



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त विकलांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES

विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities

सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment

भारत सरकार / Government of India

Case No. 3625/1011/2015

Dated: 19.10.2016

Case No. 3641/1041/2015

#### In the matter of:

Shri Dhanu Kumar Gupta, <sup>0444</sup>  
A-59, Amrita Kutiram Aawasia Yojna,  
Saipura, Sanganer,  
Jaipur-302029, Rajasthan.

--- Complainant

#### Versus

The General Manager, <sup>0445</sup>  
Central Recruitment & Promotional Department,  
State Bank of India,  
Corporate Centre, State Bank Bhawan,  
Madam Cama Road, Mumbai-400021.

..... Respondent No. 1

The Assistant General Manager, <sup>0446</sup>  
State Bank of India,  
HR Department, 13<sup>th</sup> Floor,  
Local Head Office, 11, Sansad Marg,  
New Delhi-110001.

..... Respondent No. 2

Date of hearing : 29.05.2015, 04.08.2016

#### Present :

29.05.2015

1. Shri Dhanu Kumar Gupta, Complainant.
2. Shri P.P. Tahamili, Chief Manager, Ms. Nirmala Ukrani, AGM(Law) and Shri Kittu Bajaj, on behalf of Respondents.

29.05.2015

1. Shri Dhanu Kumar Gupta, Complainant.
2. Ms. Nirmala Ukrani, AGM (Law) and Shri Shivam, CM (Rectt.), on behalf of Respondents.

### ORDER

The above named complainant, Shri Dhanu Kumar Gupta, a person with 40% locomotor disability (OA & OL) filed complaint dated 03.02.2015 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act', regarding non-issuance of appointment letter to the post of Probationary Officer in SBI.

2. The complainant enclosed a copy of the letter No.Hr/RC/1166 dated 07.01.2015 issued by Assistant General Manager (HR), State Bank of India, Local Head Office, Sansad Marg, New Delhi and has submitted that on the basis of the advertisement No. CRPD/PO/2014-15/01 dated 05.04.2014 published by the State Bank of India, Corporate Centre, Mumbai, his appointment letter to the post of Probationary Officer has not been issued.

.....2/-

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006  
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001; Tel.: 23386054, 23386154; Telefax : 23386006

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)  
(Please quote the above file/case number in future correspondence)

3. The matter was taken up with the respondent vide this Court's letter dated 05.03.2015 followed by reminder dated 25.03.2015.

4. The respondent No.1 vide letter No. .CRPD/VKS/PO/2014-15/2038 dated 20.03.2015 submitted that as the matter relates to our Local Head Office, New Delhi, we have advised them to look into the matter and take appropriate decision in the light of the guidelines issued by the Ministry of Social Justice & Empowerment.

5. The Respondent No. 2 vide letter No.HRRC/007 dated 06.04.2015 submitted that as per para 2(d) of advertisement dated 05.04.2014, at the time of written examination, only blind/low vision candidates and those candidates whose writing speed is affected by cerebral palsy can use scribe/writer at his/her own cost. In all such cases where scribe/writer is used, the following rules applies:-

- (a) The candidate will have to give a suitable undertaking in the prescribed format at the time of online examination.
- (b) Only those candidates who use a scribe/writer shall be eligible to compensatory of 20 minutes and/or part thereof for every hour of examination provided that the candidate uses scribe/writer for both the objective and descriptive test.

Shri Dhanu Kumar Gupta submitted his medical certificate dated 12.10.2009 wherein his disability is shown as shoulder disorientation right side b/c amputation right side, since the age of 5 years. He is neither blind/low vision candidate nor a candidate whose writing speed is affected by cerebral palsy, thus he has no locus to use a scribe and avail of extra time of one hour for both the objective and descriptive test. He gave a false declaration that he is blind/low vision or affected by cerebral palsy with locomotor impairment and his/her writing speed is affected and thus he needs a writer (scribe) as permissible under the Government of India rules governing the recruitment of physically challenged persons. He availed the services of a scribe by giving a false declaration merely to avail extra time of one hour for three hour examination, much to be prejudice and detriment of similarly placed candidates. Besides giving a false declaration, he used the scribe de hors the advertisement. In view of the above Shri Gupta was not eligible to use of scribe and on account of false declaration and use of scribe in violation of norms, he is not eligible for appointment accordingly. He was called upon his conduct vide letter dated 11.03.2015 and subsequent reminders to explain the reason and basis on which he used scribe to which no satisfactory reply has been given by him. Incidentally all the vacancies of the OH have been filled. No vacancy of OH is existing on date. Shri Gupta cannot be permitted to take advantage of his own wrong of using a scribe by giving a false declaration.

6. The complainant vide his rejoinder dated 27.04.2015 submitted that the comprehensive guidelines for conducting examination for persons with disabilities were notified by the Ministry of Social Justice & Empowerment for conducting examinations for persons with disabilities in order to

balance technological advancements with the right of equal opportunity and full participation of the persons with disabilities in various examinations for recruitment. It is humbly submitted that despite of a clear dictation of the fact that any restriction as to use of scribe cannot be fixed, the advertisement imposes restrictions in clear contravention of the guidelines. It is also to be emphasized here that as per the clarification issued by the Ministry of Finance to IBPS also mentions that in cases of discrepancies in interpretation of the clauses of guidelines as issued, the said discrepancy may be resolved by adopting need-based flexibility which has been vehemently denied to the complainant. It is submitted to the court that the said need-based flexibility has been denied to the complainant by virtue of ignorance of law on the part of State Bank of India and circumventing the fact to put the complainant at a greater loss.

7. Upon considering the replies dated 20.03.2015 and 06.04.2015 of the respondents and the rejoinder/comments dated 27.04.2015 of the complainant, a hearing was scheduled on 29.05.2015.

8. Reiterating his written submissions the complainant submitted that he was given extra time in 10<sup>th</sup>, 12<sup>th</sup> and B.Com. examination although he was not allowed the services of scribe. As per him, his one right arm and one right leg are amputated and therefore, he writes with his left arm. His writing speed is not adequate and is affected due to various factors like difficulty in arranging sheets etc. Moreover, for on-line examinations, he has to use the scribe as the mouse is right hand operated and he has to operate it with left hand.

9. The representative of the respondent submitted written statement dated 28.05.2015, which is the reply to the rejoinder dated 27.04.2015 submitted by the complainant. As per the said statement, the complainant had given a false declaration that his writing speed is affected due to his disability as he could write proficiently with his left hand and had no physical limitation of speed. The respondent has also stated that complainant has not disclosed whether he used a scribe for his school examination. They have, in fact, concluded that the complainant had not used the scribe and, therefore, he cannot claim that his writing speed is affected due to his disability. During the hearing, they also added that a Show Cause Notice was given to the complainant as to why his candidature should not be cancelled for using a scribe without being eligible for the same. He did not submit any document in support of the said Show Cause Notice nor did he submit any document that he has mentioned during the hearing about using scribe in his school examination.

10.. It is observed that clause (c) of the prescribed Declaration Form requires that the candidate who uses services of the scribe would give undertaking to fully satisfy the Medical Officer that as his/her writing speed is affected by the disabilities mentioned in Para 1 namely, the candidate is low vision or affected with locomotor impairment. It is further observed that the respondent Bank had not got the complainant examined by the Medical Officer to draw the conclusion that the disability of the complainant did not affect his writing speed. Therefore, it would not be appropriate to conclude that

the complainant's writing speed is not affected due to his disability and, therefore, use of the services of a Scribe for the examination was not justified and that he made a false statement. The respondent Bank is, therefore, advised to inform the complainant about the arrangement for verification of his writing speed within 30 days from the date of receipt of these Record of Proceedings as per Bank Rules and submit a report thereof within 30 days thereafter.

11. The respondent vide letter No. HR/RC/522 dated 21.09.2015 submitted the report of the Medical Board. According to that report, the average writing speed of the complainant is about 10 words per minute. He was writing with his left hand and his left upper limb is clinically normal. The respondent vide letter No. HR/RC/1456 dated 05.02.2016 submitted that they have advised the complainant Shri Dhanu Kumar Gupta, the Bank's decision vide their letter No. HR/RC/1455 dated 05.02.2016. A copy of the referred letter was enclosed with the letter for perusal of this Court.

12. The complainant vide his Rejoinder-2 sent vide his e-mail dated 21.06.2016 submitted that the concern of the Court that selection and use of scribe is under the adjudication of this Court and therefore, the bank could not adjudicate regarding the legality of use of scribe or violation of the government policies. It is brought to the kind concern of the Court that the examination board constituted by the State Bank appears to adjudicate the disabilities reflected and certified by the Chief Medical Officer, Rajkiya Jaipuria Chikitsalaya, Jaipur which is clear breach of authority and over-exercise of the power. The Bank officials are unnecessarily establishing bad logics with intent to deny selection in the examination. It is humbly requested to the Court that the matter be adjudicated in its merit.

13. Upon considering the letter No. HR/RC/522 dated 21.09.2015 and letter No. HR/RC/1456 dated 05.02.2016 of the respondent No.2 and complainant's rejoinders/comments dated 05.10.2015 and e-mail dated 21.06.2016, a hearing was scheduled on 04.08.2016.

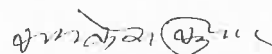
14. During the hearing on 04.08.2016, the complainant reiterated his written submissions and submitted that in the Office Memorandum dated 26.02.2013 of the Ministry of Social Justice & Empowerment, wherein uniform and comprehensive guidelines for conducting examination for the persons with disabilities have been notified to all Ministries and Departments of the Union of India. It is further emphasized that such uniform guidelines for conducting examinations for persons with disabilities were notified in order to balance technological advancement with the right of equal opportunity and full participation of the persons with disabilities in various examinations for recruitment. It is also to be emphasised here that as per the clarification issued by the Ministry of Finance to IBPS also mentions that in cases of discrepancies in interpretation of the clauses of guidelines as issued, the said discrepancy may be resolved by adopting need-based flexibility which has been vehemently denied to the complainant. To get the facility of scribe, is the right of persons with disabilities, which should not be denied. If the person with disability has availed the facility of

scribe then he must be given extra time as per rules. The complainant prayed that his case may be considered sympathetically and he may be given appointment at the earliest.

5. The representative of the respondent submitted that regarding Clause III of Ministry of Social Justice & Empowerment's O.M. dated 26.02.2013 for the facility of Scribe/Reader, the clarification is given of facility of Scribe/Reader/Lab Assistant which is meant for only for those candidates with disability, who have physical limitation to write including that of speed, the additional time may be applicable only to such candidates. Based on these guidelines, Bank has taken the decision that the complainant was not eligible for scribe and however, in compliance of the directions given by this Court vide Order dated 15.06.2015, the writing speed be got examined from the Medical Board constituted by the Bank who opined that average writing speed is about 10 words per minute. He was writing with his left hand and his left upper limb is clinically normal. Based on this report, the selection of the candidate/complainant was withdrawn vide letter No.HR/RC/1455 dated 05.02.2016. It was contended on behalf of the Bank that this withdrawal of selection is in accordance with the guidelines dated 26.02.2013 of the Ministry of Social Justice & Empowerment, Department of Disability Affairs (now renamed as Department of Empowerment of persons with Disabilities) and as per the undertaking given by the Complainant dated 21.06.2014, the complainant was required to satisfy the Bank's Medical Officer that there is necessity of use of a scribe and his/her writing speed is affected by the disability. Accordingly, the Bank's Medical Board which was consisted of two doctors from AIIMS and one Bank's Medical Officer concluded that as the complainant was writing with his left hand and his left upper limb is normal. Therefore, it was concluded that his writing speed is not affected and he was not eligible to use scribe. Further, it was submitted that as per the Certificate submitted by the complainant, his disability is since 1996 i.e. when the complainant was at the age of 5 years. Therefore, it was submitted that the complainant is having practice of writing by his left hand and there was no involvement in the examination. Examination was partly on-line and descriptive test was for one hour.

16. After hearing the parties and perusal of the record, this Court is of the view that the complainant is entitled for facility of scribe in the light of clause III of Ministry of Social Justice & Empowerment, Department of Disability Affairs (now renamed as Department of Empowerment of Persons with Disabilities) O.M. No.16-110/2003/DD.III dated 26.02.2013 which provides that the facility of Scribe/Reader/Lab Assistant should be allowed to any person who has disability of 40% or more if so desired by the person. The Bank is directed to issue appointment letter to complainant from the date he is eligible for appointment after clearing the recruitment process.

17. The case is accordingly disposed off.



( Dr. Kamlesh Kumar Pandey )  
Chief Commissioner  
for Persons with Disabilities