



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.4510/1024/2015

Dated:- 24.11.2016

In the matter of:

Shri Jag Roshan,  
G-16, Rattan Park,  
Near Ramesh Nagar Metro Station,  
New Delhi-110015.

..... Complainant

Versus

State Bank of India,  
(Through Chairman),  
State Bank Bhavan,  
Madame Cama Road,  
Mumbai-400021.

..... Respondent

**Date of Hearing : 08.06.2016, 15.07.2016, 01.08.2016, 11.08.2016 & 19.09.2016**

Present:

08.06.2016

1. S/Shri Piyush Kumar Arora and Bhanu Malhotra on behalf of Complainant.
2. Shri Manoranjan Mishra, Manager (HR) on behalf of Respondent.

15.07.2016

1. Shri Jag Roshan, Complainant alongwith S/Shri Piyush Kumar Arora and Bhanu Malhotra.
2. Respondent absent.

01.08.2016

1. Shri Jag Roshan, Complainant alongwith S/Shri Piyush Kumar Arora and Bhanu Malhotra.
2. Shri Manoranjan Mishra, Manager-HR and Ms. Nirmala Ukrani, AGM (Law) on behalf of Respondent.

11.08.2016

1. Shri Jag Roshan, Complainant alongwith Shri Bhanu Malhotra.
2. Shri Manoranjan Mishra, Manager-HR and Ms. Nirmala Ukrani, AGM (Law) on behalf of Respondent.

19.09.2016

1. Shri Jag Roshan, Complainant alongwith Shri Bhanu Malhotra.
2. Shri Manoranjan Mishra, Manager-HR, Arvind Sharma, Manager-Law & Ms. Ruchi Khurana, Advocate on behalf of Respondent.

**ORDER**

The above named complainant, a person with more than 40% locomotor disability filed a complaint under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding not approving the amendments in pay scale of JMGS-1 by S.B.I.

...2/-

2. Shri Jag Roshan joined the Clerical Cadre of State Bank of India on 05.07.1982 under PH quota, and was promoted to JMGS-1 in the year 2010. After promotion he was posted at the Rajouri Garden branch. Unfortunately despite discharging his duties well as an Officer, he was not being paid remuneration of an Officer with effect from his promotion. On the advice of his bank, he was made to undergo through the medical examination for accessing his disability during October, 2010, May, 2011 and May 2014.

3. The matter was taken up under Section 59 of the Act with the respondent vide this Court's letter dated 08.07.2015 followed by reminder dated 21.09.2015 and 23.10.2015.

4. The Deputy General Manager (B&O), State Bank of India vide his letter No.DAO-II/HR/2711 dated 06.11.2015 has stated that the complainant has not found medically fit for promotion to JMGS-I on account of 'Chronic Renal Failure' and not on account of his belonging to OH category.

5. The complainant vide his rejoinder dated 17.11.2015 and 26.04.2016 has submitted that the Bank has intentionally denied promotion to him and other benefits as well by declaring him medically unfit. He submitted that as advised by the bank he got himself medically examined during May, 2014 which clearly showed that there is no chronic renal problem. He further submitted that his promotion was due from the year 2010. During the year 2012 he got a successful kidney transplant done and the bank was given the medical records. He submitted that the respondent bank is victimizing him under the name of chronic renal disorder which is not even existing, now after the successful transplant of Kidney.

6. Upon considering respondent's reply dated 06.11.2015 and complainant's rejoinder dated 17.11.2015 and 26.04.2016, a hearing was scheduled on 08.06.2016.

7. During the hearing on 08.06.2016, the representatives of the complainant reiterated the written submissions of the complainant and submitted that he joined the Clerical Cadre of State Bank of India on 05.07.1982 on person with disability quota. He was promoted to JMGS-1 in the year 2010. After promotion he was posted at the Rajouri Garden branch. Unfortunately despite discharging his duties well as an Officer, he was not being paid remuneration of an officer with effect from his promotion. On the advice of his bank, he was made to undergo medical examination for accessing his disability during October, 2010, May, 2011 and May, 2014. Vide letter dated 18.02.2015, he was directed to get the re-examination done. Vide letter dated 06.11.2015 it was intimated that the complainant has not been found medically fit for promotion to JMGS-1 on account of "Chronic Renal Failure", whereas the reports of medical tests done in 2014 as per his knowledge do not provide for any such Chronic Renal Failure as existing kidney transplant was done in September, 2012. Even if the promotion was withdrawn, the complainant would have been given chances of performance appraisal on a yearly basis. However, the delay on account of reply in this regard has lead to a situation where the complainant has become ineligible in September, 2015 while attaining the age of 55 years.

8. The representative of the respondent submitted that persons found eligible for promotion to the post of Assistant Manager after written examination and interview and have to undergo a medical fitness examination. After which, their promotion is confirmed and benefits are awarded. The complainant accordingly after being found eligible for promotion, had to undergo the medical fitness test, in which the Bank found him medically unfit on account of "Chronic Renal Failure". Therefore, his promotion w.e.f. 28.08.2010 has been withdrawn and no discrimination against him on account his being a person with disability has been done to him. His medical fitness was examined from an outside Specialized Doctor also. 2-3 medical tests were done to give him proper chance to show that Bank is satisfied to the health position of the complainant. He has duly been informed about the circumstances leading to taking such decision by the Bank. Recently he has requested the Bank in December, 2015 to re-consider his case in the light of his kidney transplant which he has undertaken in the year 2012. His representation has been forwarded by the Local Head Office, Delhi to Corporate Centre of the SBI situated at Mumbai for their sympathetic view. Bank has not done any discrimination against him. He was appointed in Bank under OH category and the Bank has in the meanwhile awarded him two in-cadre promotions promoting him from Assistant to Senior Assistant and from Senior Assistant to Special Assistant. Now that formal withdrawal of his promotion to JMGS-I has been advised to him on 01.06.2016 and which has duly been acknowledged by him, Bank may consider him for promotion to Senior Special Assistant Cadre in present year promotional exercise.

9. Upon hearing both the parties and after going through the record, the respondent is directed to submit the following information to this Court within 15 days :-

- (i) Number of persons promoted since 2010 to 2015.
- (ii) Number of persons whose candidature was rejected on medical ground
- (iii) Number of persons with disabilities promoted since 2010 to 2015.
- (iv) Copy of Policy/guidelines regarding requirement of Medical Test in promotion exercise.
- (v) Whether the above policy was approved by the Department of Financial Services (earlier known as Banking Division) or by the Board of Directors of the Bank.

The case is fixed for next hearing on 15.07.2016.

10. During the hearing on 15.07.2016, none appeared on behalf of the respondent nor any intimation received about his inability for attending the hearing on 15.07.2016 despite the fact that the date of hearing was already informed on the last date of hearing and the Record of Proceedings in the matter were also sent on 04.07.2016 mentioning the next date of hearing i.e. 15.07.2016 by Speed Post. The respondent has also not filed the required information as asked in para 3 of the Record of Proceedings dated 04.07.2016. This Court noted with serious concern, the utter disregard shown by the complainant by neither intimating his inability to attend the hearing nor caring to appear to explain his version of the case.

11. The complainant while reiterating his written submissions has filed his objections on the statement made by the representative of the respondent during the last hearing.
12. The respondent is being given the last opportunity for appearing before this Court on 01.08.2016 failing which the case will be decided on the basis of record available on file.
13. During the hearing on 01.08.2016, Shri Manoranjan Mishra, Manager (HR), representative of State Bank of India submitted his unconditional apology for not appearing before the Court on the last date of hearing. He also submitted that he is filing the reply to the complainant's appeal and reply to the information sought by this Court vide Record of Proceedings dated 04.07.2016.
14. The copies of replies filed by the representative of the respondent are taken on record.
15. The representative of the complainant submitted that the copies of replies filed by the representative of the respondent today in the Court have not been provided to him for filing his submissions in the matter.
16. The copies of the replies were handed over to the representative of the complainant with the directions for submitting his reply two days prior to next date of hearing. The case is adjourned to 11.08.2016.
17. During the hearing on 11.08.2016, the complainant reiterated his written submissions and submitted that the respondent has stated that the Bank has never got the work of officer cadre done from the complainant. However, it is submitted that the complainant has already submitted legitimate proofs of being working as Scale-I and even Scale-II officer alongwith the submissions dated 09.08.2016 to this Court and the respondent Bank. Further the respondent bank has submitted that the complainant has never requested for a reconsideration of the promotion that was due to him since 2010. It is humbly submitted that time and again the complainant has been requesting the bank to release salary and other benefits that were to be given post promotion letter dated 09.10.2010. It is to be noted that by no means may be applicant be held responsible to be not claiming a reconsideration over the promotion that was due to the applicant since 2010, since the respondent bank neither reverted over the queries raised by the complainant nor considered their own HR policies in this regard. The HR policy of the respondent bank clearly convey that under all circumstances the respondent bank has to itself consider every employee for a promotion on a yearly basis till the time the employee achieves the maximum specified age eligibility. The respondent bank if considers that a verbal communication to the employee over working in clerical cadre is valid and justified without any need of written communication in this regard, then the principle should equally apply to the respondent bank also wherein the agony of the complainant was not only known and visible to the concerned authorities of the Bank.
18. The representative of the respondent requested to file the reply to the rejoinder dated 09.08.2016 of the complainant. The Court permitted the respondent to file the reply upto 10.09.2016 in this Court.

19. After hearing the parties, the case is re-scheduled for hearing on 19.09.2016. The parties are directed to come prepare for arguments on the date of hearing alongwith all relevant records so that a final view can be taken in the matter on the date of hearing.

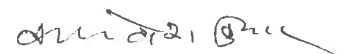
20. During the hearing on 19.09.2016, the complainant reiterated his written submissions and submitted that the respondents have again tried to misinform this Court of the 2014 medical records that have always been asked for by the complainant to be submitted by the respondents in this Court. The respondent has been submitting the old 2010-11 medical records giving details of the recommendations from Dr. Ahluvalia. The medical records of 2014 which could have been given the details over the successful kidney functioning of the complainant still not been produced by the respondents despite regularly asking for by this Court. It is reiterated that the post successful kidney transplant in 2012, the complainant has been medically fit for performing the roles of an Officer in JMGS-1 cadre. As per the usual practices being followed in the bank and in lines with the HR guidelines, on any event of withdrawal/cancellation of promotion to any employee, a formal intimation is always desired and mandatory. However, no such intimation was ever provided not only within the one year period of probation. The statement that the respondent bank never got the work of Officer cadre got done on a regular basis from the complainant and simultaneously not providing benefits of the JMGS-1 Officer is a false denial. It is submitted that legitimate proofs of the same are already submitted to Court by the complainant and further the respondent has submitted no direct answer/defence to the facts presented by the complainant which can prove these proof wrong. It is a surprise to hear that the respondent bank itself does not have a copy of the letter dated 23.12.2013 submitted and accepted by the respondent. The proofs of allocation of work to the capacity of 5/7, of which the proofs have also been submitted in the Court. It is submitted that the complainant has refused accepting the Senior Special Assistant position only and only in the ongoing financial year and that too for the reason that the present case under jurisdiction accounts for demanding the legitimate promotion to legitimate JMGS-1 scale, matter being sub-judice. Moreover the delay in the boasted in-cadre clerical positions was never because of complainant refusing the same. In fact the respondent bank has never asked the complainant for the in-cadre promotions also on legitimate times. During the hearing, the complainant prayed before the Court to direct the respondent to provide the legitimate JMGS-1 promotion to the complainant with effect from September, 2012 as the petitioner got successful kidney transplant done in September, 2012. This was because the contention of the respondent of the complainant being medically unfit on the grounds of chronic renal failure no longer existed post the successful kidney transplant done in September, 2012.

21. The representative of the respondent submitted that they have nothing to add new facts in this case. He further submitted that no discrimination has been done by the Bank with the complainant Shri Jag Roshan on account of his disability. He was appointed under OH category. Bank has already given him two in-cadre promotions and one another in-cadre promotion is in process. The

promotion which was withdrawn because he was not found medically fit for promotion to JMGS-I on account of "Chronic Renal Failure" and not on account of his belonging to OH category. On the points on which this Court had asked information from the respondent, those do not apply in the case of the complainant. The other points which have been raised by the complainant, due to the above reason become irrelevant and inapplicable. The original copy of the Medical Report has been shown to the Court as desired by the Complainant. Regarding three letters which the complainant had written to the Bank, out of which one letter which was written by his wife, that has been replied by the Bank vide letter dated 06.12.2013. Regarding the first letter, for that the Bank had already instructed verbally. The third letter dated 23.12.2013 is not traceable in the Bank record. Therefore, in this connection we are unable to tell before the Court.

22. After hearing the parties and after perusal of the record available on the file, this Court has observed from the reply submitted by the respondent vide letter No. DZO-2/RV/STAFF/364 dated 01.08.2016, in which it is stated that total 1642 number of employees have been promoted since 2010 to 2015. Only Shri Jag Roshan, the complainant has been denied promotion by the respondent organization. Here, it is surprising to know whether all 1641 persons who were promoted, were physically fit except the complainant one. It seems that he has been denied promotion only on the basis of disability. It is in violation of Section 47 of Persons with Disabilities Act which provides that no promotion shall be denied to a person merely on the ground of his disability. The respondent is advised that the complainant's case may be considered for promotion from the date when he was original promoted to the post of JMGS-I keeping in mind the provisions of Section 47(2) of the Persons with Disabilities Act, 1995. As the complainant had undergone kidney transplantation and now as per Medical Report, he is fit for performing his duties. Therefore, he should not be deprived of the right of promotion and the Bank should consider accordingly.

23. Ordered accordingly.



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