


STATE COMMISSIONER

To

1. Sri A. Ravikanth, Staff No. 6280889,
Temp. Employee (Artisan), BHEL(Dismissed from Service).
2. The Deputy General Manager,
Production (SG) & Discipline Authority,
Bharat Heavy Electricals Limited,
Ramachandrapuram (Switchgear Division),
Hyderabad, TS.