



न्यायालय मुख्य आयुक्त निःशक्तजन
In the Court of the Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.141/1015 /12-13

Dated:- 06.06.2013

In the matter of:

Shri K. K. Bhargava
F/o Shri Ashish Bhargava
Laxmi Niwas,
Beechla Road, Ajmer,
Rajasthan.

..... Complainant

Versus

Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training,
Through Secretary
North Block, New Delhi.

..... Respondent

Case No. 144/1015/12-13

In the matter of:

Shri Ramesh Gorakh Gholap
Solapur, Maharashtra
e-mail: ragholap@gmail.com

..... Complainant

Versus

Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training,
Through Secretary
North Block, New Delhi.

..... Respondent

Case No: 911/1011/12-13

In the matter of:

Kumari Bhagyashree Banayat
Qtr. No.B/21/3, Govt. Colony,
Ravi Nagar, Nagpur, Maharashtra.

..... Complainant

Versus

Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training,
Through Secretary
North Block, New Delhi.

..... Respondent

.....2/-

Case No. 117/1015/12-13**In the matter of:**

Dr. Bhimasen Hantal,
Q.No.1/2, Type V, OFK Estate,
West Land, Khamaria,
Jabalpur, M.P. - 482005

.... Complainant

Versus

Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training,
Through Secretary
North Block, New Delhi.

..... Respondent

Case No. 884/1011/12-13**In the matter of:**

Shri R.D. Meena,
Scientist (NRCSS), Tabiji,
Ajmer (Raj) – 305 206

.... Complainant

Versus

Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training,
Through Secretary
North Block, New Delhi.

..... Respondent

Date of hearing : 12.02.2013, 31.05.2013

Present :**12.02.2013**

1. Shri K.K. Bhargava, Shri Ramesh Gholap, Kumari Bhagyashree Banayat, Shri R.D. Meena, Dr. Bhimasen Hantal and Shri R.D. Meena, complainants.
2. Shri Narendra Gautam, Under Secretary and Shri S.S. Shukla, Under Secretary, DoP&T

31.05.2013

1. Shri K.K. Bhargava, , Dr. Bhimasen Hantal, complainants.
2. Ms. Gayatri Mishra, Director, Shri Narendra Gautam, Under Secretary and Shri S.S. Shukla, Under Secretary, DoP&T on behalf of Respondent.

ORDER

Shri K. K. Bhargava, whose son Shri Ashish Bhargava is a person with 40% visual impairment as per disability certificate dated 19.03.2010, Shri Ramesh Gorakh Gholap, a person with 45% locomotor disability, Kumari Bhagyashree Banayat, a person with more than 40% hearing impairment as per the disability certificates submitted by them (Case Nos.141/1015/12-13, 144/1015/12-13, 911/1011/12-13) respectively filed complaints dated 28.09.2012, dated nil and 07.12.2012 regarding allocation of cadre to candidates with disabilities who have been recommended for appointment to Indian Administrative Service (IAS). All of them have been allocated IAS on the basis of Civil Services Examination, 2011. Dr. Bhimasen Hantal, a person with 45% locomotor disability and Shri R.D. Meena, who claimed to be a person with locomotor disability (He did not submit copy of Disability Certificate) (117/1015/12-13 and 884/1011/12-13) respectively filed complaints dated 04.06.2012,

13.07.2012, 27.09.2012, 15.11.2012 and dated 24.09.2012 respectively regarding allocation of services to candidates with disabilities based on the Civil Services Examinations. The said complaints have been filed by the complainants under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act.

2. Shri K.K. Bhargava, father of Shri Ashish Bhargava and Shri Ramesh Gorakh Gholap inter alia submitted in their complaints that they have been allocated IAS based on Civil Services Examination 2011. However, they feel that they would not get their home cadres as the Cadre Allocation Policy issued by DoP&T vide OM No.13011/22/2005-AIS(I) dated 10.4.2008 is discriminatory. As per proviso to para 7(c) of the said OM, a physically disabled candidate would have a higher claim for being adjusted against an insider vacancy as compared with non-physically disabled candidates of his community i.e. SC, ST, OBC. However, in respect of a General Category candidate, para 7(d) does not provide for any preference to a candidate with disability belonging to General category over the non-disabled candidates of his community. In case of General category candidates, the Cadre Allocation will be according to their inter-se merit. Consequently, the candidates with disabilities belonging to General category are getting allocated to the most distant and difficult areas i.e. North East. They further contend that despite the Government's Policy to transfer persons with disabilities to their native place, they are not getting allocation to their home States due to the current Cadre Allocation Policy. Shri K.K. Bhargava also brought out that there is no clear-cut mention about the physically disabled category in the said O.M. dated 10.04.2008 of DoP&T and, as such, it discriminates against the candidates with disabilities. Unlike candidates of other categories, there is no specific category-wise distribution of vacancies (as insider or outsider) for candidates with disability which also amounts to discrimination against the candidates who suffer from physical disability in the Cadre Allocation Policy for IAS. He further submitted that candidates belonging to OBC, SC and ST who are at times, lower in merit than the candidates with disabilities, are able to get cadre of their choice because of specific category-wise vacancies for them according to the Cadre Allocation Policy. This also amounts to total discrimination against the candidates with disabilities.

3. Kumari Bhagyashree Banayat, in addition, submitted that there are two insider vacancies of OBC in Maharashtra to which she belongs and accordingly she requested for considering her disability status to allot her insider OBC Quota in Maharashtra.

4. Dr. Bhimasen Hantal submitted that he belongs to SC category and has been allotted Indian Railway Traffic Service (IRTS) as a candidate with locomotor disability ignoring his claim as an SC candidate within SC PH group. As per him, the existing policy of clubbing all the candidates with disabilities irrespective of their vertical category (SC/ST/OBC/General) is highly discriminatory and unreasonable. Because of such a policy, he has been deprived of allotment of IAS on the basis of CSE 2011 despite securing 1st position among candidates with disabilities belonging to SC category. He has contended that since reservation for persons with disabilities is horizontal to be distributed amongst various categories, the procedure of allocation of services should be either 3% reservation (1 each of various sub-categories) within the designated categories such as General, SC, ST and OBC or the earmarked reserved post of PHH categories (1 each of various sub-categories) should be distributed to various categories such as SC & ST as per their percentage of entitlement such as 15%

for SC, 7.5% for ST and so on within the frame of Article 16(4) and Article 335. He has further contended that the service allocation procedure of DoP&T with regard to PH category vis-à-vis weaker sections such as SC & ST also violates the concept of natural justice which says that discrimination can be allowed only when such discrimination benefits the least disadvantaged section of the society. He has, therefore, requested that the backlog of SC and ST belonging to PH categories be identified specifically of the premier services such as IAS, IFS, IRS(IT), IRS (C&E) and be filled up retrospectively or be filled up from the available current SC and ST of Civil Services Examination (CSE) 2011 and through future induction.

5. Shri R.D. Meena pointed out that the Act provides 3% horizontal reservation within their respective vertical categories. He further stated that the number of recommended PH candidates belonging to general category and OBC category has been increasing since 2002 whereas the number of PH candidates belonging to SC and ST category has been decreasing continuously. He also pointed out that not a single ST(PH) category candidate was selected in the Civil Services from the years 2006 to 2011 even though reservation for persons with disabilities is horizontal and ST (PH) candidates were available.

6. The complaints were taken up with DoP&T vide letters dated 26.10.2012, 11.12.2012, 10.12.2012 and 14.11.2012 respectively under Section 59 of the Act.

7. As no reply was received from the DoP&T, the cases were scheduled for hearing on 12.02.2013 vide Notice of Hearing dated 30.01.2013.

8. In the meanwhile replies were received from the DoP&T in respect of complaints of Dr. Bhimasen Hantal and Shri R.D. Meena.

9. DoP&T in the case of Dr. Bhimasen Hantal has submitted that his representations dated 04.06.2012 and 13.07.2012 were examined and he was given replies vide their letter dated 13.07.2012 and 13.08.2012. It was further clarified that the reservation for PH category candidates is horizontal in nature and there is no reservation quota for SCs, STs and OBCs within the quota of PH category. It implies that the PH candidates of Civil Services Examination (CSE) are adjusted against the respective quota of categories viz. SC, ST, OBC or General, to which candidate(s) belong, subject to overall vacancies in three different sub-categories i.e. Locomotor Disability and Cerebral Palsy (LD/CP), Hearing Impaired (HI) and Visually Impaired (VI) in a CSE year. The sole criteria for the benefit of preference of service to a candidate of PH category is that he belongs to PH category and for that purpose PH category is a homogeneous category. No further consideration is given to a SC/ST/OBC candidate within the PH category.

10. DoP&T in the case of Shri R.D. Meena has submitted that the role of that Department is confined to allocation of service to the candidates declared successful by the UPSC. Service Allocation to the candidates recommended by UPSC is done based on their rank, category of the candidate, preference, medical status, vacancy in the category etc. No PH candidate in ST category candidates was recommended by UPSC between CSE-2006 to CSE-2001. It is further clarified that the reservation for PH category candidates is horizontal in nature and there is no reservation quota for

SCs, STs and OBCs within the quota of PH category. It implies that the PH candidates of Civil Services Examination (CSE) are adjusted against the respective quota of categories viz. SC, ST, OBC or General, to which candidate(s) belong, subject to overall vacancies in three different sub-categories i.e. Locomotor Disability and Cerebral Palsy (LD/CP). Hearing Impaired (HI) and Visually Impaired (VI) in a CSE year. The sole criteria for the benefit of preference of service to a candidate of PH category is that he belongs to PH category and for that purpose PH category is a homogeneous category. No further consideration is given that the person is SC/ST/OBC within the PH category.

11. On 12.02.2013, the complainants in case Nos.141/1015/12-13; 144/1015/12-13 and 911/1011/12-13 which relate to allotment of home cadre/cadre of their choice contended that despite the Government's Policy to transfer persons with disabilities to their native place, they are not getting allocation to their home States due to the current Cadre Allocation Policy.

12. The complainants in case No. 117/1015/12-13 and 884/1011/12-13 contended that reservation for persons with disabilities which is horizontal reservation is not being implemented in the manner it is envisaged by the Apex Court in various cases.

13. The arguments put forth by the parties and the observations of this Court relating to the issue of cadre allocation and service allocation have been discussed under the two separate headings as under:-

(a) Cadre Allocation:-

(i) The complainants reiterated their written submissions and emphatically put forth their arguments that the candidates with disabilities as a category who are allocated IAS are being discriminated in the matter of cadre allocation. They alleged that it is happening because of faulty Cadre Policy of 2008 issued vide DoP&T's O.M. No. 13011/22/2005-AIS(I) dated 10.04.2008. According to the said Policy, there is specific reservation of vacancies in each State as insider/outsider for General/SC/ST/OBC. These vertical categories, therefore, compete for cadre allocation among their respective categories. However, there is no such provision for candidates with disabilities. Consequently, almost all the candidates with disabilities allocated IAS got the worst cadres like North East. Their contention is that the candidates with disabilities should be given their home cadre as only a few vacancies are reserved for persons with disabilities.

(ii) Referring to Para 7 of the DoP&T's O.M. No.13011/22/2005-AIS(I) dated 10.04.2008 in respect of Cadre Allocation Policy for the All India Services – IAS/IPS/IFS, and, highlighting further the alleged discrimination routinely experienced by persons with disabilities in the matter of allocation of cadre in the said services, the complainants asserted that the said Cadre Allocation Policy not only discriminates between persons with disabilities and those without disabilities; but it also results in inter se discrimination within persons with disabilities themselves inasmuch as only those persons with disabilities who are picked up for allocation of home cadre or cadre of their choice as a result of shifting the allocation from one category to another category owing to non-availability of candidates in the former category stand to benefit to the exclusion of other candidates with disabilities. In other words, they asserted that only candidates with disabilities who are converted stand to benefit to the

exclusion of those candidates with disabilities who are not converted. This, they alleged is manifestly discriminatory and against natural justice.

(iii) The representative of the respondent submitted a written reply in response to the Notice explaining therein the procedure adopted for cadre allocation in respect of various categories of candidates in accordance with the Cadre Policy issued vide O.M. dated 10.04.2008 as amended vide O.M. dated 21.04.2011 and 15.06.2011. He also added that the current policy of cadre allocation does not envisage any relaxation in respect of PH candidates. However, the cases of candidates with disabilities can be considered under the existing policy for change of cadre of a member of All India Service. If any member of All India Services including a person with disability has any genuine grievance, he/she can request for a change of cadre which would be considered by the Government.

(iv) It was observed that the Disability Certificate issued by Indira Gandhi Govt. Medical College & General Hospital, Nagpur in respect of Kumari Bhagyashree Banayat, Complainant No. 3 indicates hearing impairment in her right ear to be 47db. The hearing impairment in her left ear is shown to be 100db. Item 5(x) of the Disability Certificate also indicates that she can perform work by hearing/speaking. Her disability has been indicated as 40-50%. However, as per Section 2(l) of the Act, 'hearing impairment' means loss of sixty decibels or more in the better ear in the conversational range of frequencies. In view of this, DoP&T may examine this aspect in consultation with the Ministry of Social Justice & Empowerment, Department of Disability Affairs and Ministry of Health & Family Welfare.

(v) It was also observed that as per the Disability Certificate dated 19.03.2010 of Shri Ashish Bhargava, Complainant No.1, issued by JLN Medical College and Hospital, Ajmer, he has "Keratocomus" and his disability is indicated as PB-Partially Blind. His condition is not likely to improve and the percentage of his disability is 40% as per the Disability Certificate. However, in Item 4(x) in the disability certificate, the Medical Board has mentioned that as per item (ix) he can perform work by seeing and as per item (xi) he can perform work by reading and writing. As per Section 2(u) of the Act, "person with low vision" means a person with impairment of visual functioning even after treatment of standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device. As in the case of Kumari Bhagyashree Banayat, DoP&T may examine his case also. It was also clarified that there was no such category as "Partially Blind" in the Persons with Disabilities Act, 1995. The Medical Board had perhaps used the said term instead of "Low Vision". This Court had brought this to the notice of DoP&T a number of times in the past, yet the term being "Partially Blind" is used by many authorities.

(b) Service Allocation

(i) Dr. Bhimasen Hantal and Shri R.D. Meena submitted that horizontal reservation means reservation within each vertical category. Unless this is done, persons with disabilities belonging to SC/ST categories would never get a good service like IAS which is against the spirit and intent of Section 33 of the PwD Act. They further submitted that merely because implementation of horizontal reservation is perceived to be difficult, they cannot be deprived of their entitlement and justice. Dr. Bhimasen Hantal (Case No.117/1015/12-13) also explained how the horizontal reservation in a just

manner can be implemented as per which he could be allocated IAS. The complainants also submitted the data to show that persons with disabilities particularly belonging to ST category have not been allocated IAS for many years.

(ii) The representative of the respondent submitted the written reply during the course of hearing and explained the procedure for allocation of services in accordance with Rule 3, 4, 16, 17 and 22 of Civil Services Examination Rules, 2011. He clarified that horizontal reservation for PwDs is calculated based on number of vacancies in different services. There is no reservation quota for SCs, STs and OBCs with the quota of PH category. The PH candidates are adjusted against their respective quota of the vertical categories, namely, SC/ST/OBC or General to which they belong, subject to overall vacancies in the 3 sub-categories of disabilities, namely, locomotor disability, hearing impaired and visually impaired.

14. The copies of the respondent's replies had not been given to the complainants to enable them to file rejoinders, a copy of the said replies dated 12.02.2013 were attached with the ROP dated 26.02.2013 for the complainants to file their rejoinders, if any, within 15 days from the date of receipt of the said proceedings.

15. The Department of Personnel & Training, in their reply dated 12.02.2013 with regard to cadre allocation submitted as under:-

"1. That I in my official capacity and on the basis of documents made available am well aware of the facts and circumstances of the case and have understood the contents thereof also I have been authorized and is competent to swear this affidavit.

2. That I have read and fully understood the contents of the complaint made by the above named applicants. Save as expressly admitted herein and save what are matters of record, each and every allegation and contention made in the said complaints shall be deemed to have been emphatically and specifically denied and disputed. The replying respondent No. 1 craves leave of this CCPD to file the reply with liberty to file a more detailed para wise reply at a later date, if so required/desired.

3. Relief prayed by the applicants:

The basic relief prayed for in the above complaints is that the following officers of IAS may be allocated to their home cadres as per the details given below against the name of each of the candidates:-

<u>Sr. No.</u>	<u>Rank</u>	<u>Name</u>	<u>Home Cadre</u>
1.	397	Ashish Bhargava	Rajasthan
2.	287	Gholap Ramesh Gorakh	Maharashtra
3.	802	Bhagyashree Bhimraoji Banayat	Maharashtra
4.		Reply to the contentions of the complainants	

In response to the contentions of the complainants herein, this respondent seeks to make the following submissions:

(i) The crux of the matter is that all the complainants herein want allocation to their Home states consequent upon their appointment to IAS. The Cadre Allocation Policy, 2008, according to which their cadres have been finalized does not envisage any such relaxation to PH candidates. It is to be appreciated that any action of the Government has to be backed by a well laid down policy in this regard. In the absence of any policy to give such relaxation to PH candidates/request of the complainants cannot be acceded to.

(ii) It is seen that in support of their claim, the complainants herein have quoted the instructions as contained in DOP&T's OM No.AB14017/16/2002-Estt(RR) dated 13.3.2002, which covers Group A,B,C and D for transfer/posting of PH candidates in or nearby their native place. It is humbly submitted that the instructions issued by the Establishment Division of this Department as quoted above are applicable in the matters pertaining to the members of Central Civil Services and not in the matter pertaining to the members of All India Services, as such. It is further submitted that allocation of the members of Indian Administrative Service, appointed on the basis of a particular Civil Services Examination, to various cadres is governed by the provisions as contained in the Department's OM No.13011/22/2005-AIS(I) dated 10.4.2008, which owes its authority to rule 5 of IAS Cadre Rules, 1954, which are not applicable to Central Civil Services.

(iii) It may be appreciated that the direct recruitment to IAS is made through the Civil Services Examination, the process of which is governed by the Civil Services Examination Rules to be published every year. The applicants herein were the candidates for Civil Services Examination, 2011. Rule 19(ii) of the Civil Services Examination Rules, 2011 provides as under:-

"The cadre allotment to candidates' appointed to IAS/IPS will be governed by the policy of cadre allotment in force at the time of allotment of cadre..."

It may be seen that at the time of applying for recruitment to various services, including IAS on the basis of Civil Services Examination, the complainants herein were very much aware of the fact that in case they got selected to IAS, their cadres will be decided as per the policy in force at the relevant point of time. It is not a matter of dispute that at the relevant point of time, the Cadre Allocation Policy, 2008 as issued through this Department's OM No.13011/22/2005-AIS.I dated 10.04.2008 and amended through OM No.29062/1/2011-AIS.I dated 21.04.2011 and OM No.13013/2/2010-AIS.I dated 15.06.2011 was in operation. This Policy does not envisage any such relaxation to the PH candidate that has been claimed by the applicants herein. The implication is that the applicants herein at the time of applying for recruitment were very much aware of the provisions of the Policy according to which their cadres were to be decided in case of selection to IAS and therefore their request for allocation to Home State only in contravention to the policy on the subject is barred by the principle of estoppels.

(iv) *It is humbly submitted that the allocation of a particular cadre to a candidate is not the end of the road. The Government of India has a well laid down policy for change of the cadre of a member of All India Service. This issue is primarily governed by the Department's O.M. No.13017/16/2003 dated 08.11.2004. The issue of addressing the grievances of an officer, who has a particular kind of physical disability, which may have a connection with the cadre allocated to that officer, has been under consideration to the Government. It is the view of the competent authority that there is no requirement of a separate policy in this regard and the existing instructions on cadre transfer are adequate to address such grievances, if any. In other words, if a member of All India Service has any genuine grievance, including physical handicap and requests for change of the cadre, such requests would be considered on the basis of the policy as mentioned above on case to case basis, keeping in view the conspectus of the facts and circumstances of the case."*

16. In the cases of Dr. Bhimasesan Hantal and Shri R.D. Meena, the Department of Personnel & Training filed their replies dated 12.02.2013 with regard to Service Allocation. The substantiated part of the said replies are reproduced below:-

"3. *That the instant case relates to the issue of distribution of reservation available to Physically Handicapped/Impaired (PH) candidate further to the weaker section i.e. PH of SC, PH of ST and PH of OBC category candidates.*

4. *That the vacancy position in each of the service is calculated and reported directly by the concerned Cadre Controlling Authority to the Union Public Service Commission (UPSC) for filling up the posts through Civil Services Examination. The UPSC after declaration of result of a Civil Services Examination, forwards the list of successful candidates to this Respondent, and also the category of each candidate equal to the total number of vacancies to be filled up in the relevant Civil Services Examination for allocation to various services to the extent vacancies reported by Cadre Controlling Authorities to the UPSC taking into account candidates' merit, preferences expressed by them for various services, their medical status and vacancies in the categories i.e. SC, ST, OBC and General category. UPSC declares the category of each candidate as to whether one belongs to SC, ST, OBC or General. The role of this Respondent is confined to allocation of service to the candidates declared successful and whose dossiers are sent by the UPSC to this Respondent and nominate these recommended/allocated candidates for attending Foundation Course.*

5. *That Rules 3,4,16,17 and 22 of Civil Services Examination Rules, 2011 provided as under:-*

Rule (3):- The number of vacancies to be filled on the result of the examination will be specified in the Notice issued by the Commission.

Reservation will be made for candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and Physically disabled categories in respect of vacancies as may be fixed by the Government.

Rule (4):- Every candidate appearing at the examination who is otherwise eligible, shall be permitted four attempts at the examination:

Provided that this restriction on the number of attempts will not apply in the case of Scheduled Castes and Scheduled Tribes candidates who are otherwise eligible:

Provided further that the number of attempts permissible to candidates belonging to Other Backward Classes, who are otherwise eligible, shall be seven. The relaxation will be available to the candidates who are eligible to avail of reservation applicable to such candidates:

Provided further that a physically handicapped will get as many attempts as are available to other non-physically handicapped candidates of his or her community, subject to the condition that a physically handicapped candidate belonging to the General Category shall be eligible for seven attempts. The relaxation will be available to the physically handicapped candidates who are eligible to avail of reservation applicable to such candidates.

Note:-

(I) An attempt at a Preliminary Examination shall be deemed to be an attempt at the Examination.

(II) If a candidate actually appears in any one paper in the Preliminary Examination, he/she shall be deemed to have made an attempt at the Examination.

(III) Notwithstanding the disqualification/cancellation of candidature, the fact of appearance of the candidate at the examination will count as an attempt.

Rule (16)(1):- After interview, the candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate in the Main Examination. Therefore, the Commission shall, for the purpose of recommending candidates against unreserved vacancies, fix a qualifying mark (hereinafter referred to as general qualifying standard) with reference to the number of unreserved vacancies to be filled up on the basis of the Main Examination. For the purpose of recommending reserved category candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes against reserved vacancies, the Commission may relax the general qualifying standard with reference to number of reserved vacancies to be filled up in each of these categories on the basis of the Main Examination:

Provided that the candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes who have not availed themselves of any of the concessions or relaxations in the eligibility or the selection criteria, at any stage of the examination and who after taking into account the general qualifying standards are found fit for recommendation by the Commission shall not be recommended against the vacancies reserved for Scheduled Castes, Scheduled Tribes and the Other Backward Classes.

(16) (2): - While making service allocation, the candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes Recommended against unreserved

vacancies may be adjusted against reserved vacancies by the Govt. If by this process they get a service of higher choice in the order of their preference.

(16)(3) The Commission may further lower the qualifying standards to take care of any shortfall of candidates for appointment against unreserved vacancies and any surplus of candidates against reserved vacancies arising out of the provisions of this rule, the Commission may make the recommendations in the manner prescribed in sub-rules (4) and (5).

(16)(4):- While recommending the candidates, the Commission shall, in the first instance, take into account the total number of vacancies in all categories. This total number of recommended candidates shall be reduced by the number of candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes who acquire the merit at or above the fixed general qualifying standard without availing themselves of any concession or relaxation in the eligibility or selection criteria in terms of the proviso to sub-rule (1). Along with this list of recommended candidates, the Commission shall also maintain a consolidated reserve list of candidates which will include candidates from general and reserved categories ranking in order of merit below the last recommended candidate under each category. The reserved list so maintained shall be treated as confidential till the process of recommendation (s) in term of sub-rule (5) is finally concluded by the Commission. The number of candidates in each of these categories will be equal to the number of reserved category candidates who were included in the first list without availing of any relaxation or concession in eligibility or selection criteria as per proviso to sub-rule (1). Amongst the reserved categories, the number of candidates from each of the Scheduled Caste, the Scheduled Tribe and Other Backward Class categories in the reserve list will be equal to the respective number of vacancies reduced initially in each category.

(16)(5):- The candidates recommended in terms of the provisions of sub-rule (4), shall be allocated by the Government to the services and where certain vacancies still remain to be filled up, the Government may forward a requisition to the Commission requiring it to recommend, in order of merit, from the reserve list, the same number of candidates as requisitioned for the purpose of filling up the unfilled vacancies in each category.

Rule (17):- The minimum qualifying marks as specified under rule 15 and 16 may be relaxable at the discretion of the Commission in favour of physically handicapped candidates in order to fill up the vacancies reserved for them:

Provided that where a physically handicapped candidate obtains the minimum qualifying marks in his own merit in the requisite number for General, or the Scheduled Caste or the Scheduled Tribe or Other Backward Class category candidates, then, the extra physically handicapped candidates, i.e., more than the number of vacancies reserved for them shall be recommended by the Commission on the relaxed standards and consequential amendments in the rules will be notified in due course.

Rule (22):- The eligibility for availing reservation against the vacancies reserved for the physically disabled persons shall be the same as prescribed in "The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.":

Provided further that the physically disabled candidates shall also be required to meet special eligibility criteria in terms of physical requirements/functional classification (abilities/disabilities) consistent with requirements of the identified service/post as may be prescribed by its cadre controlling authority. A list of Services identified suitable for Physically Disabled Category along with the physical requirements and functional classifications.

The physical requirement and functional classification can, for example, be one or more of the following:-

<u>CODE</u>		<u>PHYSICAL REQUIREMENTS</u>
MF	1	Work performed by manipulation by fingers.
PP	2	Work performed by pulling and pushing.
L	3	Work performed by lifting.
KC	4	Work performed by kneeling and crouching.
BN	5	Work performed by bending.
S	6	Work performed by sitting (on bench or chair),
ST	7	Work performed by standing.
W	8	Work performed by walking.
SE	9	Work performed by seeing.
H	10	Work performed by hearing/speaking.
RW	11	Work performed by reading and writing.
C	12	Communication.

<u>CODE</u>		<u>FUNCTIONAL CLASSIFICATION</u>
BL	1	Both legs affected but not arms.
BA	2	Both arms affected – <ul style="list-style-type: none"> a) Impaired reach. b) Weakness of grip. c) Ataxic
BLA	3	Both legs and both arms affected.
OL	4	One leg affected (R or L) <ul style="list-style-type: none"> a) Impaired reach. b) Weakness of grip.

		c) Ataxic
OA	5	One arm affected (R or L)
		a) Impaired reach.
		b) Weakness of grip.
		c) Ataxic
OAL	6	One arm and one leg affected.
MW	7	Muscular weakness.
B	8	Blind.
LV	9	Low Vision.
H	10	Hearing.

6. In accordance with the above provisions, first of all, service is allocated to PH candidates keeping in view the medical status of the candidates, functional classification/physical requirement for the service, preference of service as expressed by the candidate and vacancy identified in the category of disability i.e. Locomotor Disability & Cerebral Palsy (LDCP), Visual Impairment (VI) and Hearing Impairment (HI).

6.1. Service allocation in respect of PH candidates who qualify on General Merit (GM) i.e. without availing any relaxation/concession meant for PH category is ascertained through software in PH category as well as other relevant categories and the best preferred service is allocated. In this process, if a PH category (GM) candidate is allocated the best preferred service in UR category as per his rank and preference, one vacancy in PH category remains unallocated, which is carried forward to the vacancy of the next year.

6.2 Thereafter, allocation for other candidates belonging to General/OBC/SC/ST category is done with the help of the software on the basis of rank, preference, medical status, category of candidate, medical requirement for the service and availability of vacancy in his/her category at his/her turn.

7. That the reservation for PH category candidates is horizontal in nature and there is no reservation quota for SCs, STs and OBCs with the quota of PH category. It implies that the PH candidates of Civil Services Examination (CSE) are adjusted against the respective quota of categories viz., SC, ST, OBC or General, to which candidate(s) belong, subject to overall vacancies in three different sub-categories i.e. Locomotor Disability and Cerebral Palsy (LDCP), Hearing Impaired (HI) and Visually Impaired (VI) in a CSE year.

8. That the sole criteria for the benefit of preference of service to a candidate of PH category is that he belongs to PH category and for that purpose PH category is a homogeneous category. No further consideration is given to a SC/ST/OBC candidate within the PH category.”

17. Shri K. K. Bhargava in his rejoinder letter dated 16.04.2013 has, inter-alia, prayed that there remains no doubt that his son Shri Ashish Bhargava should have been allotted Rajasthan Cadre at the first instance when allotment of cadres took place in January, 2013, on the basis of CSE-2011. The gross injustice has been done to his son by ignoring his rightful claim and entitlement, to one of the two insider vacancies in General category in Rajasthan Cadre. This has caused him tremendous mental pressure, torture and pain and he can at this stage only pray for justice. To meet the ends of justice and fair play, appropriate orders for reallocation/transfer of his son to Rajasthan Cadre may be passed to undo the injustice done to him.

18. Dr. Bhimasen Hantal in his rejoinder letter dated 09.03.2013 has, inter-alia, prayed that DoP&T's reply may kindly be dismissed as DoP&T's reply and procedure of service allocation is gross violation of constitutional provisions, spirit of rule of law, ethics of natural justice and also in contravention to clear guidelines and pronouncements of Hon'ble Apex Court and, therefore, DoP&T may kindly be directed to allot him into IAS on the basis of his rank and preferences in CSE-2011, being an SC/PH candidate as there has been Nil representation of IAS among SC/PH for seven consecutive CSE years (CSE2005-CSE-2011).

19. Shri R.D. Meena in his rejoinder letter dated 13.03.2013 has, inter-alia, submitted that the Department of Personnel & Training has not replied the satisfactory answers to the questions raised by him. DoP&T has ignored the constitutional provisions and various judgments of Hon'ble Supreme Court of India, therefore, the replies may be dismissed and the justice may be provided according to the facts in the spirit of the Constitution of India, ethics, justice and judgment of Supreme Court of India with regard to horizontal and vertical reservation.

20. No rejoinder was filed by Shri Ramesh Gorakh Gholap and Kumari Bhagyashree Banayat.

21. Upon considering the rejoinders of the above complainants, it was decided to fix the next hearing on 31.05.2013.

22. During the hearing, Shri K.K. Bhargava reiterated his written submissions and forcefully submitted that his son Shri Ashish Bhargava should be allocated Rajasthan cadre. He also submitted that the Cadre Allocation Policy must be so modified that it is non-discriminatory in respect of candidates with disabilities.

23. Dr. Bhimasen Hantal referred to some of the judgments of various Courts concerning the horizontal reservation. As per him, the horizontal reservation for persons with disabilities in accordance with the said judgments means that the reserved vacancies for persons with disabilities belonging to a particular vertical category for example SC/ST has to be computed against their share of vertical reservation.

24. The representatives of the DoP&T submitted that there is nothing more to add to their written submissions in respect of each case. They also clarified that Department of Personnel & Training has

not revised its instructions on implementation of horizontal reservation. However, the issue of reservation would be handled by another Division in the Department of Personnel & Training.

25. After careful perusal of the written averments/arguments submitted by all concerned and after hearing out the parties, this Court observes as follows:-

26. This Court cannot arrogate to itself the task of formulating/enunciating policies or undertaking legislative functions as its mandate under the Persons with Disabilities Act, 1995 is to see whether any prescribed norm, rule or law etc. in respect of persons with disabilities has been violated. Be that as it may, the issues before this Court were as follows:-

- (a) Whether the benefit of reservation of insider vacancies in respect of allocation of cadre should be extended to persons with disabilities at par with SC, ST and OBC?
- (b) .Whether horizontal reservation in relation to persons with disabilities implies distribution of horizontal reservation in various vertical categories proportionately?

27. It is further observed that regarding the first issue, while prima facie there appears to be no violation of any existing law or policy, this Court, with reference to Proviso to Para 7(c) of O.M. No.13011/22/2005-AIS(1) dated 10.04.2008 of DoP&T, Government of India, feels that the benefit of reservation of insider vacancies which is available to persons with disabilities in a situation of conversion due to non-availability of a suitable candidate in a given vertical category should also be extended to all candidates with disabilities at par with SC, ST and OBC whether in a situation of conversion or otherwise. The very fact that the impact of the disability of a candidate has nothing to do with a situation of conversion as it does not get any worse or any better by virtue of a situation of conversion, does not justify that such benefit should be made available to persons with disabilities only in the situation/event of conversion as provided for in proviso to Para 7(c) of the said O.M. This explains why the norm enunciated in Proviso to Para 7C appears to be manifestly discriminatory. For all practical purposes, this is a classic case of double-edged discrimination as it discriminates against persons with disabilities vis-à-vis persons without disabilities and also discriminates against persons with disabilities who are not in a situation of conversion vis-à-vis persons with disabilities who are in a situation of conversion. From another standpoint, it is also a case of discrimination against persons with disabilities belonging to general category vis-à-vis persons with disabilities belonging to categories other than the general category.

28 Regarding the second issue of service allocation to persons with disabilities on the basis of proportionate distribution amongst different vertical categories, it is observed that this is primarily an interpretational issue replete with umpteen intricate details and, as such, needs to be looked at afresh by the Reservation Division of the DoP&T, if necessary, in consultation with Ministry of Law & Justice, Government of India.

29. In the above view of the matter, the respondent Department is advised as under:-

- (a) To actively examine and take a fresh view of the Cadre Allocation Policy in a manner that it ensures justice and equality of opportunity to persons with disabilities, and in keeping with the purpose and spirit of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and also of the United Nations Convention on the Rights of Persons with Disabilities which India has since ratified. The respondent is further advised to particularly and actively consider revising Proviso to Para 7(c) of DoP&T's O.M. No. No.13011/22/2005-AIS(1) dated 10.04.2008 so as to ensure justice and fair play to candidates with disabilities and also consider allocating appropriate cadres to S/Shri Ashish Bhargava, Raamesh Gorakh Gholap and Kumari Bhagyashree Banayat and other similarly placed selected candidates in whose case reserved insider vacancies exist in their respective categories.
- (b) To actively examine (particularly through Reservation Division of the respondent, namely, DoP&T) and take a view on the distribution of horizontal reservation involving persons with disabilities amongst various vertical categories proportionately, if necessary, in consultation with Ministry of Law & Justice.
- (c) To take appropriate action with regard to the issues mentioned in Para 13(a)(iv) and (v) of this order.
- (d) Action taken in respect of the above may be intimated to this Court within two months from receipt of this Order.
30. A copy of this Order be posted on the website of the office of the CCPD.
31. The matter stands disposed of.

Sd/-
(P.K. Pincha)
Chief Commissioner
for Persons with Disabilities